STAFF REPORT

Council Meeting Date: May 24, 2022

Subject: Resolution authorizing the issuance of 2022 Interim Limited Obligation Bonds (LOBs).

Staff Resource(s): Tony McDowell, Finance Director

Action Requested: Adoption of a resolution authorizing the City Manager or the Finance Director to pursue on behalf of the City debt financing for capital projects with a draw program that includes the issuance of interim Limited Obligation Bonds (LOBs) in an amount not to exceed $42,000,000 for construction of various general government capital projects.

Background:

- The City has been utilizing a multi-year Capital Improvement Program (CIP) and Debt Model since fiscal year 2013-14.
- As a part of that multi-year financial model, the City routinely enters into short-term draw programs with financial institutions through the issuance of interim Limited Obligation Bonds (LOBs).
- The short term draw programs provide cash to reimburse the City for capital expenses prior to the issuance of long term fixed rate financing.
- Staff is seeking Council approval of the resolution authorizing the installment financing and related issuance of 2022 Interim Limited Obligation Bonds (LOBs) in an amount not to exceed $42,000,000.
- Staff received proposals from six financial institutions (proposals attached) and is seeking Council approval to complete the LOBs financing with Wells Fargo.
- The projects covered under this debt issuance include a wide range of strategic capital goals the City wishes to meet in public safety, multi-modal transportation, economic development, quality of life, and facility maintenance.
- Specific projects of note covered under this debt issuance include the Broadway Public Safety Station, a portion of the Dr. Wesley Grant/Southside Center project, City Hall elevator modernization, and the Nasty Branch and French Broad West greenways.
- City Council held a public hearing on the 2022 Interim LOBs on May 10, 2022.

Council Goal(s):

- A Financially Resilient City

Pro(s):

- Allows the City to move forward with the Capital Improvement Program (CIP) and Draw Program financing.

Con(s):

- None

Fiscal Impact:

- The interim LOBs draw program includes an amount not to exceed $42,000,000. Approximately $13,300,000 will likely have already been expended and will be taken on the first draw at closing as a reimbursement to the City. The City then expects to spend the remaining monies over a twenty-four-month period. The City will then look to convert the program into a long-term fixed

rate financing at or around July 2024. The debt service payments for this financing are already included in the multi-year CIP/Debt Financial Model.

Suggested Motion:

- Motion to adopt a resolution of the City Council of the City of Asheville, North Carolina, approving an amendment to an installment financing contract to provide for the financing of additional projects and authorizing the City Manager or the Finance Director to pursue on behalf of the City debt financing for capital projects with a draw program that includes an installment financing and the related issuance of interim Limited Obligation Bonds (LOBs) in an amount not to exceed $42,000,000 for construction of various general government capital projects.

Attachment(s)

- 2022 Interim Limited Obligation Bond (LOBs) Activity Calendar
- Summary of Proposals
- Resolution

2022 Interim Limited Obligation Bonds (LOBs) - Activity Calendar

April 26, 2022: Council adopts Initial Resolution for 2022 Interim Limited Obligation Bonds (LOBs)

May 10, 2022: Council holds Public Hearing on 2022 Interim Limited Obligation Bonds (LOBs)

May 24, 2022: Council adopts Approving Resolution for 2022 Interim Limited Obligation Bonds (LOBs)

June 7, 2022: Local Government Commission (LGC) approval

Jun 15, 2022: Closing of 2022 Interim Limited Obligation Bonds (LOBs)

RESOLUTION 22-___

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ASHEVILLE, NORTH CAROLINA, APPROVING AN AMENDMENT TO AN INSTALLMENT FINANCING CONTRACT TO PROVIDE FOR THE FINANCING OF ADDITIONAL PROJECTS

WHEREAS, the City of Asheville, North Carolina (the *"City"*) is a validly existing municipal corporation, existing as such under and by virtue of 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) enter into installment contracts in order to purchase, or finance or refinance the purchase of, real or personal property and to finance or refinance the construction or repair of fixtures or improvements on real property and (2) create a security interest in some or all of the property financed or refinanced to secure repayment of the purchase price;

