

ORDINANCE NO. 2015-09

AN ORDINANCE AUTHORIZING THE ISSUANCE OF A GENERAL REVENUE PROMISSORY NOTE; PROVIDING FOR THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THE NOTE; AND PRESCRIBING OTHER MATTERS RELATING THERETO.

WHEREAS, the City Council for the City of Searcy, White County, Arkansas (the "City") has determined that the City is in need of certain equipment, including fiber optic cable and transmission enabling devices and the expected cost for the installation of this fiber, for use by the City for provision of citizens of the City of Searcy (collectively, the "Equipment");

WHEREAS, the estimated cost of the Equipment and its installation is \$600,000.00 and the City can obtain the necessary funds to acquire the Equipment by issuing a promissory note, which for the purposes of identification may be referred to as General Revenue Promissory Note (Equipment Acquisition Project), Series 2014, in the aggregate principal amount of not to exceed \$600,000.00 (the "Note") with such sums to be advanced by Regions Bank ("Lender").

NOW THEREFORE, BE IT ORDAINED by the City Council of Searcy, White County, Arkansas:

Article 1. The Searcy City Council hereby finds that the Equipment, and any accession or addition thereto, and to be acquired by the City of Searcy, Arkansas, will have a useful life of more than one (1) year and that the principal amount of the Note and all other obligations heretofore incurred by the City under Amendment No. 78 to the Arkansas Constitution ("Amendment No. 78") does not exceed 5% of the assessed value of taxable property located within the City of Searcy, Arkansas as determined by the last tax assessment.

Article 2. Under the authority of the Constitution and laws of the State of Arkansas including particularly Amendment No. 78, Searcy, Arkansas, General Revenue Promissory Note (Equipment Acquisition Project), Series 2015, is hereby authorized and ordered issued in the maximum principal amount of \$600,000.00 for the purpose of financing all or a portion of the costs of acquiring and installing the Equipment. The Note shall bear interest at an interest rate not to exceed 1.67%, shall have a maturity of not greater than five (5) years and shall mature on that date which is not later than April 1, 2020.

The Note shall be dated not earlier than March 1, 2015, and shall be issuable only as a fully registered Note without coupons.

Article 3. The Note shall be executed on behalf of the City by the manual or facsimile signatures of the Mayor and City Clerk and shall have impressed or imprinted thereon the seal of the City. The Mayor and City Clerk are authorized and directed to take all actions determined by them, in their sole and exclusive discretion, to be necessary for the execution and performance of the Note.

Article 4. The Note shall be in substantially the form as that attached hereto as Exhibit A and the Mayor and City Clerk are hereby expressly authorized and directed to make all recitals contained therein.

Article 5. As provided in Amendment No. 78, the 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 debt service payments, there is hereby, and shall be appropriated to pay the Note, an amount of general revenues of the City sufficient for such purposes. The City covenants that for each fiscal year in which the Note is outstanding, the general revenues of the City shall exceed the amount of debt service payments due on the Note in that fiscal year.

Article 6. The City shall not have outstanding at any one time indebtedness under Amendment No. 78, including the Note, in an aggregate principal amount exceeding \$5,000,000.00 unless such indebtedness in excess of \$5,000,000 is expressly made subordinate in payment to the Note with respect to payments from the general revenues of the City, including road fund revenues. Nothing herein shall prohibit the City from incurring additional indebtedness under Amendment No. 78.

Article 7. The City agrees to prepare and adopt a budget for each fiscal year in accordance with Arkansas law. Each budget shall make provision for the payment of debt service due on the Note in that fiscal year.

Article 8. The Note may be redeemed or pre-paid prior to maturity.

Article 9. If there be any default in the payment of the principal of or interest on the Note, or in the performance of any of the other covenants contained in this Ordinance, Lender may, by proper suit, compel the performance of the duties of the officials of the City under the laws of Arkansas. Lender may waive any default which shall have been remedied before the entry of final judgment or decree in any suit, action or proceeding instituted under the provisions of this Ordinance or before the completion of the enforcement of any other remedy, but no such waiver shall extend to or affect any other existing or any subsequent default or defaults or impair any rights or remedies of Lender with respect thereto.

Article 10.

(a) The City covenants that it shall not take any action or suffer or permit any action to be taken or conditions 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 that the proceeds of the Note will not be used directly or indirectly in such manner as to cause the Note to be treated as “arbitrage bonds” within the meaning of Section 148 of the Internal Revenue Code of 1986 (the “ Code”).

(b) The City represents that it has not used or permitted the use of, and covenants that it will not use or permit the use of the Equipment or the proceeds of the Note, in such manner as to cause the Note to be “private activity bonds” within the meaning of Section 141 of the Code.

(c) The Note is hereby designated as a “qualified tax-exempt obligation” within the meaning of Section 265(b)(3)(B) of the Code. The City represents that the aggregate principal amount of its qualified tax-exempt obligations (excluding “private activity bonds” within the meaning of Section 141 of the Code which are not “qualified 501(c)(3) bonds” within the meaning of Section 145 of the Code), including those of its subordinate entities issued in calendar year 2011 are not expected to exceed \$10,000,000. The City further represents pursuant to Section 148(f)(4)(D) of the Code that (i) the aggregate principal amount of its tax-exempt obligations (not including “private activity bonds” within the meaning of Section 141 of the Code), including those of its subordinate entities, to be issued in calendar year 2011 is not reasonably expected to exceed \$5,000,000, and (ii) at least 95% of the proceeds of the Note will be expended for the governmental activities of the City.

(d) The City covenants that it will take no action which would cause the Note to be “federally guaranteed” within the meaning of Section 149(b) of the Code. Nothing in this Article shall prohibit investments in bonds issued by the United States Treasury.

(e) The City covenants that it 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 as required by Section 149(e) of the Code.

(f) The City covenants that it will not reimburse itself from proceeds of the Note for costs paid prior to the date the Note is issued except in compliance with United States Treasury Regulation No. 1.150-2 (the “Regulation”). This Ordinance shall constitute an “official intent” for purposes of the Regulation.

Article 11. The provisions of this Ordinance are hereby declared to be separable and if any provision shall for any reason be held illegal or invalid, such holding shall not affect the validity of the remainder of this Ordinance.

Article 12. All ordinances and resolutions or parts thereof, in conflict herewith are hereby repealed to the extent of such conflict.

Article 13. Emergency Clause. The Searcy City Council has determined that the need to provide for the purchase of the Equipment is necessary for the preservation of public peace, health and safety and that in light of this need an emergency exists and the provisions hereof shall be in full force and effect from and after the adoption of this ordinance.

PASSED AND ADOPTED 12<sup>th</sup> day of March, 2015.

Approved:

/s/ David Morris  
Mayor

Attest:

/s/ Jerry Morris  
City Clerk  
(Seal)

Exhibit A

[Form of Note]