THE CITY OF ASHEVILLE

STAFF REPORT

Council Meeting Date: February 23, 2021

Subject: 2021 Limited Obligation and Special Obligation Refunding Bonds - Initial Resolution & Approval for Limited Obligation Refunding Bond Public Hearing

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

Action Requested:
- Adoption of Initial Resolution for the proposed Limited Obligation (LOBS) Refunding Bonds
- Adoption of the Initial Resolution for the proposed Special Obligation (SOBS) Refunding Bonds
- Approval to receive public comments for the proposed Limited Obligation (LOBS) Refunding Bonds

Background:
- In May, 2018, Council authorized the issuance of a Limited Obligation Bond Anticipation Note in an amount not to exceed $48 million.
- Since that time, the City has drawn down $34.9 million on the loan.
- In order to refund the principal, the City intends to issue long-term, fixed-rate LOBS & SOBS Refunding Bonds in late April 2021.
- Projects funded with this debt issuance include TIGER VI construction in the River Arts District, Charlotte Street improvements, and the replacement of lighting at various parks facilities.
- The issuance of the LOBS Refunding Bonds requires a public hearing.

Council Goal:
- Financially Resilient City

Committee(s):
- None

Pro(s):
- Converts Limited Obligation short-term variable-rate debt to Limited Obligation and Special Obligation long-term, fixed-rate refunding bonds.
- Spreads capital costs over a longer term to better match assets' lives.

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 is included in the City's long-range financial model for issuing and paying-off debt. The final amounts of the new debt service payments will be determined on the bond sale date.

Suggested Motion:

- Motion to adopt the LOBS and SOBS Refunding Bond Initial Resolutions
- Set a public hearing of March 09, 2021 for the LOBS Refunding bonds
- After receiving public comment regarding the LOBS financing, that Council consider final approvals for the LOBS and SOBS Refunding Bonds on March 23, 2021.

Attachment(s):

- 2021 Limited Obligation and Special Obligation Refunding Bonds - Activity Calendar
- Initial Resolution for LOBs
- Initial Resolution for SOBs

2021 Limited Obligation (LOBS) & Special Obligation (SOBS) Refunding Bonds - Activity Calendar

February 23, 2021:	**Council adopts Initial Resolution for LOBS Refunding Bonds** **Council adopts call for public hearing on LOBS Refunding Bonds** **Council adopts Initial Resolution for SOBS Refunding Bonds**
March 09, 2021:	Council holds public hearing on LOBS Refunding Bonds
March 23, 2021:	Council adopts Approving Resolution for LOBS Refunding Bonds Council adopts Bond Order for SOBS Refunding Bonds Council adopts Bond Resolution for SOBS Refunding Bonds
April 13, 2021:	Local Government Commission approval
April 15, 2021:	Sale of LOBS & SOBS Refunding Bonds
April 29, 2021:	LOBS & SOBS Refunding Bonds Closing

RESOLUTION 21-___

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ASHEVILLE, NORTH CAROLINA, AUTHORIZING THE NEGOTIATION OF AN AMENDMENT TO AN INSTALLMENT FINANCING CONTRACT AND PROVIDING FOR CERTAIN OTHER RELATED MATTERS THERETO

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 and Amendment Number Three to June 1, 2018 to the Installment Financing Contract (*"Amendment Number Three"*) 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, sewer facilities 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 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, a complete list of which is available in the City Clerk's office (the *"2016 Projects"*) and a portion of such 2016 Projects were refinanced from the proceeds related to entering into the 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 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 City Council of the City (the *"City Council"*) hereby determines that it is in the best interest of the City to enter into a fourth amendment to the 2012 Contract (*"Amendment Number Four"* and together with the 2012 Contract, Amendment Number One, Amendment Number Two and Amendment Number Three, the *"Contract"*) with the Corporation in order to refinance the costs of a portion of the 2018 Projects (the remaining portion of the 2018 Projects are expected to be refinanced by the City through the issuance of special obligation bonds) and to pay the costs related to entering into Amendment Number Four;

WHEREAS, in order to secure its obligations under the Contract, which will include securing the obligations under Amendment Number Four, 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 City Hall, the City's Public Works Facility and the City's Municipal Building is located;

