

ORDINANCE NO. 2018 - 07

AN ORDINANCE AUTHORIZING THE EXECUTION OF EQUIPMENT LEASE AGREEMENT; PROVIDING FOR THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THE LEASE; 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 replacement equipment related to 911 connectivity, 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 \$240,000.00 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 the 911 Call Center Agreement (Replacement Project), Series 2018, in the aggregate amount of five (5) payments of \$59,389.09, and not to exceed \$300,000.00 (the "Lease") with such equipment, and the finance thereof, to be advanced by AT&T Capital Services, Inc. ("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 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. The Searcy City Council further waives the requirement of competitive bidding with respect to the acquisition of the Equipment.

Article 2. Under the authority of the Constitution and laws of the State of Arkansas including particularly Amendment No. 78, Searcy, Arkansas, 911 Call Center Agreement (Replacement Project), Series 2018, is hereby authorized and ordered issued in the maximum principal amount of not to exceed \$300,000.00 for the purpose of financing all or a portion of the costs of acquiring and installing the Equipment. The Lease, which shall be a capital lease and provide for the conveyance of the Equipment at the end of the term of the Lease for a nominal sum as set forth in the Lease, and which shall bear interest at the effective rate not to exceed 2.28%, shall have a maturity of not greater than five (5) years and shall mature on that date which is not later than February 1, 2023.

The Lease shall be dated not earlier than March 1, 2018.

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. 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 Lease.

Article 4. The Lease shall be in a form and in substance that may be approved by the Mayor.

Article 5. As provided in Amendment No. 78, the debt service payments 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 debt service payments, 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 of debt service payments due on 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 \$5,000,000.00 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.

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 Lease in that fiscal year.

Article 8. The Lease 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 Lease, 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 Lease 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 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 Equipment or the proceeds of the Lease, 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 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 2018 is not reasonably expected to exceed \$5,000,000, and (ii) at least 95% of the proceeds of the Lease 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 proceeds of 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.

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 this 13<sup>th</sup> day of February, 2018.

Approved:

/s/ David Morris  
Mayor of Searcy

Attest:

/s/ Jerry Morris  
City Clerk

Exhibit A