

City of Fayetteville Staff Review Form

2014-0393

 Legistar File ID

9/16/2014

 City Council Meeting Date - Agenda Item Only
 N/A for Non-Agenda Item

Paul Becker

8/28/2014

Billing & Collections /
 Finance & Internal Services Department

 Submitted By

 Submitted Date

 Division / Department

Action Recommendation:

Approval of An Ordinance Authorizing The Issuance And Sale Of Not To Exceed \$11,900,000 Of Hotel And Restaurant Gross Receipts Tax Capital Improvement And Refunding Bonds, Series 2014. The bond proceeds are to be used for renovation and expansion of the Walton Arts Center and for financing certain costs in connection with a regional park.

Budget Impact:

Account Number		Fund	
Project Number		Project Title	
Budgeted Item?	<u>No</u>	Current Budget	\$ -
		Funds Obligated	\$ -
		Current Balance	\$ -
Does item have a cost?	<u>No</u>	Item Cost	
Budget Adjustment Attached?	<u>No</u>	Budget Adjustment	
		Remaining Budget	\$ -

Previous Ordinance or Resolution # _____

Original Contract Number: _____

Comments:

ENTERED
8/28/14
USK

ENTERED
9/3/14
PA

Approval Date: _____

9-2-14 There may be some changes needed for the Bond Ordinance
 Paul A. Becker 9-2-2014
 Dave [Signature] 9-3-14
 [Signature]



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To: Mayor Jordan

Thru: Don Marr, Chief of Staff

From: Paul A Becker PAB.

Date: August 29, 2014

Subject: Approval of a Bond Ordinance Authorizing the Issuance and Sale of Hotel and Restaurant Gross Receipts Tax Capital Improvement and Refunding Bonds Series 2014 in an Amount Not To Exceed \$11,900,000

PROPOSAL:

At the request of the A & P Commission the City Council passed Ordinance Number 5605 which authorized ballot questions to be submitted to the voter regarding the issuance of HMR Tax bonds for the following purposes:

An amount not to exceed \$1,500,000 for the purpose of refunding the Series 2003 HMR Bonds.

An amount not to exceed \$6,900,000 for the purpose of financing Walton Arts Center Improvements.

An amount not to exceed \$3,500,000 for the purpose of financing Parks Improvements.

At the special election held on November 12, 2013 all three of these questions were approved by the voter. The City and the Walton Arts Center is now prepared to move forward with these important capital improvements. This Ordinance will authorize the actual issuance of these bonds to provide funds for the projects described above.

RECOMMENDATION:

The Staff recommends approval of issuance and sale of the Hotel and Restaurant Gross Receipts Tax Capital Improvement and Refunding Bonds Series 2014.

BUDGET IMPACT

The issuance of these bonds will provide funds for the Walton Arts Center Expansion and Renovation as well as providing funds for the Regional Park.

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF NOT TO EXCEED \$11,900,000 OF HOTEL, MOTEL AND RESTAURANT GROSS RECEIPTS TAX AND TOURISM REVENUE CAPITAL IMPROVEMENT AND REFUNDING BONDS, SERIES 2014, BY THE CITY OF FAYETTEVILLE, ARKANSAS FOR THE PURPOSE OF (1) REFUNDING THE CITY'S OUTSTANDING HOTEL, MOTEL AND RESTAURANT GROSS RECEIPTS TAX REFUNDING BONDS, SERIES 2003, (2) FINANCING CERTAIN COSTS IN CONNECTION WITH THE RENOVATION AND EXPANSION OF WALTON ARTS CENTER, AND (3) FINANCING CERTAIN COSTS IN CONNECTION WITH A REGIONAL PARK; AUTHORIZING THE EXECUTION AND DELIVERY OF A 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 2003 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") is authorized under the provisions of the Advertising and Promotion Commission Act, Arkansas Code Annotated (2008 Repl. & 2013 Supp.) §§26-75-601 *et seq.* (as from time to time amended, the "Act"), to issue its bonds secured by and payable from the revenues derived by the City from the one percent (1%) tax (the "Tax") levied by the City pursuant to Ordinance No. 2310 adopted by the City on March 1, 1977, as subsequently amended, upon (i) the gross receipts or gross proceeds derived from renting, leasing or otherwise furnishing hotel or motel accommodations for profit within the boundaries of the City and (ii) the portion of gross receipts or gross proceeds received by restaurants, cafes, cafeterias, delis, drive-in restaurants, carry-out restaurants, concession stands, convenience stores, grocery store-restaurants, caterers and similar businesses within the City from the sale of prepared food and beverages for on-premises or off-premises consumption; and

Ordinance No.

