

ORDINANCE NO. 2014-12

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 for use by the City for provision of citizens of the City of Searcy (the "Tractor");

WHEREAS, the estimated cost of the Tractor is \$58,920.00 and the City can obtain the necessary funds to acquire the Tractor by issuing a promissory note, which for the purposes of identification may be referred to as General Revenue Promissory Note (Tractor Acquisition Project), Series 2014, in the aggregate principal amount of not to exceed \$58,920.00 (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 Tractor, 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 (the "State"), including particularly Amendment No. 78, Searcy, Arkansas, General Revenue Promissory Note (Tractor Acquisition Project), Series 2014, is hereby authorized and ordered issued in the maximum principal amount of \$58,920.00 for the purpose of financing all or a portion of the costs of acquiring the Tractor. The Note shall bear interest at an interest rate not to exceed 1.89%, shall have a maturity of not greater than five (5) years and shall mature on that date which is not later than June 1, 2019.

The Note shall be dated not earlier than June 1, 2014, 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 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 Tractor 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 2014 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 2014 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 a Tractor 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 this 5th day of June, 2014.

Approved:

/s/ David Morris

Mayor

Attest:

/s/ Jerry Morris

City Clerk

Exhibit A

[Form of Note]



DOC645040535037752220001329234000000

COPY

REGIONS PROMISSORY NOTE

COPY

Table with 7 columns: Principal, Loan Date, Maturity, Bank/App, Loan No, Account, Officer. Values include \$58,920.00, 06-06-2014, 06-06-2019, 053, 60377522200001329234, Q9YG3.

Borrower: CITY OF SEARCY, 401 W ARCH AVE, SEARCY, AR 72143

Lender: REGIONS BANK, 201 MILAN PARKWAY, BIRMINGHAM, AL 35211

Principal Amount: \$58,920.00 Date of Note: June 6, 2014

PROMISE TO PAY. CITY OF SEARCY ("Borrower") promises to pay to REGIONS BANK ("Lender"), or order, in lawful money of the United States of America, the principal amount of Fifty-eight Thousand Nine Hundred Twenty & 00/100 Dollars (\$58,920.00), together with interest on the unpaid principal balance from June 6, 2014, calculated as described in the "INTEREST CALCULATION METHOD" paragraph using an interest rate of 1.890% per annum based on a year of 360 days, until paid in full.

PAYMENT. Borrower will pay this loan in 99 payments of \$1,030.63 each payment and an irregular last payment estimated at \$1,030.61. Borrower's first payment is due July 6, 2014, and all subsequent payments are due on the same day of each month after that.

INTEREST CALCULATION METHOD. Interest on this Note is computed on a 365/360 basis; that is, by applying the ratio of the interest rate over a year of 360 days, multiplied by the outstanding principal balance, multiplied by the actual number of days the principal balance is outstanding.

PREPAYMENT. Borrower may pay without penalty all or a portion of the amount owed earlier than it is due. Early payments will not, unless agreed to by Lender in writing, relieve Borrower of Borrower's obligation to continue to make payments under the payment schedule.

LATE CHARGE. If a payment is 10 days or more late, Borrower will be charged 5.000% of the unpaid portion of the regularly scheduled payment or \$10.00, whichever is greater.

INTEREST AFTER DEFAULT. Upon default, including failure to pay upon final maturity, the interest rate on this Note shall be increased by 2.000 percentage points. However, in no event will the interest rate exceed the maximum interest rate limitations under applicable law.

DEFAULT. Each of the following shall constitute an event of default ("Event of Default") under this Note:

- Payment Default. Borrower fails to make any payment when due under this Note.
Other Defaults. Borrower fails to comply with or to perform any other term, obligation, covenant or condition contained in this Note or in any of the related documents or to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between Lender and Borrower.
Default in Favor of Third Parties. Borrower or any Grantor defaults under any loan, extension of credit, security agreement, purchase or sales agreement, or any other agreement, in favor of any other creditor or person that may materially affect any of Borrower's property or Borrower's ability to repay this Note or perform Borrower's obligations under this Note or any of the related documents.
False Statements. Any warranty, representation or statement made or furnished to Lender by Borrower or on Borrower's behalf under this Note or the related documents is false or misleading in any material respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter.
Death or Insolvency. The death of Borrower or the dissolution or termination of Borrower's existence as a going business, the insolvency of Borrower, the appointment of a receiver for any part of Borrower's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Borrower.
Creditor or Foreclosure Proceedings. Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Borrower or by any governmental agency against any collateral securing the loan.
Events Affecting Guarantor. Any of the preceding events occurs with respect to any guarantor, endorser, surety, or accommodation party of any of the indebtedness or any guarantor, endorser, surety, or accommodation party dies or becomes incompetent, or revokes or disputes the validity of, or liability under, any guaranty of the indebtedness evidenced by this Note.
Adverse Change. A material adverse change occurs in Borrower's financial condition, or Lender believes the prospect of payment or performance of this Note is impaired.
Insecurity. Lender in good faith believes itself insecure.

