THE CITY OF ASHEVILLE

STAFF REPORT

Council Meeting Date: August 24, 2021

Subject: 2021 Water Revenue Refunding Bonds - Approval of Bond Order and Bond Resolution

Staff Resource: Tony McDowell, Director of Finance and Management Services

Action Requested:
- Approval of Bond Order for the proposed 2021 Water Revenue Refunding Bonds
- Approval of Bond Resolution for the proposed 2021 Water Revenue Refunding Bonds

Background:
- In May, 2018, Council authorized the issuance of a Water Revenue Bond Anticipation Note (Water BAN) draw program in an amount not to exceed $40 million.
- The loan was used to reimburse the City for expenses associated with the North Fork Dam project.
- The City has drawn down the full amount of the loan, $40 million.
- To pay off the Water BAN loan, the City intends to issue long-term, fixed-rate Water Revenue Refunding Bonds in late-September 2021.

Council Goal:
- Financially Resilient City

Committee(s):
- None

Pro(s):
- Converts a short-term variable-rate loan to long-term, fixed-rate refunding bonds.
- Spreads capital costs over a longer term to better match the life of the water asset, the North Fork Dam

Con(s):
- None

Fiscal Impact:
- Annual debt service payments will increase because long-term fixed rates are higher than short-term variable rate debt.
- This increase was included in the multi-year Water Rate Model that was discussed with Council during the budget process.
- The final amounts of the new debt service payments will be determined on the bond sale date and will be included in future Water Fund budgets.

Suggested Motion:
- Motion to approve the 2021 Water Revenue Refunding Bonds - Bond Order
- Motion to approve the 2021 Water Revenue Refunding Bonds - Bond Resolution

Attachment(s):

- 2021 Water Revenue Refunding Bonds - Activity Calendar
- 2021 Water Revenue Refunding Bonds - Bond Order
- 2021 Water Revenue Refunding Bonds - Bond Resolution

2021 Water Revenue Refunding Bonds - Activity Calendar

July 27, 2021:	Council adopts Initial Resolution for 2021 Water Revenue Refunding Bonds
August 24, 2021:	**Council adopts Bond Order and Bond Resolution for 2021 Water Revenue Refunding Bonds**
September 14, 2021:	LGC approval
September 16, 2021:	Sale of 2021 Water Revenue Refunding Bonds
September 30, 2021:	Closing of 2021 Water Revenue Refunding Bonds

RESOLUTION 21-___

BOND ORDER AUTHORIZING THE ISSUANCE OF WATER SYSTEM REVENUE REFUNDING BONDS OF THE CITY OF ASHEVILLE, NORTH CAROLINA

WHEREAS, the City of Asheville, 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 *"LGC"*), at one time or from time to time, revenue bonds and revenue refunding bonds of the City for the purposes as specified in the Act;

WHEREAS, the City has previously issued a City of Asheville, North Carolina Water System Revenue Bond Anticipation Note, Series 2018 (the *"Bond Anticipation Note"*) in an aggregate principal amount not to exceed $40,000,000 to finance the costs of extensions, additions and capital improvements to, or the acquisition, renewal or replacement of capital assets of, or purchasing and installing new equipment for the water system owned by the City;

WHEREAS, the City has determined to issue its Water System Revenue Refunding Bonds, Series 2021 (the *"2021 Bonds"*) to provide funds to (1) refund the Bond Anticipation Note and (2) pay the costs of issuing the 2021 Bonds;

WHEREAS, the City will issue the 2021 Bonds under the General Trust Indenture dated as of December 1, 2005 (the "*General Indenture*"), between the City and The Bank of New York Mellon Trust Company, N.A., as trustee (the "*Trustee*"), as previously amended, and Series Indenture, Number 5, dated as of September 1, 2021 (the *"Series Indenture"*), between the City and the Trustee;

WHEREAS, the City and the LGC have arranged for the sale of the 2021 Bonds to BoA Securities, Inc. (the *"Underwriter"*), under the terms of a Bond Purchase Agreement to be dated on or about September 16, 2021 (the *"Purchase Agreement"*);

WHEREAS, an application has been filed with the LGC requesting approval of the 2021 Bonds as required by the Act;

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF ASHEVILLE, NORTH CAROLINA DOES RESOLVE AS FOLLOWS:

Section 1. In order to raise the money required to refund the Bond Anticipation Note and to pay the costs of issuance of the 2021 Bonds, in addition to any funds which may be made available for such purpose from any other source, the 2021 Bonds are hereby authorized and shall be issued pursuant to the Act.

Section 2. The aggregate principal amount of the 2021 Bonds authorized by this order shall not exceed $40,500,000. The 2021 Bonds hereby authorized shall be special obligations of the City, secured by and paid solely from the proceeds thereof or from revenues, income, receipts and other money received or accrued by or on behalf of the City from or in connection with the operation of the City's Water System (as defined in the General Indenture).