WHEREAS, the City has previously executed and delivered an Installment Financing Contract dated as of June 1, 2012 (the *"2012 Contract"*), between the Asheville Public Financing Corporation (the *"Corporation"*) and the City, as amended by an Amendment Number One to the Installment Financing Contract dated as of June 1, 2016 (*"Amendment Number One"*) between the Corporation and the City, an Amendment Number Two to the Installment Financing Contract dated as of November 1, 2017 (*"Amendment Number Two"*) between the Corporation and the City, an Amendment Number Three to the Installment Financing Contract dated as of June 1, 2018 (*"Amendment Number Three"*) between the Corporation and the City and an Amendment Number Four to the Installment Financing Contract dated as of April 1, 2021 (*"Amendment Number Four"*) between the Corporation and the City;

WHEREAS, the proceeds related to the 2012 Contract were used by the City to finance the costs of (1) acquiring, constructing and improving certain streets, sidewalks, greenways, and other improvements related thereto in the City; (2) renovating and improving City Hall and the Civic Center; (3) acquiring and installing vehicles and equipment; (4) refinancing prior installment payment obligations of the City, the proceeds of which were used to finance and refinance improvements to various City facilities;

WHEREAS, the proceeds related to entering into the 2012 Contract, as amended by Amendment Number One, were used by the City to finance the costs of various projects in the City for affordable housing, public safety, transportation, economic development, parks and recreation and repair and renovation to City facilities (the *"2016 Projects"*) and a portion of such 2016 Projects were refinanced from the proceeds related to entering into the 2012 Contract, as amended by Amendment Number Two (the remaining amount was refunded with the proceeds of special obligation bonds);

WHEREAS, the proceeds related to entering into the 2012 Contract, as amended by Amendment Number Three, were used by the City to finance the costs of various projects in the City for affordable housing, public safety, transportation, economic development, parks and recreation and repair and renovation to City facilities, a complete list of which is available in the City Clerk's office (the *"2018 Projects"*);

WHEREAS, the proceeds related to entering into the 2012 Contract, as amended by Amendment Number Four, were used by the City in order to refinance the costs of a portion of the 2018 Projects (the remaining portion of the 2018 Projects were refinanced by the City through the issuance of special obligation bonds);

WHEREAS, in order to secure its obligations under the Contract, the City has granted a Deed of Trust, Security Agreement and Fixture Filing dated as of June 1, 2012, as amended by a Notice of Extension and Amendment to Deed of Trust dated as on June 1, 2016 (collectively, the *"Deed of Trust*"), on the real property on which each of City Hall, the City's Public Works Facility and the City's Municipal Building is located, each such facility having had repairs and renovations financed under the Contract;

WHEREAS, the City Council has determined that it is in the best interest of the City to enter into Amendment Number Five to the Installment Financing Contract to be dated as of June 1, 2022, (*"Amendment Number Five"* and together with the 2012 Contract, as previously amended as described above, the *"Contract"*) between the Corporation and the City, which will further supplement and amend the 2012 Contract, in order to finance the costs of various projects in the City, including but not limited to projects for affordable housing, public safety, transportation, infrastructure, economic development, parks and recreation, repair and renovation to City facilities, construction of City facilities and acquisition of vehicles and equipment (the *"2022 Projects"*);

WHEREAS, in order to assist the City in financing the 2022 Projects, the Corporation will execute and deliver a Limited Obligation Bond (City of Asheville, North Carolina), Series 2022, in an aggregate principal amount not to exceed $42,000,000 (the *"2022 Bond"*), evidencing a proportionate undivided interest in the right to receive Revenues pursuant to the Contract;

