

CITY OF HIGH POINT

AGENDA ITEM



Title: Bond Order to Authorize Issuance of Series 2022 Combined Enterprise System Revenue Bonds
From: Bobby D. Fitzjohn, Financial Services Director **Meeting Date:** March 21, 2022
Public Hearing: No **Advertising Date** N/A
Advertised By:
Attachments: Bond Order-High Point 2022 Revenue Bonds

PURPOSE:

To authorize the issuance and sale of up to \$40 million Combined Enterprise System (water and sewer) Revenue Bonds in 2022 to fund water and sewer projects approved by City Council and that have recently been completed or are currently under contract. The bonds will be issued subject to City Council authorizing application to the Local Government Commission to issue the bonds and their approval thereof.

BACKGROUND:

The proposed financing provides up to \$40 million for water and sewer projects including the Richland Creek sewer outfall replacement, the Registers Creek lift station expansion, the Riverdale Sewer lift station west force main, and replacing Eastside WWTP's UV disinfection system. Most of the identified projects are under contract, and design is underway on the UV disinfection system.

These are necessary legal proceedings for the issuance of revenue bonds.

BUDGET IMPACT:

The debt service on these bonds will be paid from Water and Sewer revenues.

RECOMMENDATION / ACTIONS REQUESTED:

City Council is requested to approve the attached "Bond Order Authorizing the Sale and Issuance by The City of High Point, North Carolina Of Not to Exceed \$40,000,000 Combined Enterprise System Revenue Bonds, Series 2022 And Authorizing the Execution and Delivery of Certain Documents in Connection Therewith."

A regular meeting of the City Council of the City of High Point, North Carolina (the “City Council”) was duly held in the Council Chambers of the Municipal Building located at 211 South Hamilton Street in High Point, North Carolina, the regular place of meeting, at 5:30 p.m. on March 21, 2022:

Members Present:

Members Absent:

* * * * *
* * *

Councilmember _____ introduced the following order, a summary of which had been provided to each Councilmember, a copy of which was available with the City Clerk and which was read by title:

BOND ORDER AUTHORIZING THE SALE AND ISSUANCE BY THE CITY OF HIGH POINT, NORTH CAROLINA OF NOT TO EXCEED \$40,000,000 COMBINED ENTERPRISE SYSTEM REVENUE BONDS, SERIES 2022 AND AUTHORIZING THE EXECUTION AND DELIVERY OF CERTAIN DOCUMENTS IN CONNECTION THEREWITH

WHEREAS, the City of High Point, North Carolina (the “City”) is authorized by The State and Local Government Revenue Bond Act, General Statutes of North Carolina, Section 159-80 *et seq.* (the “Act”) to issue, subject to the approval of the Local Government Commission of North Carolina (the “Commission”), at one time or from time to time, revenue bonds of the City for the purposes as specified in the Act;

WHEREAS, the City has heretofore entered into a Trust Agreement, dated as of November 1, 2004, as supplemented and amended (the “Trust Agreement”), with Wachovia Bank, National Association, the successor to which is currently U.S. Bank Trust Company, National Association), as trustee (the “Trustee”), authorizing the issuance of revenue bonds thereunder for the purpose of financing and refinancing the cost of improvements to the City’s Combined Enterprise System created thereunder;

WHEREAS, at a meeting held on March 7, 2022, the City Council (the “City Council”) of the City authorized the filing of an application with the Commission requesting approval of the issuance of not to exceed \$40,000,000 Combined Enterprise System Revenue Bonds, Series 2022 (or other appropriate designation) (the “2022 Bonds”) of the City for the purpose of providing funds, together with any other available funds, to (i) pay or reimburse the costs of acquiring, constructing and equipping various improvements to the City’s water and sanitary sewer systems, including, without limitation, (1) Richland Creek sewer outfall lines replacement, (2) Register’s Creek lift station expansion, (3) Riverdale sewer lift station force main and (4) a UV disinfection system replacement (collectively, the “2022 Project”) and (ii) pay the fees and expenses incurred in connection with the sale and issuance of the 2022 Bonds; and

WHEREAS, the City, by resolution, also requested the Commission to sell the 2022 Bonds at private sale without advertisement;

WHEREAS, the Commission is expected to approve the application of the City at its April 5, 2022 meeting for the issuance of the 2022 Bonds in accordance with G.S. 159-86;

WHEREAS, the City has determined to issue the 2022 Bonds in an aggregate principal amount not to exceed \$40,000,000 for the purpose of providing funds, together with any other available funds, to (1) pay or reimburse the costs of the 2022 Project and (2) pay the fees and expenses incurred in connection with the sale and issuance the 2022 Bonds.

