

ORDINANCE NO. 2015-02

AN ORDINANCE AUTHORIZING THE ISSUANCE OF A GENERAL REVENUE PROMISSORY NOTE; PROVIDING FOR THE PAYMENT OF 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 real property for use by the City for provision of services to the citizens of the City of Searcy as identified in that agreement of sale for the purchase of the said real property by the City from Porter R. Rodgers, Jr., Individually and as Trustee of the Porter R. Rodgers, Jr., Trust Under the Last Will and Testament of Porter R. Rodgers, Sr., Deceased, and Carol Rodgers, his Wife, and Ann Elizabeth Rodgers Whetsell, Individually and as Trustee of the Porter R. Rodgers, Jr., Trust Under the Last Will and Testament of Porter R. Rodgers, Sr., Deceased, and William Whetsell, her Husband (collectively, "Rodgers") (the "Property");

WHEREAS, the estimated cost of the Property is \$680,000.00 and the City can obtain the necessary funds to acquire the Property by issuing a promissory note, which for the purposes of identification may be referred to as General Revenue Promissory Note (Rodgers Property Acquisition Project), Series 2015, in the aggregate principal amount of not to exceed \$340,000.00 (the "Note") with such sums to be advanced by Rodgers ("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 Property, and any accession or addition thereto, 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, General Revenue Promissory Note (Rodgers Property Acquisition Project), Series 2015, is hereby authorized and ordered issued by the City to Rodgers in the maximum principal amount of \$340,000.00 for the purpose of financing all or a portion of the costs of acquiring the Property. The Note shall not bear interest absent default, shall have a maturity of not greater than five (5) years and shall mature on that date which is not later than January 31, 2016, and there ifs further authorized and ordered issued a mortgage (the "Mortgage") pledging to Lender the Property and securing the payment and performance of the Note. The Mortgage may contain a liquidated damages provision providing for the payment of certain sums to Lender in the event of non-performance of the City with respect to the construction of a road to provide access to the Property, all of which shall be secured by the Mortgage. These liquidated damages are specifically approved by the City in the event of non-performance of the City.

The Note shall be dated not later than January 31, 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 \$5,000,000.00 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, until the satisfaction of the sums due under the Note, 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, or for any other obligation of the City with respect to any other covenant or obligation contained in the Mortgage, or in the performance of any of the other covenants contained in this Ordinance, Lender may exercise those remedies referenced in the Mortgage and, 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. [Intentionally Omitted]

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. The agreement of sale between Rodgers and the City is ratified and adopted by the Searcy City Council.

Article 14. Emergency Clause. The Searcy City Council has determined that the need to provide for the purchase of the Property 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 13th day of January, 2015.

Approved:

/s/ David Morris
Mayor

Attest:

/s/ Jerry Morris
City Clerk
(Seal)

Exhibit A

[Form of Note]