

City of Fayetteville Staff Review Form

2015-0433

Legistar File ID

10/6/2015

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

Marsha Hertweck

9/16/2015

Accounting & Audit /
Finance & Internal Services Department

Submitted By

Submitted Date

Division / Department

Action Recommendation:

Approval of an Ordinance authorizing the issuance and sale of the City's Sales and Use Tax Capital Improvement Bonds, Series 2015 in the amount of approximately \$9,000,000 for the purpose of financing a portion of certain street improvements.

Budget Impact:

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

V20140710

Previous Ordinance or Resolution # _____

Original Contract Number: _____

Approval Date: _____

Comments:



CITY COUNCIL AGENDA MEMO

MEETING OF OCTOBER 6, 2015

TO: Mayor and City Council
FROM: Paul Becker, Finance Director
DATE: September 18, 2015
SUBJECT: **Issuance of City Sales and Use Tax Bonds in the amount of approximately \$9,000,000**

PROPOSAL:

On September 12, 2006 the voters of Fayetteville approved the issuance of up to \$110,000,000 worth of sales tax bonds for the following projects:

WSIP - \$42,000,000
Street Project - \$65,900,000
Trails Project - \$2,100,000

Subsequent to that referendum the City issued sales tax bonds in 2006, 2007, 2009 and 2013 as follows:

WSIP – \$39,340,000
Street Project - \$56,900,000
Trails Project - \$2,100,000

This bond issue, if approved, is expected to generate approximately \$9,000,000 for the completion of the Street Bond Project which was approved by the voters in 2006.

RECOMMENDATION:

Staff recommends approval of an ordinance requesting the council to approve the issuance of up to \$9,000,000 worth of sales tax bonds for the Street Programs.

BUDGET/STAFF IMPACT:

The approval of this ordinance will provide funds for continued work on the Street Bond Project.

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF THE CITY'S SALES AND USE TAX CAPITAL IMPROVEMENT BONDS, SERIES 2015, FOR THE PURPOSE OF FINANCING A PORTION OF THE COSTS OF CERTAIN STREET IMPROVEMENTS; AUTHORIZING THE EXECUTION AND DELIVERY OF A FOURTH SUPPLEMENTAL TRUST INDENTURE PURSUANT TO WHICH THE BONDS WILL BE ISSUED AND SECURED; AUTHORIZING THE EXECUTION AND DELIVERY OF AN OFFICIAL STATEMENT PURSUANT TO WHICH THE BONDS WILL BE OFFERED; AUTHORIZING THE EXECUTION AND DELIVERY OF A BOND PURCHASE AGREEMENT PROVIDING FOR THE SALE OF THE BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF A CONTINUING DISCLOSURE AGREEMENT; AND PRESCRIBING OTHER MATTERS RELATING THERETO.

WHEREAS, the City Council of the City of Fayetteville, Arkansas (the "City") has previously determined that there is a great need for a source of revenue to finance the costs of various street improvements within the City (the "2015 Project"); and

WHEREAS, the City is authorized and empowered under the provisions of the Constitution and laws of the State of Arkansas, including particularly Amendment 62 to the Constitution of the State of Arkansas ("Amendment 62") and Arkansas Code Annotated (1998 Repl. & 2013 Supp.) Sections 14-164-301 *et seq.* (as from time to time amended, the "Local Government Bond Act"), to issue and sell its capital improvement bonds to finance the costs of various capital improvements such as those comprising the 2015 Project, which capital improvement bonds may be secured by and payable from the receipts of the special city-wide sales and use tax authorized by the Local Government Bond Act; and

WHEREAS, pursuant to the provisions of Ordinance No. 4891 of the City, adopted and approved on June 20, 2006 (the "Election Ordinance"), there was submitted to the qualified electors of the City four questions regarding the issuance of an aggregate of not to exceed \$110,000,000 in principal amount of capital improvement bonds pursuant to Amendment 62 and the Local Government Bond Act to finance the capital improvements described in the Election Ordinance, said bonds to be secured by a pledge of and lien upon (i) all of the receipts of a special city-wide sales and use tax levied at the rate of one-quarter of one percent (0.25%) pursuant to the Local Government Bond Act (the "0.25% Sales and Use Tax") and (ii) all of the receipts of a special city-wide sales and use tax levied at the rate of three-quarters of one percent (0.75%) pursuant to the Local Government Bond Act (the "0.75% Sales and Use Tax"); and

WHEREAS, at a special election held September 12, 2006, a majority of the qualified electors of the City voting on the questions approved the issuance of capital improvement bonds in the principal amounts and for each of the specific purposes set forth on the ballot (and the corresponding levy of the 0.25% Sales and Use Tax and the 0.75% Sales and Use Tax, and the pledge of the receipts thereof to the payment of the capital improvement bonds); and

WHEREAS, as authorized under the provisions of Amendment 62 and the Local Government Bond Act and as approved by the qualified electors of the City, the City has now determined to issue and sell its Sales and Use Tax Capital Improvement Bonds, Series 2015, in the aggregate principal amount of \$9,000,000 (the “Bonds”), in order to provide for the funding of the 2015 Project; and

WHEREAS, as authorized by the provisions of the Election Ordinance, the City has previously made arrangements for the sale of the Bonds to Stephens Inc., Fayetteville, Arkansas (the “Underwriter”), pursuant to the terms of a Bond Purchase Agreement between the City and the Underwriter (the “Bond Purchase Agreement”) in substantially the form presented to and before this meeting;

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 62 to the Constitution of the State of Arkansas and the Local Government Bond Act, there is hereby authorized the issuance of bonds of the City to be designated as “Sales and Use Tax Capital Improvement Bonds, Series 2015” (the “Bonds”). The Bonds shall be issued in the original aggregate principal amount of Nine Million Dollars (\$9,000,000) and shall mature not later than November 1, 2025, in the principal amounts and bearing interest at the rates specified in the Bond Purchase Agreement. The entire aggregate principal amount of the Bonds hereby authorized shall be deemed to apply to the Street Project described in Question 3 of the ballot.