WHEREAS, to facilitate the above-described plan of finance on the terms most desirable to the City, the Corporation will execute and deliver Limited Obligation Bonds;

WHEREAS, the City Council hereby determines to (1) retain Parker Poe Adams & Bernstein LLP, as bond counsel (*"Bond Counsel"*), (2) retain DEC Associates, Inc., as financial advisor, (3) retain BofA Securities, Inc., as managing underwriter (the *"Underwriter"*), (4) approve the Underwriter's selection of Womble Bond Dickinson (US) LLP, as underwriter's counsel and (5) retain Branch Banking and Trust Company, or its successsor, as trustee (the "*Trustee*"), in connection with the execution of Amendment Number Four and the related Limited Obligation Bonds (collectively, the "*Financing Team*"); and

WHEREAS, the City Council has previously determined and hereby determines that the 2018 Projects are essential to the City's proper, efficient and economic operation and to the general health and welfare of its inhabitants; that the 2018 Projects provide and will provide an essential use and will permit the City to carry out public functions that it is authorized by law to perform; and that entering into Amendment Number Four is necessary and expedient for the City by virtue of the findings presented herein; and

WHEREAS, the City Council hereby determines that the Contract, including Amendment Number Four, allows the City to refinance a portion of the 2018 Projects and take title thereto at favorable interest rates currently available in the financial marketplace and on terms advantageous to the City; and

WHEREAS, the City Council hereby determines that the estimated cost of refinancing the applicable portion of the 2018 Projects is an amount not to exceed $16,000,000 and that such cost of refinancing the applicable portion of the 2018 Projects exceeds the 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; and

WHEREAS, although the cost of refinancing a portion of the 2018 Projects pursuant to the Contract, including Amendment Number Four, is expected to exceed the cost of refinancing the 2018 Projects pursuant to a bond financing for the same undertaking, the City Council hereby determines that the cost of refinancing the applicable portion of the 2018 Projects pursuant to the Contract, including

Amendment Number Four, 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: (1) 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; (2) the time required for a general obligation bond election would cause an unnecessary delay which would thereby decrease the financial benefits of refinancing the 2018 Projects; and (3) insufficient revenues are produced by the 2018 Projects so as to permit a revenue bond financing; and

WHEREAS, the City Council hereby determines that the estimated cost of refinancing a portion of the 2018 Projects pursuant to the Contract, including Amendment Number Four, 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; and

WHEREAS, the City does not anticipate a future property tax increase to pay installment payments falling due under the Contract as a result of entering into Amendment Number Four, but any property tax increase, if necessary, will not be excessive; and

WHEREAS, Bond Counsel will render an opinion to the effect that entering into Amendment Number Four and the transactions contemplated thereby are authorized by law;

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;

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; and

WHEREAS, a public hearing on entering into Amendment Number Four after publication of a notice with respect to such public hearing will be held by the City Council on March 9, 2021 and approval of the LGC with respect to entering into Amendment Number Four must be received;

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

Section 1. ***Authorization to Negotiate Amendment***. That the City Manager and the Chief Financial Officer, individually or collectively, with advice from the City Attorney, bond counsel and financial advisor, are hereby authorized and directed to proceed and negotiate on behalf of the City for the refinancing of a portion of the 2018 Projects under the Contract, including Amendment Number Four, for a principal amount not to exceed $16,000,000 and for entering into Amendment Number Four in accordance with the provisions of Section 160A-20 of the General Statutes of North Carolina, such obligations to be secured as provided under the Contract and the Deed of Trust.

Section 2. ***Application to LGC.*** That the Chief Financial Officer or his designee is hereby directed to file with the LGC an application for its approval of Amendment Number Four and all relevant transactions contemplated thereby on a form prescribed by the LGC and to state in such application such facts and to attach thereto such exhibits regarding the City and its financial condition as may be required by the LGC.

Section 3. ***Direction to Retain Professionals.*** The use of the Financing Team in connection with the City's execution of Amendment Number Four and the issuance of the related Limited Obligation Bonds is hereby approved and ratified. The Chief Financial Officer, or his designee, is hereby authorized to retain such other professionals as she deems necessary in her judgment to carry out the transaction contemplated in this Resolution.

