

# CITY OF HIGH POINT

## AGENDA ITEM



### **Title: Resolution Approving an Installment Financing Contract and Providing for Certain Other Related Matters**

**From:** Bobby D. Fitzjohn, Financial Services Director

**Meeting Date:** March 2, 2020

**Public Hearing:** Yes

**Advertising Date /** February 19, 2020

**Advertised By:** Clerk

**Attachments:** Approving Resolution

---

#### **PURPOSE:**

The final legal proceedings in connection with the authorization and issuance of the financing for the construction services related to the Police Department Headquarters and Communications Center, the City's bond attorneys have prepared the attached proceedings and resolution that will authorize the financing through the issuance of limited obligation bonds, the related trust agreements that collateralize those bonds, and delegate authority to the Mayor, City Manager, and the Financial Services Director to approve the interest rates, purchase process, and other terms of the Bonds

#### **BACKGROUND:**

The issuance of any debt obligation (bonds, notes, financing agreements, and leases) of the City requires the authorization of the City Council. This is the final legal step required of City Council for the issuance of the limited obligation bonds for the Police Department Headquarters and Communications Center. The issuance of an installment financing contract, in this case through limited obligation bonds, is authorized by G.S. 160A-20.

The statute requires approval of the Local Government Commission because the proposed transaction will be collateralized by real property. The Local Government Commission is expected to approve the financing at its April 7, 2020 meeting.

#### **BUDGET IMPACT:**

No increase in property taxes is needed to service the debt related to the proposed Series 2020 LOBs.

#### **RECOMMENDATION / ACTIONS REQUESTED:**

The Financial Services Department recommends Council adopt the Resolution Approving an Installment Financing Contract and Providing for Certain Other Related Matters.

EXTRACTS FROM MINUTES OF CITY COUNCIL

\* \* \*

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 2, 2020:

Members Present:

Members Absent:

\* \* \* \* \*

The Financial Services Director of the City of High Point, North Carolina (the “*City*”) reported to the City Council (the “*City Council*”) that notice of a public hearing was published on February 19, 2020, stating that the City Council would hold a public hearing at 5:30 p.m. on March 2, 2020 to receive public comments on the proposed execution and delivery by the City of (1) an installment financing contract in a principal amount not to exceed \$18,250,000 (the “*Contract*”), the proceeds of which would be used to finance the renovation, improvement and expansion of a facility to be used as a police headquarters/communications center located at 1730 Westchester Drive, High Point, North Carolina (the “*Project*”), and (2) a deed of trust, security agreement and fixture filing (the “*Deed of Trust*”) under which the City would grant a lien on the City’s fee simple interest in the real property on which the Project is located, together with the improvements thereon, as may be required for the benefit of the entity providing the funds to the City under the Contract.

The Mayor then announced that the City Council would hear anyone who wished to be heard on the questions of the proposed Contract, the Deed of Trust and the Project to be financed thereby.

[No one spoke at the public hearing.]

\_\_\_\_\_ moved that the public hearing be closed. The motion was unanimously adopted.

After the closing of the public hearing, \_\_\_\_\_ moved that the following resolution, a summary of which had been provided to each Council Member and a copy of which was available with City Clerk, be adopted:

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HIGH POINT, NORTH CAROLINA, APPROVING AN INSTALLMENT FINANCING CONTRACT AND PROVIDING FOR CERTAIN OTHER RELATED MATTERS**

*WHEREAS*, the City of High Point, North Carolina (the “*City*”) is a municipal corporation validly existing under the Constitution, statutes and laws of the State of North Carolina (the “*State*”);

*WHEREAS*, the City has the power, pursuant to the General Statutes of North Carolina, to (1) purchase real and personal property, (2) enter into installment purchase contracts to finance the purchase or improvement of real and personal property used, or to be used, for public purposes, and (3) grant a security interest in some or all of the property purchased or improved to secure repayment of the purchase price;

*WHEREAS*, the City Council of the City (the “*City Council*”) hereby determines that it is in the best interest of the City to enter into an Installment Financing Contract dated as of April 1, 2020 (the “*Contract*”) with the High Point Public Facilities Corporation (the “*Corporation*”) in order to (1) finance the renovation, improvement and expansion of a facility to be used as a police headquarters/communications center (the “*Project*”), and (2) pay certain costs incurred in connection with the execution and delivery of the Contract;

*WHEREAS*, the City hereby determines that the Project is essential to the City’s proper, efficient and economic operation and to the general health and welfare of its inhabitants; that the Project has or will provide an essential use and has or will permit the City to carry out public functions that it is authorized by law to perform; and that entering into the Contract is necessary and expedient for the City by virtue of the findings presented herein;

