



City of Norman, OK

Municipal Building
Council Chambers
201 West Gray
Norman, OK 73069

Master

File Number: R-1415-106

File ID: R-1415-106

Type: Resolution

Status: Consent Item

Version: 2

Reference: Item 30

In Control: City Council

Department: Utilities Department

Cost: \$1,433,017.00

File Created: 04/28/2015

File Name: Transferring 2006 water bond monies , reallocation of Water Fund monies and reduction of appropriations in the Water Fund

Final Action:

Title: RESOLUTION R-1415-106: A RESOLUTION OF THE TRUSTEES OF THE NORMAN UTILITIES AUTHORITY AND THE COUNCIL OF THE CITY OF NORMAN, OKLAHOMA, TRANSFERRING \$1,433,017 OF 2006 SERIES WATER BOND FUNDING TO THE BERRY ROAD WATER LINE REPLACEMENT PROJECT, REALLOCATING \$500,000 TO THE RAW WATER LINE PROJECT, AND REDUCING WATER FUND APPROPRIATIONS BY \$834,675.

Notes: ACTION NEEDED: Acting as the City Council and the Norman Utilities Authority , motion to adopt or reject Resolution R-1415-106.

ACTION TAKEN: _____

Agenda Date: 05/26/2015

Agenda Number: 30

Attachments: R-1415-106

Project Manager: Mark Daniels, Utilities Engineer

Entered by: mark.daniels@normanok.gov

Effective Date:

History of Legislative File

Ver- sion:	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:
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Text of Legislative File R-1415-106

Body

BACKGROUND: The Norman Utilities Authority (NUA) approved a \$20.4 million (\$20.4MM) revenue bond in 2006 to implement a series of water improvement projects including the first phase of a parallel raw water line from Lake Thunderbird to the Water Treatment Plant; construction of ten new water wells and associated water supply lines; and other improvements to the water distribution system. In the revenue bond process, proceeds from the entire debt issuance are placed on deposit with the trustee bank pending work on specified projects. As the projects progress, funds on deposit are drawn to make payment for the work performed. Funds on deposit are allowed to accumulate interest while those funds are waiting to be drawn. Under IRS rules, proceeds from revenue bonds are targeted to be spent within three years of their deposit.

This spending time frame specified by IRS rules is designed to protect against profiteering by using low interest financing options available to public entities leveraged against higher interest paying investment vehicles during the time the bond proceeds are waiting to be drawn to pay for public improvements. These provisions are

commonly referred to as the anti-arbitrage provisions. To avoid arbitrage penalties, if bond proceeds not spent after five years from the date of the debt issuance then a public entity is required to explain why the proceeds have not been spent timely. The NUA has been providing valid explanations since 2011 regarding remaining proceeds from the 2006 Bond issuance. Some of the reasons given have included pending litigation on projects funded with bond proceeds, as well as a change in the State of Oklahoma's policy regarding placement of water lines in the medians of state highways (in NUA's case, highway 9).

However, as noted in the Fiscal Year Ending (FYE) 2015 budget, \$5.35MM is budgeted for the remaining water distribution projects. Some of the remaining water distribution projects qualify for use of proceeds from the 2006 Series Water Bond Funding authorization. Consequently, the NUA desires to utilize any remaining proceeds from the 2006 Series Water Bond Funding to complete projects eligible for use of these bond funds in order to close out this bond funding series. This is more of a housekeeping item which will designate 2006 Series Water Bond proceeds for eligible projects and designate Water Fund Balance to be set aside to resolve final payment for the projects that are still pending in litigation.

The following three (3) revenue bond-funded projects have not been closed out, as they are the subject of a pending lawsuit *Red Cliff, Inc. v. Norman Utilities Authority*, Cleveland County District Court case CJ-2013-1223 TS. This case, filed in January 2013, continues in the litigation process and involves a dispute concerning proper payment for work performed under the contracts. Council was apprised of this litigation in Executive Sessions in February 2013, and again in March of 2014. Remaining project balances for as follows:

Raw Water Line, Phase 1 (project WB0051) - \$ 679,524
FYE08 12-inch Waterline (project WB0140) - \$ 618,118
FYE08 16-inch Waterline (project WB0141) - \$ 135,375

