ORDINANCE NO. 20,732

AN ORDINANCE AUTHORIZING THE ISSUANCE OF A PROMISSORY NOTE TO PROVIDE SHORT-TERM FINANCING UNDER AMENDMENT NO. 78 TO THE ARKANSAS CONSTITUTION FOR THE ACQUISITION, CONSTRUCTION, AND INSTALLATION OF REAL AND TANGIBLE PERSONAL PROPERTY DEDICATED TO PUBLIC SAFETY AND INFORMATION TECHNOLOGY; PROVIDING FOR THE PAYMENT OF THE PRINCIPAL AND INTEREST ON THE NOTE; TO DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES.

WHEREAS, the City of Little Rock, Arkansas (the “City”) is authorized and empowered under the provisions of Amendment No. 78 to the Arkansas Constitution (“Amendment No. 78”) and Act 1808 of 2001 (codified as Title 14, Chapter 78 of the Arkansas Code of 1987 Annotated) (the “Act”), to issue promissory notes and to expend the proceeds thereof to finance all or a portion of acquiring, constructing, and installing real property or tangible personal property having an expected useful life of more than one year; and,

WHEREAS, the City proposes to acquire land, software, and equipment, and to construct and equip buildings (the “Property”) for the Little Rock Police Department, Little Rock Fire Department and the Little Rock Information Technology Department; and,

WHEREAS, it is proposed that the City issue its promissory note in the principal amount of Seven Million, Seven Hundred Thousand Dollars ($7,700,000) (the “Note”) under Amendment No. 78 and the Act for the purpose of financing all or a portion of the costs of the acquisition, construction, and installation of the Property and for paying the costs of issuance of the Note; and,

WHEREAS, the City intends to arrange for a loan (the “Loan”) from a financial institution (the “Lender”) and to issue the Note to the Lender at a price of par in consideration for the Loan;

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF DIRECTORS OF THE CITY OF LITTLE ROCK, ARKANSAS:

Section 1. The Board of Directors hereby finds that the Property is tangible personal property having a useful life of more than one (1)-year. The Board of Directors further finds that the sum of the principal amount of the Note and the aggregate outstanding principal amount of the City’s Promissory Notes dated September 25, 2008, December 22, 2011, and March 28, 2012, does not exceed 5% of the
of taxable property located within the City as determined by the last tax assessment completed before the issuance of the Note.

Section 2. Under the authority of the Constitution and the laws of the State of Arkansas, including particularly Amendment No. 78 and the Act, the Note is hereby authorized and ordered issued in the principal amount of Seven Million, Seven Hundred Thousand Dollars ($7,700,000) for the purpose of financing all or a portion of the costs of acquiring, constructing, and installing the Property and paying expenses of issuing the Note. The Note shall be dated the date of its issuance and shall bear interest on the outstanding principal amount at a fixed rate calculated on the basis of the actual number of days elapsed in a year of 365 days (366 days in a leap year). The Note shall be repaid in five (5) substantially equal annual amortized installments of principal and interest, commencing one (1)-year from the date of the Note and continuing on the same day of each year thereafter, with the final installment due five (5) years from the date of the Note. The Note shall be issued in fully registered form.

Section 3. The proceeds of the Note are intended to fund the following projects in the following amounts:

   (a) Public Safety Radio Communications System Upgrade: $2,891,000
   (b) 911/311 Communications Software and Equipment: $2,350,000
   (c) Southwest Little Rock Fire Station: $459,000
   (d) Information Technology - Equipment & Software: $2,000,000

Section 4. The Note shall be issued to the Lender in consideration for the Loan. The Lender shall be selected by the City Manager based upon the commitment or proposal for the Loan that the City Manager determines to have the lowest cost to the City. The City Treasurer is hereby authorized and directed to solicit proposals or commitments for the Loan from at least three (3) financial institutions having offices in Pulaski County, or having requested to be solicited, in the manner approved by the City Manager. The City Manager shall have the right to reject any and all proposals and commitments.

