

City of Fayetteville Item Review Form

2014-0084

Legistar File Number

3/4/2014

City Council Meeting Date - Agenda Item Only

N/A for Non-Agenda Item

Paul Becker

Submitted By

Finance

Department

Action Required:

Approval of an ordinance authorizing the issuance and sale of not to exceed \$7,500,000 of Water and Sewer System Refunding Revenue Bonds, Series 2014

Does this item have a cost?

\$0.00

Cost of this request

Category or Project Budget

Program or Project Name

Account Number

Funds Used to Date

Program or Project Category

\$0.00

Project Number

Remaining Balance

Fund Name

Budgeted Item?

Budget Adjustment Attached?

Previous Ordinance or Resolution # _____

Original Contract Number: _____

Comments:

Paul A. Becker

12-14-14

Paul A. Becker

Wm. Man
Lionel Jackson

V20130812
ENTERED
dm 2/14/14

ENTERED
2/19/14
PH

NON-AGENDA ITEM MEMO

To: Mayor Jordan

Thru: Don Marr, Chief of Staff

From: Paul A Becker

Date: February 14, 2014

Subject: Approval of a Bond Ordinance Authorizing the Issuance of Water and Sewer Refunding Bonds

PROPOSAL:

Due to the current low interest rates in the Municipal Bond Market, the City is in a position to refinance the outstanding Water and Sewer 2009 Revenue Bonds. The refunding issue would be up to \$7,500,000. By doing this the City should save in excess of \$200,000 in reduced interest rate costs.

RECOMMENDATION:

The Staff recommends approval of refunding the outstanding 2009 Water and Revenue Bonds through the issuance of 2014 Water and Sewer Revenue Bonds.

BUDGET IMPACT

This refunding issue should result in interest cost savings to the City.

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF NOT TO EXCEED \$7,500,000 OF WATER AND SEWER SYSTEM REFUNDING REVENUE BONDS, SERIES 2014, BY THE CITY OF FAYETTEVILLE, ARKANSAS FOR THE PURPOSE OF REFUNDING THE CITY'S OUTSTANDING WATER AND SEWER SYSTEM REVENUE BONDS, SERIES 2009; AUTHORIZING THE EXECUTION AND DELIVERY OF A FOURTH SUPPLEMENTAL TRUST INDENTURE PURSUANT TO WHICH THE SERIES 2014 BONDS WILL BE ISSUED AND SECURED; AUTHORIZING THE EXECUTION AND DELIVERY OF AN OFFICIAL STATEMENT PURSUANT TO WHICH THE SERIES 2014 BONDS WILL BE OFFERED; AUTHORIZING THE EXECUTION AND DELIVERY OF A BOND PURCHASE AGREEMENT PROVIDING FOR THE SALE OF THE SERIES 2014 BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF AN ESCROW DEPOSIT AGREEMENT PROVIDING FOR THE REDEMPTION OF THE SERIES 2009 BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF A CONTINUING DISCLOSURE AGREEMENT; AND PRESCRIBING OTHER MATTERS RELATING THERETO.

WHEREAS, the City of Fayetteville, Arkansas (the "City"), a city of the first class, presently owns and operates a public water and sewer utility system (the "System") serving the residents of the City and its environs; and

WHEREAS, the City is authorized and empowered under the provisions of the Constitution and laws of the State of Arkansas, including particularly Amendment 65 to the Constitution and Arkansas Code Annotated (1998 Repl. & 2013 Supp.) Sections 14-164-401 *et seq.*, Sections 14-234-201 *et seq.* and Sections 14-235-201 *et seq.* (collectively, and as from time to time amended, the "Authorizing Legislation"), to issue and sell its water and sewer revenue bonds and to expend the proceeds thereof to finance the costs of acquisition, construction, equipping, improving, maintaining, operating and repairing the System, and to refund any bonds issued under the Authorizing Legislation; and