LENDER'S RIGHTS. Upon default, Lender may declare the entire unpaid principal balance under this Note and all accrued unpaid interest immediately due, and then Borrower will pay that amount.

ATTORNEYS' FEES; EXPENSES. Lender may hire or pay someone else to help collect this Note if Borrower does not pay. Borrower will pay Lender that amount. This includes, subject to any limits under applicable law, Lender's reasonable attorneys' fees and Lender's legal expenses whether or not there is a lawsuit, including reasonable attorneys' fees and expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), and appeals. If not prohibited by applicable law, Borrower also will pay any court costs, in addition to all other sums provided by law.

JURY WAIVER. Lender and Borrower hereby waive the right to any jury trial in any action, proceeding, or counterclaim brought by either Lender or Borrower against the other.

GOVERNING LAW. With respect to interest (as defined by federal law) this Note will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of Alabama without regard to its conflicts of laws provisions. In all other respects, this Note will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of Arkansas without regard to its conflicts of law provisions. The loan transaction that is evidenced by this Note has been approved, made, and funded, and all necessary loan documents have been accepted by Lender in the State of Alabama.

RIGHT OF SETOFF. To the extent permitted by applicable law, Lender reserves a right of setoff in all Borrower's accounts with Lender (whether checking, savings, or some other account). This includes all accounts Borrower holds jointly with someone else and all accounts Borrower may open in the future. However, this does not include any IRA or Keogh accounts, or any trust accounts for which setoff would be prohibited by law. Borrower authorizes Lender, to the extent permitted by applicable law, to charge or setoff all sums owing on the debt against any and all



**PROMISSORY NOTE
(Continued)**

Loan No: 60377522200001329234

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such accounts, and, at Lender's option, to administratively freeze all such accounts to allow Lender to protect Lender's charge and setoff rights provided in this paragraph.

WAIVER OF DEFENSES. Borrower agrees and acknowledges that Borrower does not have any claims, defenses, counterclaims, setoffs, rights of recoupment, or other claims of any nature whatsoever (including but not limited to claims arising from fraud, misrepresentation, breach of contract, breach of commitment, impairment of collateral or waiver) against Lender, and Borrower hereby expressly waives and releases any and all such claims, defenses, counterclaims, setoffs, rights of recoupment, or other claims of any nature whatsoever that it may have against Lender.

SUCCESSOR INTERESTS. The terms of this Note shall be binding upon Borrower, and upon Borrower's heirs, personal representatives, successors and assigns, and shall inure to the benefit of Lender and its successors and assigns.

GENERAL PROVISIONS. If any part of this Note cannot be enforced, this fact will not affect the rest of the Note. Lender may delay or forgo enforcing any of its rights or remedies under this Note without losing them. Borrower and any other person who signs, guarantees or endorses this Note, to the extent allowed by law, waive presentment, demand for payment, and notice of dishonor. Upon any change in the terms of this Note, and unless otherwise expressly stated in writing, no party who signs this Note, whether as maker, guarantor, accommodation maker or endorser, shall be released from liability. All such parties agree that Lender may renew or extend (repeatedly and for any length of time) this loan or release any party or guarantor or collateral; or impair, fail to realize upon or perfect Lender's security interest in the collateral; and take any other action deemed necessary by Lender without the consent of or notice to anyone. All such parties also agree that Lender may modify this loan without the consent of or notice to anyone other than the party with whom the modification is made. The obligations under this Note are joint and several.

PRIOR TO SIGNING THIS NOTE, BORROWER READ AND UNDERSTOOD ALL THE PROVISIONS OF THIS NOTE. BORROWER AGREES TO THE TERMS OF THE NOTE.

BORROWER ACKNOWLEDGES RECEIPT OF A COMPLETED COPY OF THIS PROMISSORY NOTE.

BORROWER:

CITY OF SEARCY

By: COPY
DAVID MORRIS, Mayor of CITY OF SEARCY