Section 5. As provided in Amendment No. 78, the annual debt service payments on the Note in each fiscal year shall be charged against and paid from the general revenues of the City for such fiscal year. For the purpose of making the annual debt service payments, there is hereby, and shall be, appropriated to pay the Note an amount of general revenues of the City sufficient for that purpose. The City Treasurer is hereby authorized and directed to withdraw from the General Fund of the City the amounts and at the times necessary to make the annual debt service payments on the Note.

Section 6. The Board of Directors finds that it is appropriate to use the proceeds of a 3/8-Cent Sales and Compensating Use Tax for capital projects approved by the voters at an election held on September 13, 2011 (the “Tax Proceeds”), to repay the principal of the Note, and to use other general revenues of the City.
Section 7. The City covenants with the owner of the Note from time to time (the “Owner”) as follows:
(a) The City shall not take any action or suffer or permit any action to be taken or condition to exist which causes or may cause the interest payable on the Note to be included in gross income for federal income tax purposes. Without limiting the generality of the foregoing, the City covenants with the Owner that the proceeds of the sale of the note will not be used directly or indirectly in such manner as to cause the Note to be treated as an “arbitrage bond” within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended (the “Code”).
(b) The City will not use or permit the use of the property acquired, constructed, or installed with the proceeds of the Note in such manner as to cause the Note to be a “private activity bond” within the meaning of Section 141 of the Code.
(c) None of the proceeds of the Note will be used (directly or indirectly) either to make or finance loans to persons other than State or Local governmental units or in any trade or business carried on by any person other than a State or Local governmental unit or other than as a member of the general public.
(d) The City will take no action which would cause the Note to be “Federally guaranteed” within the meaning of the Code.
(e) The City will not reimburse itself from the proceeds of the Note for any costs paid prior to the date the Note is issued except in compliance with the United States Treasury Regulation § 1.150-2. This ordinance shall constitute an “official intent” for purpose of the Regulation, but it is supplemental to Little Rock, Ark., Resolution No. 13,708 (June 18, 2013) which sets forth the same original intent.
(f) The City will submit to the secretary of the Treasury of the United States, not later than the 15th day of the second calendar month after the close of the calendar quarter in which the Note is issued, a statement concerning the Note which contains the information required by Section 149(e) of the Code.

Section 8. The City shall provide such financial information to the Lender as the Lender may reasonably request.

Section 9. The Mayor, City Manager, City Clerk, City Treasurer, and City Attorney, for and on behalf of the City, are hereby authorized and directed to do any and all things necessary to effect the issuance, execution and delivery of the Note and the performance of all acts of whatever nature necessary to effect and carry out the authority conferred by this Ordinance. The Mayor, City Manager, City Clerk, City Treasurer and City Attorney are hereby further authorized and directed, for and on behalf of the City, to
execute all papers, documents, certificates, and other instruments that may be required for the carrying out of such authority or to evidence the exercise thereof.

Section 10. Severability. In the event any section, subsection, subdivision, paragraph, subparagraph, item, sentence, clause, phrase, or word of this ordinance is declared or adjudged to be invalid or unconstitutional, such declaration or adjudication shall not affect the remaining provisions of this ordinance, as if such invalid or unconstitutional provision were not originally a part of this ordinance.

Section 4. Repealer. All ordinances, resolutions, bylaws, and other matters inconsistent with this ordinance are hereby repealed to the extent of such inconsistency.

Section 5. Emergency. The Board of Directors hereby determines that the instigation and completion of the projects set forth within this ordinance are essential to the public health, safety and welfare of the citizens of Little Rock, and must be financed as quickly as possible; an emergency is, therefore, declared to exist and this ordinance shall be in full force and effect from and after the date of its execution.

PASSED: June 4, 2013

ATTEST:  

Toya Robinson, Assistant City Clerk

APPROVED AS TO LEGAL FORM:

Thomas M. Carpenter, City Attorney

APPROVED:

Mark Stodola, Mayor