WHEREAS, the City will issue the 2022 Bonds under the Trust Agreement and an Eleventh Supplement Trust Agreement, to be dated as of May 1, 2022 (the "*Eleventh Supplemental Trust Agreement*") between the City and the Trustee;

WHEREAS, the City and the Commission have arranged for the sale of the 2022 Bonds to Wells Fargo Bank, National Association, and Loop Capital (the "*Underwriters*"), pursuant to the provisions of a Bond Purchase Agreement (hereinafter defined), at such prices determined by the Commission, subject to the approval thereof by the City;

WHEREAS, copies of the forms of the following documents relating to the transactions described above have been or will be filed with the City and are available to the City Council:

1. the Eleventh Supplemental Trust Agreement, including the form of the 2022 Bond set forth in an exhibit thereto;
2. the Bond Purchase Agreement to be dated as the date of delivery thereof (the "*Bond Purchase Agreement*") among the Commission, the Underwriters and the City, related to the sale of the 2022 Bonds; and
3. the Preliminary Official Statement, to be dated as of the date of delivery thereof (the "*Preliminary Official Statement*"), relating to the offering and sale of the 2022 Bonds.

NOW, THEREFORE, BE IT ORDERED BY THE CITY COUNCIL OF THE CITY OF HIGH POINT, NORTH CAROLINA, AS FOLLOWS:

Section 1. Pursuant to the provisions of The State and Local Government Revenue Bond Act, as amended (the "*Act*"), particularly G.S. 159-88, the City hereby authorizes the issuance of the 2022 Bonds in an aggregate principal amount not to exceed \$40,000,000 for the purposes described above. The exact amount of 2022 Bonds to be issued shall be determined by the Financial Services Director of the City, or his designee, at the time the 2022 Bonds are sold and shall be an amount sufficient, together with any other available funds of the City, to (a) pay or reimburse the costs of the 2022 Project and (b) pay the fees and expenses incurred in connection with the sale and issuance of the 2022 Bonds. The 2022 Bonds shall mature at such times and in such amounts and be subject to redemption as shall be set forth in the Eleventh Supplemental Trust Agreement, subject to the provisions of this order.

The 2022 Bonds shall be issued as fully registered bonds in denominations of \$5,000 or any whole multiple thereof and shall be subject to provisions of the book-entry only system for registration of the 2022 Bonds as set forth in the Eleventh Supplemental Agreement. Interest on the 2022 Bonds shall be payable on May 1 and November 1 of each year, beginning November 1, 2022, until the payment in full of the principal thereof. The final maturity of the 2022 Bonds shall not be later than November 1, 2046.

Capitalized words and terms used in this order and not defined herein shall have the same meanings given such words and terms in the Trust Agreement and the Eleventh Supplemental Trust Agreement.

Section 2. The proposal set forth in the Bond Purchase Agreement submitted by the Underwriters offering to purchase the 2022 Bonds at the aggregate purchase price and bearing interest at the rates determined by the Commission and approved by the City as hereinafter provided, such purchase price not to be less than 95% of the aggregate principal amount of the 2022 Bonds and such interest rates not to result in an aggregate true interest cost in excess of 5.00%, is hereby approved. The Commission is hereby requested to sell and award the 2022 Bonds to the Underwriters on behalf of the City, subject to the approval of the City, in accordance with the terms and provisions set forth in the Bond Purchase Agreement. The Mayor, the City Manager and the Financial Services Director of the City are each hereby designated to approve on behalf of the City the sale of the 2022 Bonds to the Underwriters at such interest rates, for such purchase price and upon such terms and conditions as the Mayor, the City Manager or Financial Services Director shall determine, subject to the provisions of this order. The Mayor, the City Manager and the Financial Services Director of the City are each hereby authorized and directed in the name and on behalf of the City to execute and deliver the Bond Purchase Agreement in substantially the form presented, together with such modifications as the Mayor, the City Manager or the Financial Services Director, with the advice of counsel, may deem necessary and appropriate, such execution and delivery to be conclusive evidence of the approval and authorization in all respects of the form and content thereof.