WHEREAS, pursuant to the provisions of Ordinance No. 5235 of the City, adopted and approved on April 21, 2009, the City has previously issued its Water and Sewer System Revenue Bonds, Series 2009 (the "Series 2009 Bonds"), in the original principal amount of \$8,210,000, for the purpose of financing the cost of improvements to the System; and

WHEREAS, pursuant to the provisions of Ordinance No. 5496 of the City, adopted and approved on April 17, 2012, the City has previously issued its Water and Sewer System Refunding Revenue Bonds, Series 2012 (the "Series 2012 Bonds"), in the original principal amount of \$3,665,000, for the purpose of refunding outstanding bonds of the City previously issued to finance and refinance the cost of improvements to the System; and

WHEREAS, in accordance with the provisions of the Authorizing Legislation, the City has now determined to issue its Water and Sewer System Refunding Revenue Bonds, Series 2014 (the “Series 2014 Bonds”), in the aggregate principal amount of not to exceed \$7,500,000 for the purpose of (i) refunding all of the outstanding Series 2009 Bonds, and (iii) paying printing, underwriting, legal and other expenses incidental to the issuance of the Series 2014 Bonds; and

WHEREAS, the City has determined to issue and secure the Series 2014 Bonds on a parity basis with its outstanding Series 2012 Bonds pursuant to that certain Trust Indenture dated as of May 1, 2002, as amended and supplemented by a First Supplemental Trust Indenture dated as of May 1, 2004, by a Second Supplemental Trust Indenture dated as of June 1, 2009, and by a Third Supplemental Trust Indenture dated as of May 15, 2012 (as amended and supplemented, the “Original Indenture”), by and between the City and BOKF, N.A. dba Bank of Oklahoma (formerly Bank of Oklahoma, N.A.), Tulsa, Oklahoma (the “Bank of Oklahoma”), as trustee (the “Trustee”), as such Original Indenture may be amended and supplemented pursuant to a Fourth Supplemental Trust Indenture (the “Fourth Supplemental Indenture”), by and between the City and the Trustee, a form of which Fourth Supplemental Indenture has been presented to and is before this meeting; and

WHEREAS, the City proposes to enter into a Bond Purchase Agreement (the “Bond Purchase Agreement”) in substantially the form presented to and before this meeting, with Stephens Inc., Fayetteville, Arkansas (the “Underwriter”), providing for the sale of the Series 2014 Bonds.

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

Section 1. The City Council hereby finds and declares that the current refunding of the Series 2009 Bonds is in the best interests of the City and the customers of the System due to the reduction of the interest expense relating to the indebtedness represented by the Series 2009 Bonds.

Section 2. Under the authority of the Constitution and laws of the State of Arkansas, including particularly Amendment 65 to the Constitution of Arkansas and the Authorizing Legislation, there is hereby authorized the issuance of bonds of the City to be designated as “Water and Sewer System Refunding Revenue Bonds, Series 2014” (the “Series 2014 Bonds”). The Series 2014 Bonds shall be issued in the original aggregate principal amount of not to exceed Seven Million Five Hundred Thousand Dollars (\$7,500,000), shall mature not later than August 15, 2020, and shall bear interest at the rates specified in the Bond Purchase Agreement. The average yield on the Series 2014 Bonds shall not exceed 2.75% per annum. The proceeds of the Series 2014 Bonds will be utilized, along with other available moneys, to effect a current refunding of the Series 2009 Bonds and to pay printing, underwriting, legal and other expenses incidental to the issuance of the Series 2014 Bonds. The Series 2014 Bonds shall be issued in the forms and denominations, shall be dated, shall be numbered, shall mature, shall be subject to redemption prior to maturity, and shall contain such other terms, covenants and conditions, all as set forth in the Original Indenture, as amended and supplemented by the Fourth Supplemental Indenture. The Series 2014 Bonds shall be issued and secured by net revenues of the System on a parity basis with the pledge of net revenues securing the outstanding Series 2012 Bonds.