WHEREAS, the 2022 Bond will be executed and delivered under and pursuant to an Indenture of Trust dated as of June 1, 2012 (the *"2012 Indenture"*), as previously supplemented and amended, between the Corporation and Branch Banking and Trust Company, the successor to which is Truist Bank, as trustee (the *"Trustee"*), and a Supplemental Indenture, Number 5 to be dated as of June 1, 2022 (the *"Fifth Supplemental Indenture"* and together with the 2012 Indenture, the *"Indenture"*), between the Corporation and the Trustee;

WHEREAS, Wells Fargo Bank, National Association, or one of its subsidiaries or affiliates (the *"Purchaser"*), has agreed to purchase the 2022 Bond and provide the funding for the 2022 Projects pursuant to the terms of the Indenture, the Contract and a Bond Purchase and Advance Agreement (the *"Purchase Agreement"*) to be entered into among the Corporation, the City, the Purchaser and the North Carolina Local Government Commission (the *"LGC"*);

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) Amendment Number Five;

(2) the Fifth Supplemental Indenture; and

(3) the Purchase Agreement;

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

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, a public hearing on Amendment Number Five and the 2022 Projects after publication of a notice with respect to such public hearing was held by the City Council on May 10, 2022; and

WHEREAS, the City has filed an application to the LGC for approval of Amendment Number Five;

***NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ASHEVILLE, NORTH CAROLINA, AS FOLLOWS*:**

Section 1. ***Ratification of Instruments.*** That all actions of the Mayor, the City Manager, the Finance Director, the City Clerk, including anyone serving as such in an interim capacity, and their respective designees (the *"Authorized Officers"*), 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 Amendment Number Five and the Purchase Agreement.*** That the City approves the financing of the 2022 Projects as contemplated by the terms of the Instruments and in accordance with the terms of the Contract, including Amendment Number Five, in an aggregate principal amount not to exceed $42,000,000, which will be a valid, legal and binding obligation of the City in accordance with its terms. The form and content of Amendment Number Five and the Purchase Agreement shall be and the same hereby are in all respects authorized, approved and confirmed, and the Authorized Officers, either individually or collectively, shall be and they hereby are authorized, empowered and directed to execute and deliver Amendment Number Five and the Purchase Agreement, including necessary counterparts, in substantially the form and content presented to the City Council, 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 the City's approval of any and all changes, modifications, additions or deletions therein from the form and content of Amendment Number Five and the Purchase Agreement presented to the City Council, and that from and after the execution and delivery of Amendment Number Five and the Purchase Agreement, the Authorized Officers, either individually or collectively, 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 Contract.

Section 3. ***City Representative.*** That each of the Authorized Officers are hereby designated as the City's Representative to act on behalf of the City in connection with the transactions contemplated by this Resolution and the Instruments, and they are authorized to proceed with the financing of the 2022 Projects in accordance with this Resolution and the Instruments and to seek opinions as to matters of law from attorneys as they deem appropriate for all documents contemplated hereby as required by law. The Authorized Officers, either individually or collectively, 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 to consummate the transactions contemplated by the Indenture, the Contract, the Instruments and the administration thereof after the issuance of the 2022 Bond and as they deem necessary or appropriate to implement and carry out the intent and purposes of this Resolution. Any provision in this Resolution that authorizes more than one officer to take certain actions will be read to permit such officers to take the authorized actions either individually or collectively.

Section 4. ***Severability.*** That if any one or more of the covenants, agreements or provisions contained in this Resolution 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 is for any reason whatsoever held invalid, then such covenants, agreements or provisions will be null and void and will be deemed

separable from the remaining agreements and provisions and will in no way affect the validity of any of the other agreements and provisions of this Resolution, the Purchase Agreement or Amendment Number Five and the other instruments authorized hereunder.

Section 5. ***Repealer.*** That all motions, orders, resolutions and parts thereof, in conflict herewith are hereby repealed.

Section 6. ***Effective Date***. That this Resolution is effective on the date of its adoption.

Read, approved and adopted this 24th day of May, 2022.

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City Clerk Mayor

APPROVED AS TO FORM:

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City Attorney