Section 3. The 2022 Bonds, together with any other obligations secured on a parity therewith pursuant to the provisions of the Trust Agreement, shall be secured on a parity basis by a pledge, charge and lien upon the Net Receipts and the money and Investment Obligations held in the accounts and subaccounts of the Bond Fund in the manner and to the extent provided in the Trust Agreement and the Eleventh Supplemental Trust Agreement. Neither the credit nor the taxing power of the State of North Carolina or the City are pledged for the payment of the principal of, premium, if any, or interest on the 2022 Bonds and no holder of the 2022 Bonds has the right to compel the exercise of the taxing power by the State of North Carolina or the City or the forfeiture of any of its property in connection with any default thereon.

Section 4. The form and content of the Eleventh Supplemental Trust Agreement are hereby in all respects approved and confirmed, and the Mayor, the City Manager or the Financial Services Director and the City Clerk or any assistant or deputy City Clerk, or anyone serving in such capacity, and their respective designees (the “*Authorized Officers*”) are hereby authorized, empowered and directed to execute and deliver the Eleventh Supplemental Trust Agreement for and on behalf of the City, including necessary counterparts, in substantially the form and content presented to the City, but with such changes, modifications, additions, or deletions therein as shall to them seem necessary, desirable, or appropriate, their execution thereof to constitute conclusive evidence of their approval of any and all such changes, modifications, additions, or deletions therein, and that from and after the execution and delivery of the Eleventh Supplemental Trust Agreement, the Authorized Officers are hereby authorized, empowered and directed to do all such acts and things and to execute all such documents as may be necessary to carry out and comply with the provisions of the Eleventh Supplemental Trust Agreement as executed. The Trustee is hereby appointed as Bond Registrar under the Trust Agreement and the Eleventh Supplemental Agreement.

Section 5. The Preliminary Official Statement relating to the offering for sale of the 2022 Bonds is hereby approved. The distribution of the Preliminary Official Statement in connection with the offering for sale of the 2022 Bonds by the Underwriters is hereby authorized and approved. The City authorizes and consents to the preparation and distribution of a final Official Statement, in substantially the form of the Preliminary Official Statement, together with such changes as are necessary to reflect the

final terms of the 2022 Bonds. The Mayor, the City Manager and the Financial Services Director are each hereby authorized and directed to deliver the final Official Statement, in substantially the form of the Preliminary Official Statement, together with such modifications as such officers, with the advice of counsel, may deem necessary and appropriate, such delivery to be conclusive evidence of the approval and authorization in all respects of the form and content thereof.

Section 6. The City Manager and the Financial Services Director are each hereby authorized to execute a no-arbitrage certificate in order to comply with Section 148 of the Internal Revenue Code of 1986, as amended, and the applicable Income Tax Regulations thereunder.

Section 7. No stipulation, obligation or agreement herein contained or contained in the 2022 Bonds, the Eleventh Supplemental Trust Agreement or any other instrument related to the issuance of the 2022 Bonds shall be deemed to be a stipulation, obligation or agreement of any officer, agent or employee of the City in his or her individual capacity, and no such officer, agent or employee shall be personally liable on the 2022 Bonds or be subject to personal liability or accountability by reason of the issuance thereof.

Section 8. The Authorized Officers, or their respective designees, are hereby authorized, empowered, and directed to do any and all other acts and to execute any and all other documents, which they, in their discretion, deem necessary and appropriate in order to consummate the transactions contemplated by this Bond Order, the Eleventh Supplemental Trust Agreement and the Bond Purchase Agreement; except that none of the above will be authorized or empowered to do anything or execute any document which is in contravention, in any way, of (a) the specific provisions of this Bond Order, (b) the specific provisions of the Eleventh Supplemental Trust Agreement and the Bond Purchase Agreement, (c) any agreement to which the City is bound, (d) any rule or regulation of the City, or (e) any applicable law, statute, ordinance, rule, or regulation of the United States of America or the State of North Carolina.