Section 3. The issuance of the 2021 Bonds by the City, in substantially the form to be set forth in the Series Indenture, be and the same hereby is in all respects approved and confirmed. The form and content of the 2021 Bonds and the provisions of the Series Indenture with respect to the 2021 Bonds (including without limitation the maturity dates and rates of interest) shall be approved and confirmed in a resolution of the City Council.

The principal of, premium, if any, and interest on the 2021 Bonds shall not be payable from the general funds of the City, nor shall they constitute a legal or equitable pledge, charge, lien or encumbrance upon any of its property or upon any of its income, receipts or revenues except the funds which are pledged under the General Indenture. 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, purchase price or interest on the 2021 Bonds, and no holder of the 2021 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 2021 Bonds are to be sold to the Underwriter under the terms of the Purchase Agreement, as shall be approved in a resolution of the City Council.

Section 5. The proceeds from the sale of the 2021 Bonds are to be deposited in accordance with the Series Indenture.

Section 6. 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 are to be deemed separable from the remaining agreements and provisions and in no way affect the validity of any of the other agreements and provisions hereof or of the 2021 Bonds authorized hereunder.

Section 7. 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 8. This Bond Order is effective immediately on its adoption and pursuant to §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 Council other than the procedures set out in the Act.

Read, approved and adopted this 24th day of August, 2021.

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City Clerk Mayor

APPROVED AS TO FORM:

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City Attorney

RESOLUTION 21-___

RESOLUTION OF THE CITY OF ASHEVILLE, NORTH CAROLINA, PROVIDING FOR THE ISSUANCE, SALE AND DELIVERY OF WATER SYSTEM REVENUE REFUNDING BONDS

WHEREAS, the City of Asheville, 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 *"LGC"*), at one time or from time to time, revenue bonds and revenue refunding bonds of the City for the purposes as specified in the Act;

WHEREAS, the City has previously issued a City of Asheville, North Carolina Water System Revenue Bond Anticipation Note, Series 2018 (the *"Bond Anticipation Note"*) in an aggregate principal amount not to exceed $40,000,000 to finance the costs of extensions, additions and capital improvements to, or the acquisition, renewal or replacement of capital assets of, or purchasing and installing new equipment for the water system owned by the City;

WHEREAS, the City has determined to issue its Water System Revenue Refunding Bonds, Series 2021 (the *"2021 Bonds"*) to provide funds to (1) refund the Bond Anticipation Note and (2) pay the costs of issuing the 2021 Bonds;

WHEREAS, the City will issue the 2021 Bonds under the General Trust Indenture dated as of December 1, 2005 (the "*General Indenture*"), between the City and The Bank of New York Mellon Trust Company, N.A., as trustee (the "*Trustee*"), as previously amended, and Series Indenture, Number 5, dated as of September 1, 2021 (the *"Series Indenture"*), between the City and the Trustee;

WHEREAS, the City and the LGC have arranged for the sale of the 2021 Bonds to BoA Securities, Inc. (the *"Underwriter"*), under the terms of a Bond Purchase Agreement to be dated on or about September 16, 2021 (the *"Purchase Agreement"*);

WHEREAS, copies of the forms of the following documents relating to the transactions described above have been filed with the City:

1. the General Indenture;

2. the Series Indenture;

3. the Purchase Agreement; and

4. a Preliminary Official Statement (the "*Preliminary Official Statement*") with respect to the 2021 Bonds, which after the inclusion of certain pricing and other information will become the final Official Statement (the *"Official Statement"*) relating to the 2021 Bonds; and

5. a 2021 Bond in the form set forth in the Series Indenture;

WHEREAS, the City has determined it is in its best interest to amend the General Indenture to modernize and clarify its provisions and provide appropriate operating flexibility of the water system in the future (the *"Amended and Restated General Indenture"*) and the City intends to seek the consent of the owners of not less than a majority in aggregate principal amount of the Bonds Outstanding (as defined in the General Indenture) required under the General Indenture in order to execute and deliver amendments to the General Indenture for certain purposes provided therein and in accordance with the terms and conditions thereof as previously approved by the City Council;

WHEREAS, the City Council desires to authorize and approve the City's execution, delivery and entering into the Amended and Restated General Trust Indenture, a form of which is on file with the City, if and when the City obtains the requisite consent of the owners of not less than a majority in aggregate principal amount of the Bonds Outstanding in accordance with terms and conditions of the General Indenture without need for further City Council authorization, approval or action;

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF ASHEVILLE, NORTH CAROLINA DOES RESOLVE AS FOLLOWS:

Section 1. The 2021 Bonds are to be issued by the City for the purpose of providing funds (a) to refund the Bond Anticipation Note and (b) to pay the costs of issuing the 2021 Bonds. The use of the proceeds of the 2021 Bonds to refund the Bond Anticipation Note, as described above, is necessary in order to fix the long-term interest cost of the City related to the projects financed from the proceeds of the Bond Anticipation Note.

