

CITY OF HIGH POINT

AGENDA ITEM



Title: Authorize Issuance of Series 2021A CES Revenue Refunding Bonds

From: Bobby D. Fitzjohn, Financial Services Director

Meeting Date: December 6, 2021

Public Hearing: No

Advertising Date: N/A

Advertised By:

Attachments: Bond Order

PURPOSE:

The Financial Services Department recommends that the City Council take the final step to authorize the issuance of up to \$21 million Series 2021A Taxable Combined Enterprise System (CES) Refunding Bonds.

BACKGROUND:

The bond market is currently favorable for refunding the City's outstanding Series 2012A CES Revenue Refunding Bonds. On November 15th, City Council approved the initial resolution authorizing staff to begin the process, this is the final action required.

The proposed refunding will allow the City to take advantage of current market rates by utilizing direct bank loans rather than waiting until the bonds are callable. The bonds' taxable rates will be converted to the tax-exempt rates upon the call date of the refunded bonds.

An RFP was distributed to more than 50 national, regional, and local lending institutions by the City's Financial Advisors. Upon analysis, staff is recommending the Pinnacle Bank proposal for the 2021A bond, with a 7.4% NPV savings or cash flow savings of approximately \$142 thousand per year for through FY 2032 with a total cash savings of approximately \$1.6 million.

The LGC will consider the application for refunding at their December 7, 2021 meeting and the refunding will close on December 16th.

BUDGET IMPACT:

The refunding savings will be built into the debt service budgets for the Water & Sewer Fund in the 2022-2023 Annual Budget and successive years.

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 \$21,000,000 Taxable Combined Enterprise System Revenue Refunding Bond, Series 2021A And A Subsequent Tax-Exempt Combined Enterprise System Revenue Refunding Bond 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 December 6, 2021:

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 \$21,000,000 TAXABLE COMBINED ENTERPRISE SYSTEM REVENUE REFUNDING BOND, SERIES 2021A AND A SUBSEQUENT TAX-EXEMPT COMBINED ENTERPRISE SYSTEM REVENUE REFUNDING BOND 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 (succeeded by U.S. Bank 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, pursuant to the Trust Agreement and a Fifth Supplemental Trust Agreement, dated as of June 1, 2012 (the “Fifth Supplemental Trust Agreement”), between the City and the Trustee, the City has heretofore issued its \$32,125,000 Combined Enterprise System Revenue Refunding Bonds, Series 2012A (the “2012A Bonds”); and

WHEREAS, the City Council of the City (the “City Council”) has been advised by the Financial Services Director that the City can achieve debt service savings by refinancing the 2012A Bonds;

WHEREAS, the City has determined (1) to issue its not to exceed \$21,000,000 Taxable Combined Enterprise System Revenue Refunding Bond, Series 2021A (the “2021A Bond”) and (2) to apply the proceeds of the 2021A Bond, together with other available funds, to (a) refund the 2012A Bonds maturing

on and after November 1, 2023 (the “*Refunded Bonds*”) and (b) pay the costs of issuing the 2021A Bond and the Tax-Exempt Bond (as defined below);

WHEREAS, the City will issue the 2021A Bond under the Trust Agreement and a Ninth Supplement Trust Agreement, to be dated as of December 1, 2021 (the “*Ninth Supplemental Agreement*”) between the City and the Trustee;

WHEREAS, the City and the Commission have arranged for the issuance of the 2021A Bond to Pinnacle Bank (the “*Purchaser*”) pursuant to the terms of the Trust Agreement, the Ninth Supplemental Agreement and the Bond Purchase Agreement (as defined below);

WHEREAS, pursuant to the terms and conditions of the Ninth Supplemental Agreement and the Forward Purchase Agreement (as defined below), the City also desires to authorize the sale and issuance to the Purchaser of a tax-exempt revenue refunding bond in the principal amount equal to the outstanding principal amount of the 2021A Bond at the time of issuance thereof (the “*Tax-Exempt Bond*”) for the purpose of refunding and redeeming the 2021A Bond;

WHEREAS, the City has filed with the Commission an application for the approval and private sale without advertisement of the 2021A Bond and the Tax-Exempt Bond in accordance with Section 159-85 of the General Statutes of North Carolina, as amended;

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 Ninth Supplemental Agreement, including the forms of the 2021A Bond and the Tax-Exempt Bond set forth in exhibits thereto;
2. the Bond Purchase Agreement to be dated as the date of delivery thereof (the “*Bond Purchase Agreement*”) among the Commission, the Purchaser and the City, related to the sale of the 2021A Bond;
3. the Escrow Agreement (2021A) to be dated as of December 1, 2021 (the “*Escrow Agreement*”) between the City and U.S. Bank National Association, as escrow agent, related to the refunding of the Refunding Bonds; and
4. the Forward Purchase Agreement to be dated as the date of delivery thereof (the “*Forward Purchase Agreement*”) among the Commission, the Purchaser and the City, related to the sale of the Tax-Exempt Bond.

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

Section 1. In order to raise the money required to (a) refund the Refunded Bonds and (b) pay other costs incurred in connection with the issuance and sale of the 2021A Bond and the Tax-Exempt Bond, the 2021A Bond is hereby authorized and will be issued pursuant to the Act, the Trust Agreement and the Ninth Supplemental Agreement. In order to provide the money to refund and redeem the 2021A Bond, the Tax-Exempt Bond is hereby authorized and will be issued pursuant to the Act, the Trust Agreement and the Ninth Supplemental Agreement. The Board has determined that the sale and issuance of the 2021A Bond, and the subsequent sale and issuance of the Tax-Exempt Bond if and when issued, as provided in this Bond Order is in the best interests of the City in order to achieve debt service savings.