WHEREAS, under the authority of the Act and pursuant to the provisions of Ordinance No. 4488 adopted on May 20, 2003, the City has previously issued and there are presently outstanding not more than \$1,275,000 in aggregate principal amount of the City's Hotel, Motel and Restaurant Gross Receipts Tax Refunding Bonds, Series 2003 (the "Series 2003 Bonds"), which Series 2003 Bonds are secured by the pledge of and lien upon the City's receipts of the A&P Commission Tax; and

WHEREAS, the City's Advertising and Promotion Commission (the "A&P Commission") by resolution adopted on May 13, 2013, has recommended that the City assist in (i) the completion of the Walton Arts Center expansion and renovation (the "Walton Arts Center Improvements") and (ii) the acquisition, construction and equipping of a regional park (the "Park Improvements") through the issuance of its Hotel, Motel and Restaurant Gross Receipts Tax and Tourism Revenue Capital Improvement Bonds ("capital improvement bonds"); and

WHEREAS, the A&P Commission has determined and the City Council concurs that the Walton Arts Center is a cultural arts and entertainment facility and its expansion and renovation will constitute a "tourism project" within the meaning of Arkansas Code Annotated (1998 Repl.) §14-170-205 which will secure and develop tourism and thereby stimulate and enhance the economic growth and well-being of the City and its people; and

WHEREAS, the A&P Commission has further determined and the City Council concurs that the City's proposed regional park will constitute a "public recreation facility" and "city park" within the meaning of Arkansas Code Annotated (2008 Repl.) §26-75-606 and a "tourism project" within the meaning of Arkansas Code Annotated (1998 Repl.) §14-170-205 which will secure and develop tourism and thereby stimulate and enhance the economic growth and well-being of the City and its people; and

WHEREAS, pursuant to the provisions of Ordinance No. 5605, duly adopted by the City Council on August 6, 2013, there was submitted to the qualified electors of the City the questions of the issuance of bonds pursuant to the Act in principal amount (i) not to exceed \$1,500,000 for the purpose of refunding the Series 2003 Bonds, (ii) not to exceed \$6,900,000 for the purpose of financing a portion of the Walton Arts Center Improvements, and (iii) not to exceed \$3,500,000 for the purpose of financing a portion of the Park Improvements, said bonds to be secured by a pledge of and lien upon the City's receipts of the Tax (the "Tax Receipts"); and

WHEREAS, at a special election held November 12, 2013, a majority of the qualified electors of the City voting on the aforementioned questions approved the issuance of the bonds for each of aforementioned purposes and the corresponding pledge of the Tax Receipts to the payment thereof; and

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

Section 1. Under the authority of the Constitution and laws of the State of Arkansas, including particularly Amendment 65 to the Constitution of the State of Arkansas and the Act, there is hereby authorized the issuance of bonds of the City to be designated as "Hotel, Motel and Restaurant Gross Receipts Tax and Tourism Revenue Capital Improvement and Refunding Bonds, Series 2014" (the "Bonds"). The Bonds shall be issued in the original aggregate principal amount of not to exceed Eleven Million Nine Hundred Thousand Dollars (\$11,900,000), shall mature not later than December 1, 2044, and shall bear interest at the rates specified in the Bond Purchase Agreement. As authorized by the November 12, 2013 special election, not to exceed \$1,500,000 aggregate principal amount of the Bonds shall be deemed applicable to the refunding of the Series 2003 Bonds, not to exceed \$6,900,000 aggregate principal amount of the Bonds shall be deemed applicable to the Walton Arts Center Improvements, and not to exceed \$3,500,000 aggregate principal amount of the Bonds shall be deemed applicable to the Park Improvements

The average yield on the Bonds as a whole shall not exceed 5.000% per annum. The proceeds of the Bonds will be utilized (i) to finance a portion of the cost of redeeming the Series 2003 Bonds, (ii) to finance a portion of the costs of the Walton Arts Center Improvements, (iii) to finance a portion of the costs of the Park Improvements, (iv) to establish a debt service reserve for the Bonds or to purchase a surety bond for reserve purposes, (v) to pay a premium for bond insurance, if deemed economically beneficial, and (vi) to pay printing, underwriting, legal and other expenses incidental to the issuance of the Bonds. The 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 Trust Indenture submitted to this meeting.