The Mayor is hereby authorized and directed to execute and deliver the Series 2014 Bonds in substantially the form thereof contained in the Fourth Supplemental Indenture submitted to this meeting, and the City Clerk is hereby authorized and directed to execute and deliver the Series 2014 Bonds and to affix the seal of the City thereto, and the Mayor and City Clerk are hereby authorized and directed to cause the Series 2014 Bonds to be accepted and authenticated by the Trustee. The Mayor is hereby authorized to confer with the Trustee, the Underwriter, and Kutak Rock LLP, Little Rock, Arkansas (“Bond Counsel”), in order to complete the Series 2014 Bonds in substantially the form contained in the Fourth Supplemental Indenture submitted to this meeting, with such changes as shall be approved by such persons executing the Series 2014 Bonds, their execution to constitute conclusive evidence of such approval.

Section 3. To prescribe the terms and conditions upon which the Series 2014 Bonds are to be executed, authenticated, issued, accepted, held and secured, the Mayor is hereby authorized and directed to execute and acknowledge the Fourth Supplemental Trust Indenture (the “Fourth Supplemental Indenture”), by and between the City and the Trustee, and the City Clerk is hereby authorized and directed to execute and acknowledge the Fourth Supplemental Indenture and to affix the seal of the City thereto, and the Mayor and the City Clerk are hereby authorized and directed to cause the Fourth Supplemental Indenture to be accepted, executed and acknowledged by the Trustee. The Fourth Supplemental Indenture is hereby approved in substantially the form submitted to this meeting, including, without limitation, the provisions thereof pertaining to the pledge of System net revenues to the Series 2014 Bonds and the terms of the Series 2014 Bonds. The Mayor is hereby authorized to confer with the Trustee, the Underwriter and Bond Counsel in order to complete the Fourth Supplemental Indenture in substantially the form submitted to this meeting, with such changes as shall be approved by such persons executing the Fourth Supplemental Indenture, their execution to constitute conclusive evidence of such approval.

(Advice is given that a copy of the Fourth Supplemental Indenture in substantially the form authorized to be executed is on file with the City Clerk and is available for inspection by any interested person.)

Section 4. There is hereby authorized and approved a Preliminary Official Statement of the City, including the cover page and appendices attached thereto, relating to the Series 2014 Bonds. The Preliminary Official Statement is hereby “deemed final” by the City within the meaning of U.S. Securities and Exchange Commission Rule 15c2-12. The distribution of the Preliminary Official Statement is hereby approved. The Preliminary Official Statement, as amended to conform to the terms of the Bond Purchase Agreement, including Exhibit A thereto, and with such other changes and amendments as are mutually agreed to by the City and the Underwriter, is herein referred to as the “Official Statement,” and the Mayor is hereby authorized to execute the Official Statement for and on behalf of the City. The Official Statement is hereby approved in substantially the form of the Preliminary Official Statement submitted to this meeting, and the Mayor is hereby authorized to confer with the Trustee, the Underwriter and Bond Counsel in order to complete the Official Statement in substantially the form of the Preliminary Official Statement submitted to this meeting, with such changes as shall be approved by such persons, the Mayor’s execution to constitute conclusive evidence of such approval.

(Advice is given that a copy of the Preliminary Official Statement is on file with the City Clerk and is available for inspection by any interested person.)

Section 5. In order to prescribe the terms and conditions upon which the Series 2014 Bonds are to be sold to the Underwriter, the Mayor is hereby authorized and directed to execute a Bond Purchase Agreement on behalf of the City, to be dated as of the date of its execution (the “Bond Purchase Agreement”), by and between the City and the Underwriter, and the Bond Purchase Agreement is hereby approved in substantially the form submitted to this meeting, and the Mayor is hereby authorized to confer with the Underwriter and Bond Counsel in order to complete the Bond Purchase Agreement in substantially the form submitted to this meeting, with such changes as shall be approved by such persons executing the Bond Purchase Agreement, their execution to constitute conclusive evidence of such approval.