Section 9. From and after the execution and delivery of the documents hereinabove authorized, the Authorized Officers, or their respective designees, are hereby authorized, empowered, and directed to do all such acts and things and to execute all such documents as may be necessary to carry out and comply with the provisions of said documents as executed, and are further authorized to take any and all further actions to execute and deliver any and all other documents as may be necessary in the issuance and on-going administration of the 2022 Bonds and the execution and delivery of the documents described in this order.

The Authorized Officers, or their respective designees, are hereby authorized and directed to prepare and furnish, when the 2022 Bonds are issued, certified copies of all the proceedings and records of the City relating to the 2022 Bonds and such other affidavits, certificates, and documents as may be required to show the facts relating to the legality and marketability of the 2022 Bonds as such facts appear on the books and records in such party's custody and control or as otherwise known to them; and all such certified copies, certificates, affidavits, and documents, including any heretofore furnished, will constitute representations of the City as to the truth of all statements contained therein.

This order also constitutes the resolution referred to in Section 2.08 of the Trust Agreement approving the award of the 2022 Bonds by the Commission and directing the authentication and delivery of the 2022 Bonds to or upon the order of the purchasers therein named upon payment of the purchase price therefor plus the accrued interest thereon, if any.

Section 10. All acts and doings of the Authorized Officers, or their respective designees, that are in conformity with the purposes and intents of this Bond Order and in the furtherance of the issuance of the 2022 Bonds and the execution, delivery, and performance of the documents described in this order are hereby in all respects approved and confirmed. Any provision in this Bond Order that authorizes

more than one officer of the City to take certain actions shall be read to permit such officers to take the authorized actions either individually or collectively.

Section 11. If any one or more of the agreements or provisions herein contained is held contrary to any express provision of law or contrary to the policy of express law, though not expressly prohibited, or against public policy, or for any reason whatsoever is held invalid, then such covenants, agreements, or provisions are null and void and separable from the remaining agreements and provisions and do not in any way affect the validity of any of the other agreements and provisions hereof or of the 2022 Bonds authorized hereunder.

Section 12. The proceeds from the sale of the 2022 Bonds, and other available funds of the City, shall be deposited in accordance with the Eleventh Supplemental Trust Agreement.

Section 13. All resolutions or parts thereof of the City Council in conflict with the provisions herein contained are, to the extent of such conflict, hereby superseded and repealed.

Section 14. This Bond Order is effective immediately on its adoption and pursuant to Section 159-88 of the General Statutes of North Carolina, as amended, need not be published or subjected to any procedural requirements governing the adoption of ordinances or resolutions by the City other than the procedures set out in the Act.

PASSED, ADOPTED AND APPROVED this 21st day of March, 2022.

STATE OF NORTH CAROLINA)
)
CITY OF HIGH POINT) ss:

I, Lisa B. Vierling, City Clerk of the City of High Point, North Carolina, ***DO HEREBY CERTIFY*** that the foregoing is a true and exact copy of so much of the proceedings of the City Council as it relates to an order entitled “**BOND ORDER AUTHORIZING THE SALE AND ISSUANCE BY THE CITY OF HIGH POINT, NORTH CAROLINA OF NOT TO EXCEED \$40,000,000 COMBINED ENTERPRISE SYSTEM REVENUE BONDS, SERIES 2022 AND AUTHORIZING THE EXECUTION AND DELIVERY OF CERTAIN DOCUMENTS IN CONNECTION THEREWITH**” duly adopted by the City Council of the City of High Point, North Carolina, at a meeting held on the 21st day of March, 2022 and that such proceedings are to be recorded in the minute books of said City Council.

WITNESS my hand and the seal of the City of High Point, North Carolina, this the ____ day of _____, 2022.

City Clerk
City of High Point, North Carolina

(SEAL)