*WHEREAS*, the City hereby determines that the estimated cost of the Project is an amount not to exceed \$18,250,000 and that such cost of the Project exceeds the total amount that can be prudently raised from currently available appropriations, unappropriated fund balances and non-voted bonds that could be issued by the City in the current fiscal year pursuant to Article V, Section 4 of the Constitution of the State;

*WHEREAS*, although the cost of financing the Project pursuant to the Contract is expected to exceed the cost of financing the Project pursuant to a bond financing for the same undertaking, the City hereby determines that the cost of financing the Project pursuant to the Contract and the obligations of the City thereunder are preferable to a general obligation bond financing or revenue bond financing for several reasons, including but not limited to the following: (a) the cost of a special election necessary to approve a general obligation bond financing, as required by the laws of the State, would result in the expenditure of significant funds; (b) the time required for a general obligation bond election would cause an unnecessary delay which would thereby decrease the financial benefits of the Project; and (c) insufficient revenues are produced by the Project so as to permit a revenue bond financing;

*WHEREAS*, the City hereby determines that the estimated cost of financing the Project pursuant to the Contract reasonably compares with an estimate of similar costs under a bond financing for the same undertaking as a result of the findings delineated in the above preambles;

*WHEREAS*, the obligation of the City to make Installment Payments under the Contract is a limited obligation of the City payable solely from currently budgeted appropriations of the City and does not constitute a pledge of the faith and credit of the City within the meaning of any constitutional debt limitation;

WHEREAS, the City does not anticipate future property tax increases solely to pay installment payments falling due under the Contract in any fiscal year during the term of the Contract;

WHEREAS, the sums to fall due under the Contract will be adequate but not excessive for its proposed purpose;

WHEREAS, Parker Poe Adams & Bernstein LLP, as special counsel (*"Special Counsel"*), will render an opinion to the effect that entering into the Contract and the transactions contemplated thereby are authorized by law and constitute a purpose for which public funds may be expended pursuant to the Constitution and laws of the State;

WHEREAS, no deficiency judgment may be rendered against the City in any action for its breach of the Contract, and the taxing power of the City is not and may not be pledged in any way directly or indirectly or contingently to secure any moneys due under the Contract;

WHEREAS, the City is not in default under any of its debt service obligations;

WHEREAS, the City's budget process and Annual Budget Ordinance are in compliance with the Local Government Budget and Fiscal Control Act, and external auditors have determined that the City has conformed with generally accepted accounting principles in preparing its Annual Budget Ordinance;

WHEREAS, past audit reports of the City indicate that its debt management and contract obligation payment policies have been carried out in strict compliance with the law, and the City has not been censured by the North Carolina Local Government Commission (the *"LGC"*), external auditors or any other regulatory agencies in connection with such debt management and contract obligation payment policies;

WHEREAS, the City has filed an application with the LGC for approval of the LGC with respect to the City entering into the Contract in an aggregate principal amount of not to exceed \$18,250,000, and the City hereby determines that all findings, conclusions and determinations of the City in this resolution are subject to such approval by the LGC;

WHEREAS, to secure its obligations under the Contract, the City will execute and deliver a Deed of Trust, Security Agreement and Fixture Filing dated as of April 1, 2020 (the *"Deed of Trust"*), granting a lien on the City's fee simple interest in the real property on which the Project is located, together with the improvements thereon;

WHEREAS, the Corporation will execute and deliver an aggregate principal amount not to exceed \$18,250,000 of its Limited Obligation Bonds (collectively, the *"Bonds"*), each evidencing proportionate undivided interests in rights to receive certain Revenues (as defined in the Contract) pursuant to the Contract;

WHEREAS, in connection with the sale of the Bonds to Pinnacle Bank (the *"Purchaser"*), the Corporation will enter into a Bond Purchase Agreement to be dated the date of delivery thereof (the *"Purchase Contract"*) between the Corporation and the Purchaser relating to the Bonds, and the City will execute a Letter of Representation to the Purchaser (the *"Letter of Representation"*);

WHEREAS, there have been described to the City Council the forms of the following documents (collectively, the *"Instruments"*), copies of which have been made available to the City Council, which the City Council proposes to approve, enter into and deliver, as applicable, to effectuate the proposed installment financing:

- (1) the Contract;
- (2) the Deed of Trust;
- (3) an Indenture of Trust dated as of April 1, 2020 (the “*Indenture*”) between the Corporation and U.S. Bank National Association, as trustee; and
- (3) the Purchase Contract and the Letter of Representation.

