



Agenda Memorandum

Agenda Item – {{section.number}}.B.

City Council Meeting
July 8, 2024

Strategic Priority 3: Community Health and Safety

Invest in innovative and collaborative approaches to provide a continuum of services that preserve, promote, and protect the health, safety, and environment of Westminster

Strategic Priority 5: Resilient Infrastructure

Maintain and invest in resilient infrastructure that creates the highest return for safety, community connectivity, enjoyment of life, and local economic success

Subject: Action Items Authorizing Debt Financing of the Drinking Water Facility Project Including: First Reading of Councillor's Bill No. 22 Authorizing the Issuance of Tax-Exempt Utility Enterprise Revenue Bonds, Authorization of Bond Counsel, and Adoption of Resolution No. 14 Permitting Reimbursement from the Proceeds of the Tax-Exempt Utility Bonds

Prepared By: Larry Dorr, Deputy City Manager & CFO
David Frankel, City Attorney

Recommended City Council Action:

1. Pass Councillor's Bill No. 22, on the first reading, authorizing the issuance of tax-exempt Utility Enterprise Revenue Bonds, Series 2024 in a par amount not to exceed \$210 million for the construction of a new Drinking Water Facility, and related Bond Cost of Issuance expenses.
2. Authorize the City Manager to execute an agreement for bond counsel services with Butler Snow, LLP for a fee not to exceed \$50,000 and with Kutak Rock, LLP for a fee not to exceed \$55,000 in connection with the anticipated issuance of tax-exempt Utility Enterprise Revenue Bonds.
3. Adopt Resolution No. 14 permitting reimbursement for costs incurred for capital expenses from the proceeds of the tax-exempt Utility Enterprise Revenue Bonds, Series 2024.

Summary Statement:

- On June 17, 2024, City Council gave Staff direction to pursue tax-exempt Utility Enterprise

Revenue Bonds (Bonds) for the construction of a new Water Treatment Facility (Project.)

- To legally issue the Bonds, City Council needs to approve a Bond Ordinance, authorizing the issuance of Utility Enterprise Revenue Bonds within certain parameters, not to exceed certain terms and interest rates and approve special legal counsel agreements in accordance with City Charter requirements.
- Federal law permits a municipal government to approve a resolution, which allows the City to finance capital projects from existing financial resources and reimburse itself from debt proceeds or other financing issues in the future. The reimbursement resolution permits reimbursement of all hard costs such as actual materials, construction costs, and land purchases incurred up to 60 days prior to the approval of the reimbursement resolution. Additionally, qualified preliminary expenditures (soft dollar expenses, such as design costs, in the amount not to exceed 20 percent of the issue price of the bond issue) with respect to a specific project may be reimbursed outside of the 60-day requirement.

Fiscal Impact:

Not to exceed \$210 million in par value

Source of Funds:

Utility Enterprise Revenue Bonds proceeds

Policy Issue(s):

Should the City issue Utility Enterprise Revenue Bonds, Series 2024 in the par amount not to exceed \$210 million to finance a New Water Treatment Facility and pay for bond issuance costs?

Should the City authorize special external legal counsel to ensure revenue bonds comply with all local, state and federal laws?

Should the City authorize the ability to reimburse the City for Project incurred costs ahead of debt financing?

Alternative(s):

1. City Council could direct Staff not to pursue Utility Enterprise Revenue Bonds and pay for the improvements with pay-as-you-go funds, This alternative is not viable. Without additional financing, the City does not have the available funds to pay for the project.
2. City Council could direct Staff to amend the Bond Ordinance to a lower par amount. This is not recommended as the total funding amount requested provides the City with the funding source to complete components of the Project. The current par amount will facilitate the ozone treatment technology to ensure purified and tasteful water in the event of a wildfire that pollutes the City's main water source.
3. City Council could not pass the reimbursement resolution. This action is not recommended as time sensitive purchases would have to be delayed, or without the reimbursement resolution, the City would not be able to recover the cost paid prior to the issuance of the Utility Enterprise Revenue Bonds. Federal law requires that a reimbursement resolution be adopted in order for

a municipality to pre-pay qualifying costs, such as design costs, and subsequently reimburse itself from financing proceeds.

Background Information:

Bond Ordinance

On April 24, 2023, City Council approved the design and construction management contracts for a new Water Treatment Facility on Westminster Boulevard. In the year that followed, Staff explored financing options for building a new Water Treatment Facility, while weighing overall cost, financial flexibility, timing, and other factors. On April 1, 2024, Staff presented those options to City Council, and City Council directed Staff to pursue the issuance of Utility Enterprise Revenue Bonds for construction of a new Water Treatment Facility.