TOTAL - \$1,433,017

The Raw Water Line, Phase 1 project (WB0051) was awarded to Red Cliff, Incorporated on July 27, 2010 pursuant to Contract K-0910-172 in the amount of \$3,171,711. The project included approximately 2.5 miles of parallel 48-inch waterline along Robinson Street from 60th Avenue NE to the Water Treatment Plant. Work began September 27, 2010 and was to be complete by March 26, 2011. On December 14, 2012, the contract with Red Cliff was terminated due to failure to complete the remaining work. On February 12, 2013, the NUA approved Contract K-1213-129 with BRB Contractors in the amount of \$788,505 to complete the remaining work. The work was completed by BRB and placed into service. The remaining unencumbered funding is listed below by account:

Land/ROW - 031-9356-462.60-01 - \$ 299
Construction - 031-9356-462.61-01 - \$679,225

TOTAL Raw Water Line Phase 1 Project - \$679,524

The FYE 08 Waterline projects (WB0140 and WB0141) were a part of the Phase 2B Waterline project awarded to Red Cliff, Inc. (Red Cliff) in January 2011 in the amount of \$1,472,742. The project included approximately 35,000 feet of water supply lines to deliver groundwater from new water wells in NE Norman into the distribution system. The construction was funded from Water Bond projects WB0140, 12-inch Waterline and WB0141, 16-inch Waterlines. The work was completed and placed into service; however, the final amount due to the contractor is under dispute. All remaining unencumbered funding for both projects is listed below by project number and account:

WB0140 -Land/ROW - 031-9345-462.60-01 - \$82,000
WB0140 - Construction - 031-9345-462.61-01 - \$440,197
WB0140 - Design - 031-9345-462.62-01 - \$95,921

TOTAL FYE 08 12-Inch Waterline Project - \$618,118

WB0141 - Land/ROW - 031-9345-462.60-01 - \$19,000
WB0141 - Construction - 031-9345-462.61-01 - \$79,320

WB0141 - Design - 031-9345-462.62-01 - \$37,055

TOTAL FYE 08 16-Inch Waterline Project - \$135,375

The Berry Road Waterline Replacement project, Phase 1 (WA0305) was awarded to Central Contracting Services, Inc. on March 10, 2015 pursuant to Contract K-1415-70 in the amount of \$1,334,675. The project includes approximately 3,800 feet of 16-inch and 24-inch water along Lindsey Street from Chautauqua Avenue to Berry Road, then north on Berry Road to Avondale. No funds have been expended to date on this construction project. An additional \$2.65MM is available in FYE15 for the Phase 2 project (WA0305) extending northward along Berry Road from Avondale to Robinson.

DISCUSSION: Staff has recommended and Bond Counsel has agreed that the Berry Road Waterline Replacement, Phase 1 Improvements may be funded with the remaining 2006 Water Bond funds. As such, \$1,433,017 in unencumbered funds from projects WB0051, WB0140, and WB0141 are proposed to be transferred into Berry Road Waterline Replacement, Construction (account 031-9521-462.61-01; project WB0305). \$1,334,675 of the transferred bond proceeds in this account would replace existing Water Fund capital allocations. Legal staff has recommended that the NUA reserve sufficient funding for potential settlements related to the Red Cliff lawsuit in Water Fund allocations. Outside legal expenses since the litigation began have exceeded \$100,000. Utilities staff believes another \$400,000 would far exceed work performed by the contractor on the projects. Accordingly, \$500,000 of the Water Fund capital allocated to the Berry Road Waterline replacement project that will be “freed up” by the transferred 2006 revenue bond proceeds to that project are therefore proposed to be re-allocated to Construction accounts to be available for resolution of the Red Cliff, Inc. contracts litigation, as follows:

\$400,000 to Construction (account 031-9356-462-61-01; project WA0051)

\$100,000 to Construction (account 031-9345-462.61-01; project WA0140 & WA0141)

The remaining \$834,675 of “freed-up” Water Fund capital allocations are proposed to be returned to the Water Fund balance to be used for projects identified in the fiscal year 2015-2016 budget year.

RECOMMENDATION 1: Recommend the NUA transfer a total of \$1,433,017 of 2006 Series Water Bond Funding to Berry Road Waterline Replacement Construction (account 031-9521-462.61-01; project WB0305);

RECOMMENDATION 2: Recommend the NUA authorize re-allocation of \$400,000 in the Water Fund to Construction (account 031-9356-462.61-01; project WA0051) and \$100,000 to Construction (account 031-9345-462.61-01; project WA0140 & WA0141).

RECOMMENDATION 3: Recommend the NUA reduce appropriations in the Water Fund by \$834,675.