Section 4. ***Public Hearing.*** That a public hearing (the *"Public Hearing"*) shall be conducted by the City Council on March 9, 2021 at or about 5:00 p.m. during its remote meeting concerning entering into Amendment Number Four. The City Clerk is hereby directed to cause a notice of the Public Hearing, in substantially the form attached hereto as Exhibit A, to be published at least once in a qualified newspaper of general circulation within the City no fewer than 10 days prior to the Public Hearing.

Section 5. ***Other Acts Authorized.*** That the Mayor, the City Manager, the Deputy City Manager, the City Attorney, the Chief Financial Officer and the City Clerk, and their respective designees, are hereby authorized, individually and collectively, to do any and all other things necessary to complete the steps necessary for the execution and delivery of Amendment Number Four and the transactions described in this Resolution.

Section 6. ***Repealer.*** That all motions, orders, resolutions and parts thereof in conflict herewith are hereby repealed.

Section 7. ***Effective Date.*** That this Resolution is effective on the date of its adoption.

Read, approved and adopted this 23rd day of February, 2021.

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City Clerk Mayor

APPROVED AS TO FORM:

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City Attorney

EXHIBIT A
NOTICE OF PUBLIC HEARING

The City of Asheville, North Carolina (the "City") has previously entered into an installment financing contract in 2012 and amendments thereto (the "2012 Contract") for the purpose of financing and refinancing various projects in the City. The City entered into an amendment to the 2012 Contract in 2018 for the purpose of financing various projects in the City for affordable housing, public safety, transportation, economic development, parks and recreation and repair and renovation to City facilities (the "2018 Projects"). A complete list of the 2018 Projects is available in the City Clerk's office. The City Council of the City (the "City Council") is considering entering into a fourth amendment ("Amendment Number Four") to the 2012 Contract (the 2012 Contract, as previously amended and amended by Amendment Number Four is the "Contract"), pursuant to Section 160A-20 of the General Statutes of North Carolina, in a principal amount not to exceed $16,000,000, under which the City will make certain installment payments, in order to refinance a portion of the 2018 Projects. In connection with the Contract, the City has granted a deed of trust and security agreement (the "Deed of Trust") under which the site of City Hall, the City's Public Works Facility and the City's Municipal Building, and the improvements thereon, have been mortgaged by the City to create a lien thereon for the benefit of the entities, or their assigns, providing the funds to the City under the Contract. City Hall is located at 70 Court Plaza, the Public Works Facility is located at 161 S. Charlotte Street and the Municipal Building is located at 100 Court Plaza, each in Asheville, North Carolina. On payment by the City of all installment payments due under the Contract, including Amendment Number Four and any further amendments of the Contract, the Deed of Trust and any lien created thereunder will terminate and the City's title to the mortgaged property will be unencumbered. The City expects that it will execute future amendments under the Contract to finance and refinance other projects of the City.

In order to refinance the remaining portion of the 2018 Projects that is not refinanced by entering into Amendment Number Four, the City Council is also considering issuing special obligation bonds pursuant to Section 159 of the General Statutes of North Carolina. The special obligation bonds will be secured by and payable from certain revenues of the City, including the receipts from sales taxes and state utility taxes, but will not constitute a pledge of the City's taxing power.

NOTICE IS HEREBY GIVEN that on March 9, 2021 at or about 5:00 p.m., a public hearing will be conducted by the City Council concerning the approval of the execution and delivery of Amendment Number Four. This will be a remote meeting. Public comment instructions will be available at http://www.ashevillenc.gov/council/meeting_agenda.htm on March 5, 2021 or by calling 828-259-5601. All interested parties are invited to present comments at the public hearing. Any person wishing to comment in writing should do so as provided in the public comment instructions referred to above or by sending to City of Asheville, 70 Court Plaza, Asheville, NC 28802, Attention: City Treasurer. Written comments must be submitted between the date of publication of this notice and 24 hours after the public hearing.

