

ORDINANCE NO. 2016-33

AN ORDINANCE AUTHORIZING THE ISSUANCE OF A PROMISSORY NOTE TO FINANCE A NEW SWIMMING FACILITY; AUTHORIZING THE SALE OF THE NOTE AND THE EXECUTION OF A NOTE PURCHASE AGREEMENT; AND PRESCRIBING OTHER MATTERS PERTAINING THERETO.

WHEREAS, the City of Searcy, Arkansas (the "City") is authorized and empowered under the provisions of Amendment No. 78 to the Arkansas Constitution ("Amendment No. 78") and Title 14, Chapter 78 of the Arkansas Code of 1987 Annotated (the "Authorizing Legislation") to issue notes and to expend the proceeds thereof to finance the cost of acquiring, constructing and installing real property or tangible personal property having an expected useful life of more than one (1) year; and

WHEREAS, the City proposes to develop a new swimming facility by acquiring, constructing and installing, as a part thereof, real property and tangible personal property having a useful life of more than one year (collectively, the "Capital Improvements" and individually, a "Capital Improvement"); and

WHEREAS, it is proposed that the City issue its General Revenue Promissory Note, Series 2016 in the principal amount of \$5,000,000 (the "Note") under Amendment No. 78 and the Authorizing Legislation for the purpose of financing a portion of the costs of the Capital Improvements; and

WHEREAS, the City has made arrangements with Regions Bank (the "Purchaser") to purchase the Note; and

WHEREAS, a copy of the hereinafter described Note Purchase Agreement has been presented to and is before this meeting;

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

Section 1. The City Council hereby finds that each Capital Improvement to be acquired, constructed and installed will have a useful life of more than one (1) year, and that the principal amount of the Note plus the principal amount of any outstanding obligations of the City under Amendment No. 78 do not exceed five percent (5%) of the assessed value of taxable property located within the City as determined by the last tax assessment.

Section 2. The issuance of the Note in the principal amount of \$5,000,000 is hereby authorized under Amendment No. 78 and the Authorizing Legislation to finance a portion of the costs of acquiring, constructing and installing the Capital Improvements and paying the costs of issuing the Note. The Note shall be dated the date of issuance and shall bear interest on the outstanding principal amount at the rate of 1.88% per annum. Interest only shall be due on

January 15, 2017 and on the fifteenth day of each month thereafter to and including December 15, 2017. Commencing January 15, 2018 and on the fifteenth day of each month thereafter, principal and interest shall be paid so that the principal of the Note that is outstanding on December 15, 2017 is amortized over a period ending December 15, 2021, which is the maturity date of the Note.

Section 3. The Note shall be sold to the Purchaser upon the terms and conditions set forth in a Note Purchase Agreement by and between the City and the Purchaser (the "Note Purchase Agreement"). The Mayor and City Clerk are hereby authorized to execute, acknowledge and deliver the Note Purchase Agreement and the Note for and on behalf of the City. The Note Purchase Agreement and the Note are hereby approved in substantially the forms submitted to this meeting, and the Mayor is hereby authorized to confer with the Purchaser in order to complete the Note Purchase Agreement and the Note in substantially the forms submitted to this meeting with such changes as shall be approved by such persons executing the documents, their execution to constitute conclusive evidence of such approval.

Section 4. 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 monthly 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 Treasurer is hereby authorized and directed to withdraw from the General Fund of the City and/or from such other sources as may be hereafter directed by the City Council, the amounts and at the times necessary to make the monthly debt service payments on the Note and to make such payments in accordance with the Note Purchase Agreement.

Section 5. (a) The City covenants with the Purchaser that it 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 Purchaser 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 represents to the Purchaser that it will not use or permit the use of the Capital Improvements or 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. In this regard, the City covenants with the Purchaser that (i) it will not use (directly or indirectly) the proceeds of the Note to make or finance loans to any person, and (ii) that while the Note is outstanding the Capital Improvements will only be used by state and local governmental entities and by other persons on a basis as members of the general public.

(c) The Note is hereby designated as a "qualified tax-exempt obligation" within the meaning of the Code. The City represents to the Purchaser 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 2016 will not exceed \$10,000,000.

(d) The City covenants with the Purchaser that it will not reimburse itself from Note proceeds for any costs paid prior to the date the Note is issued except in compliance with United States Treasury Regulation § 1.150-2 (the "Regulation"). This Ordinance is an "official intent" within the meaning of the Regulation.

Section 6. The Mayor and City Clerk, for and on behalf of the City, are hereby authorized and directed to do any and all things necessary to effect the execution and delivery of the Note Purchase Agreement and the performance of all obligations of the City thereunder, the issuance, execution, sale 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 and City Clerk 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 7. The City Clerk is hereby authorized and directed to file in the office of the City Clerk, as a part of the minutes of the meeting at which this Ordinance is adopted, for inspection by any interested person a copy of the Note Purchase Agreement and such document shall be on file for inspection by any interested person.

Section 8. The provisions of this Ordinance are hereby declared to be separable, and if any section, phrase or provision shall for any reason be declared to be invalid, such declaration shall not affect the validity of the remainder of the sections, phrases and provisions.

Section 9. All ordinances, resolutions and parts thereof in conflict herewith are hereby repealed to the extent of such conflict.

PASSED: November 8, 2016.

APPROVED:

ATTEST:

/s/ David Morris
Mayor

/s/ Jerry Morris
City Clerk

(SEAL)