

ORDINANCE NO. 2017 - 37

AN ORDINANCE AUTHORIZING THE EXECUTION OF AN EQUIPMENT LEASE-PURCHASE AGREEMENT (FIRE TRUCK ACQUISITION PROJECT); PROVIDING FOR THE PAYMENT OF THE SUMS DUE UNDER SAID AGREEMENT; 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 firefighting apparatus, namely a fire truck to be purchased from Sunbelt Fire (the "Fire Truck");

WHEREAS, the estimated cost of the Fire Truck is \$562,052.00 and the City can obtain the use and benefit of the Fire Truck, and ultimately acquire the said Fire Truck, by entering into a Lease-Purchase Agreement for the aggregate sum of all payments to be, exclusive of interest, \$562,052.00 (the "Lease") with such sums to be advanced by Regions Equipment Finance Corporation ("Lessor").

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

Article 1. The Searcy City Council hereby finds that the Fire Truck, 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 Lease 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, the Lease is hereby authorized and ordered to be entered into for the principal amount of \$562,052.00 for the purpose of leasing, subject to a purchase option at the end of the term of the Lease, of the Fire Truck. The Lease shall have a maturity of not greater than five (5) years and shall mature on that date which is sixty (60) months from and after the date of the execution of the Lease.

Article 3. The Lease 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.

Article 4. The Lease shall be in substantially the form presented to the Searcy City Council, and the specific form is, hereby, approved.

Article 5. As provided in Amendment No. 78, the payments due on the Lease 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 payments due on the Lease, there is hereby, and shall be

appropriated to pay the Lease, an amount of general revenues of the City sufficient for such purposes. The City covenants that for each fiscal year in which the Lease is outstanding, the general revenues of the City shall exceed the amount due under the Lease in that fiscal year.

Article 6. The City shall not have outstanding at any one time indebtedness under Amendment No. 78, including the Lease, 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 Lease 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 that is secured by the property financed in whole or in part with proceeds of the indebtedness.

Article 7. The City agrees to have its financial statements audited annually by an independent certified public accounting firm or by the Joint Legislative Auditing Committee, Division of Legislative Audit of the State of Arkansas. While the Lease is outstanding, a copy of the audit report shall be furnished to the Lessor on request.

Article 8. The City agrees to prepare and adopt a budget for each fiscal year in accordance with Arkansas law and to furnish the Lessor with a copy of the same by January 31 of each year while the Lease is outstanding. Each budget shall make provision for the payment of debt service due on the Lease in that fiscal year.

Article 9. The Lease may be paid, and the Fire Truck or pre-paid, prior to maturity.

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 sums due under the Lease to be included in gross income for federal income tax purposes. Without limiting the generality of the foregoing, the City covenants that the Lease will not be used directly or indirectly in such manner as to cause the Lease 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 Fire Truck in such manner as to cause the Lease to be “private activity bonds” within the meaning of Section 141 of the Code.

(c) The Lease 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 2017 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 2017 is not reasonably expected to exceed

\$5,000,000, and (ii) the sums advanced to acquire the Fire Truck will be expended for the governmental activities of the City.

(d) The City covenants that it will take no action which would cause the Lease 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 Lease is issued, a statement as required by Section 149(e) of the Code.

(f) The City covenants that it will not reimburse itself from any proceeds that might be generated from the Lease for costs paid prior to the date the Lease 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 and this Ordinance, specifically 2017-27.

Article 13. Emergency Clause. The Searcy City Council has determined that the need to provide for the purchase of a fire truck 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 14<sup>th</sup> day of December, 2017.

Approved:

/s/ David Morris  
Mayor of Searcy

Attest:

/s/ Jerry Morris  
City Clerk

(Seal)