*WHEREAS*, it appears that each of the Instruments is in an appropriate form and is an appropriate instrument for the purposes intended;

*WHEREAS*, the City Council has conducted a public hearing on this date to receive public comment on the proposed Contract and the transactions contemplated thereby; and

*WHEREAS*, the City has filed an application to the LGC for approval of the Contract;

***NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL AS FOLLOWS:***

Section 1. ***Ratification of Instruments.*** All actions of the City, the Mayor, the City Clerk (the “*Clerk*”), the City Manager, the Financial Services Director, the City Attorney and their respective designees, whether previously or hereinafter taken, in effectuating the proposed financing are hereby approved, ratified and authorized pursuant to and in accordance with the transactions contemplated by the Instruments.

Section 2. ***Authorization to Execute the Contract.*** The City approves the financing of the Project in accordance with the terms of the Contract, which will be a valid, legal and binding obligation of the City in accordance with its terms. The form and content of the Contract are hereby in all respects authorized, approved and confirmed, and the Mayor, the Clerk, the City Manager and the Financial Services Director and their respective designees (the “*Authorized Officers*”) are hereby authorized, empowered and directed, individually and collectively, to execute and deliver the Contract, including necessary counterparts, in substantially the form and content presented to the City Council, but with such changes, modifications, additions or deletions therein as they may deem necessary, desirable or appropriate, their execution thereof to constitute conclusive evidence of the City’s approval of any and all changes, modifications, additions or deletions therein from the form and content of the Contract presented to the City Council. From and after the execution and delivery of the Contract, the Authorized Officers are hereby authorized, empowered and directed, individually and collectively, 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 Contract as executed.

Section 3. ***Authorization to Execute the Deed of Trust.*** The City approves the form and content of the Deed of Trust, and the Deed of Trust is in all respects authorized, approved and confirmed. The Authorized Officers are hereby authorized, empowered and directed, individually and collectively, to execute and deliver the Deed of Trust, including necessary counterparts, in substantially the form and content of the Deed of Trust presented to the City Council, but with such changes, modifications, additions or deletions therein as they may deem necessary, desirable or appropriate, their execution thereof to constitute conclusive evidence of the City’s approval of any and all changes, modifications, additions or deletions therein from the form and content of the Deed of Trust presented to the City Council. From and after the execution and delivery of the Deed of Trust, Authorized Officers are hereby authorized, empowered and directed, individually and collectively, 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 Deed of Trust as executed.

Section 4. ***Purchase Contract and Letter of Representation.*** The form and content of the Purchase Contract are hereby approved in all respects, and the Authorized Officers are hereby authorized, empowered and directed, individually and collectively, to execute and deliver the Letter of Representation, including necessary counterparts, in substantially the form and content of the Letter of Representation presented to the City Council, but with such changes, modifications, additions or deletions therein as they may deem necessary, desirable or appropriate, their execution thereof to constitute conclusive evidence of the City's approval of any and all changes, modifications, additions or deletions therein from the form and content of the Letter of Representation presented to the City Council. From and after the execution and delivery of the Letter of Representation, the Authorized Officers are hereby authorized, empowered and directed, individually and collectively, 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 Letter of Representation as executed.

Section 5. ***City Representative.*** The Mayor, the City Manager and the Financial Services Director are hereby designated as the City's Representative to act on behalf of the City in connection with the transactions contemplated by the Instruments, and the Mayor, the City Manager and the Financial Services Director are authorized, individually and collectively, to proceed with the transactions contemplated by the Contract in accordance with the Instruments and to seek opinions as a matter of law from the City Attorney, which the City Attorney is authorized to furnish on behalf of the City, and opinions of law from such other attorneys for all documents contemplated by this Resolution as required by law. The City's representatives or their respective designees are hereby authorized, empowered and directed, individually and collectively, to do any and all other acts and to execute any and all other documents which they, in their discretion, deem necessary or appropriate to consummate the transactions contemplated by the Instruments and their ongoing administration or as they deem necessary or appropriate to implement and carry out the intent and purposes of this Resolution.

Section 6. ***Severability.*** If any section, phrase or provision of this Resolution is for any reason declared to be invalid, such declaration shall not affect the validity of the remainder of the sections, phrases or provisions of this Resolution.

Section 7. ***Repealer.*** All motions, orders, resolutions and parts thereof, in conflict herewith are hereby repealed.

Section 8. ***Effective Date.*** This Resolution is effective on the date of its adoption.

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 a resolution entitled “**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HIGH POINT, NORTH CAROLINA, APPROVING AN INSTALLMENT FINANCING CONTRACT AND PROVIDING FOR CERTAIN OTHER RELATED MATTERS**” duly adopted by the City Council of the City of High Point, North Carolina, at a meeting held on the 2nd day of March, 2020 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 \_\_\_\_\_, 2020.

City Clerk  
City of High Point, North Carolina

(SEAL)