Section 2. The issuance of the 2021 Bonds by the City in the principal amount not to exceed $40,500,000, in substantially the form and content set forth in the Series Indenture, subject to appropriate insertions and revisions in order to comply with the provisions of the General Indenture and the Series Indenture, be and the same hereby are in all respects approved and confirmed, and the form and content of the 2021 Bonds set forth in the Series Indenture be and the same hereby are in all respects approved and confirmed, and the provisions of the General Indenture and the Series Indenture with respect to the 2021 Bonds (including without limitation the maturity dates and rates of interest to be inserted in the Series Indenture) be and the same hereby are approved and confirmed and are incorporated herein by reference.

The 2021 Bonds shall be special obligations of the City. The principal of, premium, if any, and interest on the 2021 Bonds shall not be payable from the general funds of the City, nor shall they constitute a legal or equitable pledge, charge, lien or encumbrance upon any of its property or upon any of its income, receipts or revenues except the funds which are pledged under the General Indenture and the Series Indenture. 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 2021 Bonds, and no holder of 2021 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 3. That the form and content of the Series Indenture and the exhibits thereto be and the same hereby are in all respects approved and confirmed, and the Mayor, the City Manager, the Chief Financial Officer and City Clerk of the City, or their respective designees, individually or collectively (the *"Authorized Officers"*), be and they hereby are authorized, empowered and directed to execute and deliver the Series Indenture 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 Series Indenture, 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 General Indenture and the Series Indenture as executed. The Trustee is hereby appointed as Registrar and Paying Agent thereunder.

Section 4. That the 2021 Bonds shall be sold to the Underwriter pursuant to the terms of the Purchase Agreement. The form and content of the Purchase Agreement are in all respects approved and confirmed, and the Authorized Officers are hereby authorized, empowered and directed to execute and deliver the Purchase 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 him or her seem necessary, desirable or appropriate, his or her execution thereof to constitute conclusive evidence of his or her approval of any and all such changes, modifications, additions or deletions therein, and that from and after the execution and delivery of the Purchase 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 Purchase Agreement as executed.

Section 5. The form, terms and content of the Preliminary Official Statement are in all respects authorized, approved and confirmed, and the use of it by the Underwriter, in connection with the sale of the 2021 Bonds is hereby in all respects authorized, approved and confirmed. The use of the final Official Statement, in substantially the form of the Preliminary Official Statement, by the Underwriter in connection with the sale of the 2021 Bonds is hereby in all respects authorized, approved and confirmed. The Mayor, the City Manager or Chief Financial Officer of the City is authorized to execute the Official Statement, if necessary, on behalf of the City.

Section 6. The City Manager or the Chief Financial Officer of the City, or their respective designee, is 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 regulations promulgated thereunder.

Section 7. No stipulation, obligation or agreement herein contained or contained in the 2021 Bonds, the General Indenture, the Series Indenture, the Purchase Agreement, or any other instrument related to the issuance of the 2021 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 2021 Bonds or be subject to personal liability or accountability by reason of the issuance thereof.

Section 8. The Authorized Officers 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 Resolution, the General Indenture, the Series Indenture, and the Purchase Agreement (collectively, the *"Instruments"*), except that none of the above shall be authorized or empowered to do anything or execute any document which is in contravention, in any way, of the specific provisions of the Instruments, any agreement to which the City is bound, any rule or regulation of the City or any applicable law, statute, ordinance, rule or regulation of the United States of America or the State of North Carolina.

Section 9. The Authorized Officers are authorized, empowered and directed to execute, deliver and enter into the Amended and Restated General Trust Indenture for and on behalf of the City if and when the City obtains the requisite consent of the owners of not less than a majority in aggregate principal

amount of the Bonds Outstanding in accordance with the terms and conditions of the General Indenture without need for further City Council authorization, approval or action. The Authorized Officers are further 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 obtain the aforementioned requisite consent and execute, deliver and enter into the Amended and Restated General Trust Indenture.

Section 10. All acts and doings of the Authorized Officers that are in conformity with the purposes and intent of this Resolution and in the furtherance of the issuance of the 2021 Bonds and the execution, delivery and performance of the Instruments shall be, and the same hereby are, in all respects authorized, approved and confirmed.

Section 11. If any one or more of the agreements or provisions herein contained shall be 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 shall for any reason whatsoever be held invalid, then such covenants, agreements or provisions may be null and void and deemed separable from the remaining agreements and provisions and in no way affect the validity of any of the other agreements and provisions hereof or of the 2021 Bonds authorized hereunder.

Section 12. 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 13. This Resolution shall take effect upon its adoption.

Read, approved and adopted this 24th day of August, 2021.

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City Clerk Mayor

APPROVED AS TO FORM:

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City Attorney