

O-17-41

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING THE ISSUANCE OF A GENERAL REVENUE PROMISSORY NOTE (BURNS PARK GOLF COURSE EQUIPMENT PROJECT), SERIES 2017; PROVIDING FOR THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THE NOTE; DECLARING AN EMERGENCY; AND PRESCRIBING OTHER MATTERS RELATING THERETO.

WHEREAS, the City of North Little Rock, Arkansas (the "City") is authorized and empowered under the provisions of Amendment 78 to the Arkansas Constitution and the provisions of Arkansas Code Annotated Section 14-78-101 *et seq* (the "Act") to issue notes and expend the proceeds thereof for purpose of acquiring, constructing, installing and renting real property or tangible personal property having an expected useful life of more than one (1) year; and

WHEREAS, the City Council of the City of North Little Rock, Arkansas (the "City") has determined that the City is in need of one (1) 2010 used Carryall 1 cart, twenty (20) 2002 used ClubCar golf carts and attachments and fifty (50) 2016 new Precedent Electric Golf Carts and attachments for the Burns Park Golf Course (collectively, the "Equipment"); and

WHEREAS, the cost of the Equipment is \$280,750.00; and

WHEREAS, the City can obtain the necessary funds for the acquisition of the Equipment by issuing its Promissory Note in favor of First Security Bank ("Lender") in the principal amount of \$280,750.00 (the "Note").

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NORTH LITTLE ROCK, ARKANSAS:

SECTION 1: The City Council hereby confirms that the Equipment will have a useful life of more than one (1) year and that the aggregate principal amount of the Note and the outstanding principal amount of all other obligations heretofore incurred by the City under Amendment No.78 does not exceed 5% of the assessed value of taxable property located within the City as determined by the last tax assessment.

SECTION 2: Under the authority of the Constitution and laws of the State of Arkansas (the "State"), including Amendment No. 78 and the Act, the Mayor and the City Clerk are hereby authorized and ordered to execute and deliver, by and on behalf of the City, a Promissory Note in favor of Lender in the maximum amount of \$280,750.00 for the purpose of financing the cost of acquiring the Equipment. The Note shall bear interest at an interest rate not to exceed 2.78%, and shall be paid in sixty (60) monthly installments of principal and interest, to mature on that date which is sixty (60)

months from the date of the Note (the "Maturity Date") at which time the entire unpaid balance of principal shall be due in a single sum. The Note may be prepaid in whole, but not in part, on any scheduled payment date. The Note shall be dated as of the date of its execution and shall be issuable only as a fully registered Note without coupons. The Note shall be secured by a security agreement granting unto Lender a first priority lien on and security interest in and to the Equipment (the "Security Agreement"), which the Mayor and City Clerk are also authorized to execute.

SECTION 3: The Note and Security Agreement shall be executed on behalf of the City by the Mayor and City Clerk and shall have impressed or imprinted thereon the seal of the City.

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 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.

SECTION 5: The City covenants and agrees with the Lender, and any subsequent owner of the Note, as follows:

5.1. The City 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.

5.2. The proceeds of the Note will not be used, directly or indirectly, in such a 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").

5.3. The City shall not use or permit the use of the Equipment or the proceeds of the Note in a manner as to cause the Note to be a "private activity bond" within the meaning of Section 141 of the Code.

5.4. The City shall not reimburse itself from the proceeds of the Note for any costs paid prior to the date of the Note except in compliance with United States Treasury Regulation Sec. 1.150-2. This Ordinance constitutes an "official intent" for purposes of such Regulation.

5.5. The City is a qualified small issuer within the meaning of Sec. 265(b)(3)(C) of the Code.

5.6. Pursuant to Sec. 265(b)(3) of the Code, the City hereby designates the Note as a qualified tax exempt obligation.

5.7. The City shall submit to the United States Secretary of Treasury not later than the fifteenth (15th) day of the second (2nd) calendar month after the close of the calendar quarter in which the Note is issued a statement concerning the Note as required by Section 149(e) of the Code.

SECTION 6: The City shall provide a copy of its annual budget and such other such financial information to the Lender as the Lender may reasonably request.

SECTION 7: 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, in addition to any other remedies available to Lender, by proper suit, compel the performance of the duties of the officials of the City under the laws of Arkansas. No remedy conferred upon or reserved to Lender is intended to be exclusive of any other remedy or remedies, and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Ordinance or by law. 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 the Note, 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. No delay or omission of Lender to exercise any right or power accrued upon any default shall impair any such right of power or shall be construed to be a waiver of any such default or an acquiescence therein, and every power and remedy given by this Ordinance to Lender may be exercised from time to time and as often as may be deemed expedient. In any proceeding to enforce the provisions of this Ordinance or the Note, Lender shall be entitled to recover from the City all costs of such proceeding, including reasonable attorney's fees.

SECTION 8: The terms of this Ordinance constitute a contract between the City and the Lender and no variation or change in the undertaking herein set forth shall be made while the Note is outstanding, except as may be agreed in writing as between the City and Lender.

SECTION 9: The Mayor and City Clerk are hereby authorized and directed, for and on behalf of the City, to perform all acts of whatever nature or kind necessary to effect and carry out the authority granted by this Ordinance and to execute and deliver all documents, certificates and other instruments that may be required therefor.

SECTION 10: In the event that any provision of this Ordinance is declared or adjudged to be invalid or unconstitutional, such declaration or adjudication shall not affect the remaining portions of this Ordinance which shall remain in full force and effect as if the portion declared invalid were not originally a part of this Ordinance.

SECTION 11: All laws, ordinances, resolutions or parts thereof which are inconsistent with the provisions of this Ordinance are hereby repealed to the extent of the inconsistency.

SECTION 12: The immediate need to acquire the Equipment in order to continue to provide essential services to the citizens and residents of the City being necessary for the preservation of the public peace, health, safety and welfare, an emergency is hereby found to exist and this Ordinance shall be in full force and effect from and after its passage.

PASSED:

APPROVED:

Mayor Joe A. Smith

SPONSOR:

Joe A. Smith
Mayor Joe A. Smith *by AP*

ATTEST:

Diane Whitbey, City Clerk

APPROVED AS TO FORM:

C. Jason Carter
C. Jason Carter, City Attorney *by AP*

PREPARED BY LAW OFFICES OF MILLAR JILES LLP/mm
FORMATTED BY THE OFFICE OF THE CITY ATTORNEY/b

FILED <u>11:17</u> A.M. _____ P.M.
By <u>Amy Fields</u>
DATE <u>5/16/17</u>
Diane Whitbey, City Clerk and Collector North Little Rock, Arkansas
RECEIVED BY <u>T. McGraw</u>