(Advice is given that a copy of the Bond Purchase Agreement in substantially the form authorized to be executed is on file with the City Clerk and is available for inspection by any interested person.)

Section 6. In order to provide for the redemption of the Series 2009 Bonds, the Mayor is hereby authorized and directed to execute an Escrow Deposit Agreement to be dated as of the date of its execution (the “Escrow Agreement”), by and between the City and the Bank of Oklahoma, as escrow trustee (the “Escrow Trustee”), and the Mayor is hereby authorized and directed to cause the Escrow Agreement to be executed by the Escrow Trustee. The Escrow Agreement is hereby approved in substantially the form submitted to this meeting, and the Mayor is hereby authorized to confer with the Escrow Trustee, Underwriter and Bond Counsel in order to complete the Escrow Agreement in substantially the form submitted to this meeting, with such changes as shall be approved by such persons executing the Escrow Agreement, their execution to constitute conclusive evidence of such approval.

(Advice is given that a copy of the Escrow Agreement in substantially the form authorized to be executed is on file with the City Clerk and is available for inspection by any interested person.)

Section 7. In order to provide for continuing disclosure of certain financial and operating information with respect to the City and the System in compliance with the provisions of Rule 15c2-12 of the U.S. Securities and Exchange Commission, the Mayor is hereby authorized and directed to execute a Continuing Disclosure Agreement to be dated as of the date of its execution (the “Continuing Disclosure Agreement”), by and between the City and the Bank of Oklahoma, as dissemination agent (the “Dissemination Agent”), and the Mayor is hereby authorized and directed to cause the Continuing Disclosure Agreement to be executed by the Dissemination Agent. The Continuing Disclosure Agreement is hereby approved in substantially the form submitted to this meeting, and the Mayor is hereby authorized to confer with the Dissemination Agent, Underwriter and Bond Counsel in order to complete the Continuing Disclosure Agreement in substantially the form submitted to this meeting, with such changes as shall be approved by such persons executing the Continuing Disclosure Agreement, their execution to constitute conclusive evidence of such approval.

(Advice is given that a copy of the Continuing Disclosure Agreement in substantially the form authorized to be executed is on file with the City Clerk and is available for inspection by any interested person.)

Section 8. The rates for System Water Services enacted pursuant to Ordinance No. 5123, adopted and approved on April 1, 2008, and the rates for System Sewer Services enacted pursuant to Ordinance No. 5129, adopted and approved on April 15, 2008, and Ordinance No. 5438, adopted and approved on September 20, 2011, are hereby ratified and confirmed.

Section 9. 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 issuance, sale, execution and delivery of the Series 2014 Bonds and to effect the execution and delivery of the Fourth Supplemental Indenture, the Bond Purchase Agreement, the Official Statement, the Escrow Agreement, the Continuing Disclosure Agreement and a Tax Regulatory Agreement relating to the tax exemption of interest on the Series 2014 Bonds, and to perform all of the obligations of the City under and pursuant thereto. The Mayor and the City Clerk are 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 10. Kutak Rock LLP, Little Rock, Arkansas, is hereby appointed to act as Bond Counsel on behalf of the City in connection with the issuance and sale of the Series 2014 Bonds.

Section 11. The provisions of this Ordinance are hereby declared to be severable, and if any section, phrase or provision shall for any reason be declared to be illegal or invalid, such declaration shall not affect the validity of the remainder of the sections, phrases or provisions of this Ordinance.

Section 12. All ordinances, resolutions and parts thereof in conflict herewith are hereby repealed to the extent of such conflict.

ADOPTED AND APPROVED THIS ____ DAY OF _____, 2014.

APPROVED:

Mayor

ATTEST:

City Clerk

(S E A L)