The Mayor is hereby authorized and directed to execute and deliver the Bonds in one or more series, each series to be in substantially the form thereof contained in the Trust Indenture submitted to this meeting, and the City Clerk is hereby authorized and directed to execute and deliver the Bonds and to affix the seal of the City thereto, and the Mayor and City Clerk are hereby authorized and directed to cause the Bonds to be accepted and authenticated by the Trustee. The Mayor is hereby authorized to confer with the Trustee, Stephens Inc., Fayetteville, Arkansas (the "Underwriter"), and Kutak Rock LLP, Little Rock, Arkansas ("Bond Counsel"), in order to complete the Bonds in substantially the form contained in the Trust Indenture submitted to this meeting, with such changes as shall be approved by such persons executing the Bonds, their execution to constitute conclusive evidence of such approval.

Section 2. In order to pay the principal of and interest on the Bonds as they mature or are called for redemption prior to maturity, there is hereby pledged all of the Tax Receipts. The levy and collection of the Tax shall not be discontinued or reduced while any of the Bonds are outstanding unless sufficient funds are on deposit with the Trustee under the Trust Indenture to redeem the Bonds in full. The City covenants and agrees that all Tax Receipts will be accounted for separately as special funds on the books of the City, and all Tax Receipts will be deposited and will be used solely as provided in the Trust Indenture.

Section 3. To prescribe the terms and conditions upon which the Bonds are to be executed, authenticated, issued, accepted, held and secured, the Mayor is hereby authorized and directed to execute and acknowledge the Trust Indenture, by and between the City and Simmons First Trust Company, N.A., Pine Bluff, Arkansas, the Trustee, and the City Clerk is hereby authorized and directed to execute and acknowledge the Trust 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 Trust Indenture to be accepted, executed and acknowledged by the Trustee. The Trust Indenture is hereby approved in substantially the form submitted to this meeting, including, without limitation, the provisions thereof pertaining to the pledge of Tax Receipts and the terms of the Bonds. The Mayor is hereby authorized to confer with the Trustee, the Underwriter and Bond Counsel in order to complete the Trust Indenture in substantially the form submitted to this meeting, with such changes as shall be approved by such persons executing the Trust Indenture, their execution to constitute conclusive evidence of such approval.

(Advice is given that a copy of the Trust 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 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 Bonds are to be sold to the Underwriter, the Mayor is hereby authorized and directed to execute the Bond Purchase Agreement on behalf of the City, to be dated as of the date of its execution, 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 2003 Bonds, the Mayor is hereby authorized and directed to execute the Escrow Deposit Agreement to be dated as of the date of its execution, by and between the City and BOKF, NA, as 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 Underwriter, the Escrow Trustee 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 Tax and the City 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 the Continuing Disclosure Agreement to be dated as of the date of its execution, by and between the City and the Simmons First Trust Company, N.A., 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, the 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. In order to secure lower interest rates on the Bonds, the Underwriter has proposed that the City consider the purchase of a policy of bond insurance with a portion of the proceeds of the Bonds, which policy would guarantee the payment of the principal of and interest on the Bonds when due. If deemed economically advantageous by the Mayor, upon the advice of the Underwriter, the Mayor is hereby authorized to execute an insurance commitment and to do any and all things necessary to accomplish the delivery of a bond insurance policy with respect to the Bonds.

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 Bonds and to effect the execution and delivery of the Trust 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 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. 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 11. All ordinances, resolutions and parts thereof in conflict herewith are hereby repealed to the extent of such conflict.

PASSED and APPROVED this day of 16th day of September, 2014.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

By: _____
SONDRA E. SMITH, City Clerk/Treasurer