The average yield on the Bonds as a whole shall not exceed 3.50%. The proceeds of the Bonds will be utilized to finance the costs of the 2015 Project, to establish a debt service reserve for the Bonds or to purchase a surety bond or debt service reserve insurance policy for reserve purposes, if deemed economically beneficial, to pay a premium for bond insurance, if deemed economically beneficial, and to pay printing, underwriting, legal and other expenses incidental to the issuance of the Bonds. The Bonds shall be issued in the form 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 Fourth Supplemental 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 Fourth Supplemental 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, the Underwriter and Kutak Rock LLP, Little Rock, Arkansas (“Bond Counsel”), in order to complete the Bonds in substantially the form contained in the Fourth Supplemental 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 receipts of the 0.25% Sales and Use Tax and the 0.75% Sales and Use Tax levied by the Election Ordinance. Such pledge securing the Bonds shall be made on a parity basis with the existing pledge of such receipts in favor of the City's \$50,000,000 Sales and Use Tax Capital Improvement Bonds, Series 2006A (the "Series 2006A Bonds"), the City's \$14,340,000 Sales and Use Tax Capital Improvement Bonds, Series 2007 (the "Series 2007 Bonds"), the City's \$11,250,000 Sales and Use Tax Capital Improvement Bonds, Series 2009 (the "Series 2009 Bonds"), and the City's \$22,750,000 Sales and Use Tax Capital Improvement Bonds, Series 2013 (the "Series 2013 Bonds"). The levy and collection of the 0.25% Sales and Use Tax and the 0.75% Sales and Use Tax shall commence on the dates provided in the Local Government Bond Act and shall continue until such time as the Series 2006A Bonds, the Series 2007 Bonds, the Series 2009 Bonds, the Series 2013 Bonds and the Bonds are no longer outstanding or sufficient funds are on deposit with the Trustee to redeem the Series 2006A Bonds, the Series 2007 Bonds, the Series 2009 Bonds, the Series 2013 Bonds and the Bonds in full. The City covenants and agrees that all receipts from the 0.25% Sales and Use Tax and the 0.75% Sales and Use Tax will be accounted for separately as special funds on the books of the City, and receipts of said 0.25% Sales and Use Tax and 0.75% Sales and Use Tax will be deposited and will be used solely as provided in the Trust Indenture (as defined below).

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 a Fourth Supplemental Trust Indenture (the "Fourth Supplemental 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 Fourth Supplemental 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 Fourth Supplemental Trust Indenture to be accepted, executed and acknowledged by the Trustee. The Fourth Supplemental Trust Indenture supplements and amends a Trust Indenture dated as of November 1, 2006, as previously amended by a First Supplemental Trust Indenture dated as of October 1, 2007, a Second Supplemental Trust Indenture dated as of November 1, 2009, and a Third Supplemental Trust Indenture dated as of November 1, 2013, each by and between the City and the Trustee (the "Original Indenture," and collectively with the Fourth Supplemental Trust Indenture, the "Trust Indenture"). The Fourth Supplemental Trust Indenture is hereby approved in substantially the form submitted to this meeting, including, without limitation, the provisions thereof pertaining to the pledge of 0.25% Sales and Use Tax receipts and 0.75% Sales and Use 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 Fourth Supplemental Trust Indenture in substantially the form submitted to this meeting, with such changes as shall be approved by such persons executing the Fourth Supplemental Trust Indenture, their execution to constitute conclusive evidence of such approval.

(Advice is given that a copy of the Fourth Supplemental 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 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 continuing disclosure of certain financial and operating information with respect to the 0.25% Sales and Use Tax and the 0.75% Sales and Use Tax 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 Trustee, and the Mayor is hereby authorized and directed to cause the Continuing Disclosure Agreement to be executed by the Trustee. 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 Trustee, 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 7. The Trust Indenture requires that a debt service reserve be funded in conjunction with the issuance of the Bonds. The Underwriter has proposed that the City consider the purchase of a surety bond or a debt service reserve insurance policy with a portion of the proceeds of the Bonds in order to fulfill such requirement. 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 surety bond or a debt service reserve insurance policy with respect to the Bonds.

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 Fourth Supplemental Trust Indenture, the Bond Purchase Agreement, the Official Statement, 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. As previously provided in the Election Ordinance, Kutak Rock LLP, Little Rock, Arkansas, is hereby confirmed as Bond Counsel on behalf of the City in connection with the issuance and sale of the 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 _____, 2015.

APPROVED:

ATTEST:

Mayor

City Clerk

(S E A L)