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 Ninth Supplemental Trust Agreement.

Section 2. The aggregate principal amount of the 2021A Bond authorized by this Bond Order will not exceed \$21,000,000 and the interest rate on the 2021A Bond will not initially exceed 1.99% per annum (which rate may be adjusted in accordance with the Ninth Supplemental Agreement). The aggregate principal amount of the Tax-Exempt Bond, if and when issued, authorized by this Bond Order will not exceed the principal amount equal to the outstanding principal amount of the 2021A Bond at the time of issuance thereof and the interest rate on the Tax-Exempt Bond will not initially exceed 1.59% per annum (which rate may be adjusted in accordance with the Ninth Supplemental Agreement). The final maturity of the 2021A Bond and the Tax-Exempt Bond shall not be later than November 1, 2031.

Section 3. The City requests that the 2021A Bond be sold at private sale by the Commission without advertisement to the Purchaser at such price as the Commission determines to be in the best interest of the City and in accordance with the Ninth Supplemental Agreement and the Bond Purchase Agreement. The City will be authorized, but not obligated or required, to issue and sell the Tax-Exempt Bond to the Purchaser under the terms of the Ninth Supplemental Agreement and the Forward Purchase Agreement. The City requests that the Tax-Exempt Bond, if and when issued, be sold at private sale by the Commission without advertisement to the Purchaser at such price as the Commission determines to be in the best interest of the City and in accordance with the Forward Purchase Agreement.

Section 4. The issuance of the 2021A Bond and the Tax-Exempt Bond by the City in substantially the form and content set forth in the Ninth Supplemental Agreement, subject to appropriate insertions and revisions in order to comply with the provisions of the Trust Agreement and the Ninth Supplemental Agreement, are hereby in all respects approved and confirmed, and the form and content of the 2021A Bond and the Tax-Exempt Bond set forth in the Ninth Supplemental Agreement are hereby in all respects approved and confirmed, and the provisions of the Trust Agreement and the Ninth Supplemental Agreement with respect to the 2021A Bond and the Tax-Exempt Bond (including without limitation the maturity dates and rates of interest) are hereby approved and confirmed and are incorporated herein by reference.

The 2021A Bond and the Tax-Exempt Bond, if and when issued, 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 Ninth 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 2021A Bond and the Tax-Exempt Bond, if and when issued, and no holder of the 2021A Bond and the Tax-Exempt Bond, if and when issued, 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 5. That the form and content of the Ninth Supplemental Agreement, the Escrow Agreement, the Bond Purchase Agreement and the Forward Purchase Agreement (collectively, the “*Bond Documents*”), and the respective exhibits thereto, 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 Bond Documents 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 Bond Documents, 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 Bond Documents as executed. The Trustee is hereby appointed as Bond Registrar under the Trust Agreement and the Ninth Supplemental Agreement and as Escrow Agent under the Escrow Agreement.

Section 6. The City Manager and the Chief Financial Officer of the City are each hereby authorized to (i) if and when the Tax-Exempt Bond is issued, 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 and (ii) call the Refunded Bonds for redemption.

Section 7. No stipulation, obligation or agreement herein contained or contained in the 2021A Bond, the Tax-Exempt Bond, the Bond Documents or any other instrument related to the issuance of the 2021A Bond and the Tax-Exempt Bond 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 2021A Bond and the Tax-Exempt Bond 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 and the Bond Documents; 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 Bond Documents, (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 2021A Bond and the Tax-Exempt Bond, if and when issued, and the execution and delivery of the Bond Documents.

The Authorized Officers, or their respective designees, are hereby authorized and directed to prepare and furnish, when the 2021A Bond and the Tax-Exempt Bond are issued, certified copies of all the proceedings and records of the City relating to the 2021A Bond and the Tax-Exempt Bond, and such other affidavits, certificates, and documents as may be required to show the facts relating to the legality and marketability of the 2021A Bond and the Tax-Exempt Bond 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 2021A Bond and the Tax-Exempt Bond, if and when issued, by the Commission and directing the authentication and delivery of the 2021A Bond and the Tax-Exempt Bond, if and when issued, to or upon the order of the purchasers therein named upon payment of the purchase price therefor plus the accrued interest thereon.

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 2021A Bond and the Tax-Exempt Bond and the execution, delivery, and performance of the Bond Documents 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 2021A Bond and the Tax-Exempt Bond authorized hereunder.

Section 12. The proceeds from the sale of the 2021A Bond and the Tax-Exempt Bond, if and when issued, and other available funds of the City shall be deposited in accordance with the Ninth Supplemental Agreement and the Escrow 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 6th day of December, 2021.

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

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 \$21,000,000 TAXABLE COMBINED ENTERPRISE SYSTEM REVENUE REFUNDING BOND, SERIES 2021A AND A SUBSEQUENT TAX-EXEMPT COMBINED ENTERPRISE SYSTEM REVENUE REFUNDING BOND 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 6th day of December, 2021 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 _____, 2021.

City Clerk
City of High Point, North Carolina

(SEAL)