On June 17, 2024, Staff presented estimated revenue bond terms and interest rate options to City Council. The City Council directed Staff to pursue the 30-Year financing plan to fund the project with a combination of bonds and cash accumulated in the Utility for capital projects. As presented on June 17, 2024 the estimated remaining cost of building a new Water Treatment Facility is \$240 million. Of the \$240M in total cost, \$50 million is necessary for the installation of raw and finished water lines, and \$190M for the treatment facility. The estimated 30-Year financing plan was presented as below:

Repayment Term	Interest Rate	Payment	Bond Amount	Water Rate Increase
20 Years	4.000%	\$13,900,000	\$190M	7.50%
30 Years	4.500%	\$11,600,000	\$190M	4.50%
40 Years	4.750%	\$10,660,000	\$190M	2.50%

The estimated remaining cost of the project as presented to City Council on June 17, 2024 is \$240 million, which excludes the cost to build the facility with the ozone pollution treatment technology. This added technology is estimated to cost an additional \$20 million. City Council directed Staff on June 17, 2024 to explore the possibility of increasing the borrowed funds from \$190M to \$210M so as to equip the facility with ozone pollution treatment technology. A revised 30-Year financing plan is detailed in the grid below, and reflected in the ordinance authorizing revenue bonds.

Repayment Term	Interest Rate	Payment	Bond Amount	Water Rate Increase
20 Years	4.250%	\$15,700,000	\$210M	
30 Years	4.750%	\$13,300,000	\$210M	4.50%
40 Years	5.000%	\$12,200,000	\$210M	

After careful analysis, and if interest rates remain within parameters, a par amount not to exceed \$210 million is feasible with the Utility's very strong credit ratings, and within the current and anticipated interest rate structures. The parameters set forth in the Bond Ordinance will give some flexibility to manage changes in market conditions, and as above should interest rates increase from current levels in the market.

External Legal Counsel

As with all public, tax-exempt financings, this financing requires the expertise of nationally recognized law firms regarding certain tax-related matters, general bond counsel and financial disclosure. Kim Crawford of the law firm Butler Snow, LLP has served as the City's Bond Counsel on numerous other issues and is thoroughly familiar with the City's Charter, ordinances, and outstanding bond covenants. Additionally, the City must complete certain debt issuing documents related to the financing, which requires special legal services to prepare and disseminate. Continuing Disclosure counsel ensures the City complies with the regulatory requirements to release to prospective investors in the Preliminary and Final Official Statements, which details the Project, the City's profile, and financial information providing investors critical information. Federal securities law requires the City to issue an Official Statement in connection with this financing. Tom Peltz of Kutak Rock, LLP is a recognized expert in disclosure matters under federal securities law. Kutak Rock, LLP has acted in this capacity on numerous other bond issues and financings for Westminster, and is familiar with the City's financial position, the general economic condition of the City, and other material facts related to the City's preparation of a satisfactory Official Statement in connection with this financing.

The fees quoted by Butler Snow and Kutak Rock are reasonable and in line with past financings. The familiarity of both firms with the City and its financial and legal documents is critical to a successful debt issuance. The efficiencies in retaining Butler Snow and Kutak Rock as the City's bond counsel and disclosure counsel are significant and will help assure an expeditious closing of the tax-exempt financing with reasonable costs.

Reimbursement Resolution

The City has utilized reimbursement resolutions previously when project expenditures are anticipated ahead of debt issuance. The more recent reimbursement resolutions passed were related to the issuance of the 2019 Utility Enterprise Revenue Bonds and the 2023 Certificates of Participation for the Replacement of the Municipal Court. Reimbursement resolutions are an important tool allowing for the flexible use of City funds to commence capital projects, which are subsequently reimbursed with the financing proceeds.

Current law mandates the following provisions must be included by a municipality to properly pass a Reimbursement Resolution:

- An announcement and acknowledgment that the municipality will reimburse itself from proceeds for costs pre-funded through other means, in this case through the City's Utility Enterprise Fund.
- An announcement and acknowledgment of the municipality's expectation to issue debt financing.

Qualified preliminary expenditures are defined as architectural, engineering, surveying, soil testing, and similar costs that are incurred prior to commencement of the acquisition, construction, or rehabilitation of a project and acquisition, site preparation, and similar costs incident to commencement of construction.

Financing the construction of a new Water Treatment Facility meets the Strategic Priority of Resilient Infrastructure by making a long-term investment in a facility that will provide a core service to the community for decades to come. It meets Strategic Priority of Community Health and Safety by constructing a facility that will protect the health of the residents by providing safe, clean, reliable drinking water.

Respectfully submitted,

Mark A Freitag

Mark A. Freitag
City Manager

Attachments:

Councillor's Bill No. 22

Butler Snow Legal Services Contract

Kutak Rock Legal Services Contract

Resolution No. 14