/s/ Magdalen Burleson
City Clerk
City of Asheville, North Carolina

RESOLUTION 21-___

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ASHEVILLE, NORTH CAROLINA, DIRECTING THE APPLICATION TO THE LOCAL GOVERNMENT COMMISSION FOR APPROVAL OF SPECIAL OBLIGATION BONDS AND CERTAIN RELATED MATTERS

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 previously financed through the execution of an installment financing in 2018 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, a portion of the 2018 Projects are in municipal service districts created by the City pursuant to Article 23 of Chapter 160A of the General Statutes of North Carolina;

WHEREAS, the City Council of the City (the *"City Council"*) hereby determines that it is in the best interest of the City to issue its special obligation bonds (the *"Special Obligation Bonds"*), as permitted by Article 7A of Chapter 159 of the General Statutes of North Carolina (the *"Act"*), to refinance a portion of the 2018 Projects that are located in municipal service districts (the remaining portion of the 2018 Projects are expected to be refinanced by the City through an installment financing);

WHEREAS, the City Council hereby further determines that each of the 2018 Projects to be refinanced with the Special Obligation Bonds are or will be located in a municipal service district that is either the central city or downtown area or an urban area that consists primarily of existing or redeveloping concentrations of industrial, retail, wholesale, office, or significant employment generating uses or any combination of these uses;

WHEREAS, the City Council hereby further determines that each of the 2018 Projects to be refinanced with the Special Obligation Bonds further the public health, safety, welfare, convenience, and economic well-being of the citizens of the municipal service district in which they are located;

WHEREAS, the City Council is considering the issuance of the Special Obligation Bonds in an aggregate principal amount not to exceed $22,000,000;

WHEREAS, the City Council hereby determines to (1) retain Parker Poe Adams & Bernstein LLP, as bond counsel, (2) retain DEC Associates, Inc., as financial advisor, (3) retain BofA Securities, Inc., as managing underwriter (the *"Underwriter"*), (4) approve the Underwriter's selection of Womble Bond Dickinson (US) LLP, as underwriter's counsel, and (5) retain The Bank of New York Mellon Trust Company, N.A., as trustee, in connection with the issuance by the City of the Special Obligation Bonds (collectively, the "*Financing Team*"); and

WHEREAS, the City Council wants the Chief Financial Officer, or his designee, (1) to file with the North Carolina Local Government Commission (the *"LGC*") an application for its approval of the Special Obligation Bonds, on a form prescribed by the LGC, (2) to request in such application that the LGC approve (a) the negotiation of the sale of the Special Obligation Bonds to the Underwriter and (b) the Financing Team, (3) to state in such application such facts and to attach thereto such exhibits in regard

to the Special Obligation Bonds and to the City and its financial condition, as may be required by the LGC, and (4) to take all other action necessary for the issuance of the Special Obligation Bonds; and

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

Section 1. ***Purpose of Special Obligation Bonds***. That the Special Obligation Bonds are to be issued by the City in an aggregate principal amount not to exceed $22,000,000 for the purpose of providing funds (1) to refinance the costs of a portion of the 2018 Projects located in municipal service districts in the City and (2) to pay the costs of issuing the Special Obligation Bonds, as set out in the documents attached to the City's application to the LGC. The use of the proceeds of the Special Obligation Bonds, as described, is necessary in order to provide long-term refinancing for downtown revitalization projects and urban area revitalization projects.

Section 2. ***Direction to Retain Professionals.*** That the use of the Financing Team in connection with the City's issuance of the Special Obligation Bonds is hereby approved and ratified. The Chief Financial Officer, or his designee, is hereby authorized to retain such other professionals as he deems necessary in his judgment to carry out the transaction contemplated in this Resolution.

Section 3. ***Application to LGC.*** That the Chief Financial Officer of the City, with advice from the City Manager, the City Attorney, bond counsel and financial advisor, is hereby authorized, directed and designated to file an application with the LGC for its approval of the issuance of the Special Obligation Bonds.

Section 4. ***Sale to Underwriter.*** That the City Council requests that the LGC sell the Special Obligation Bonds through negotiation to the Underwriter on such terms as may be agreed on but at a true interest cost not exceeding 5.00%.

Section 5. ***Findings required by LGC.*** That the City Council finds and determines and asks the LGC to find and determine from the City's application and supporting documentation that the Special Obligation Bonds will effect the purposes of the Act and:

(a) that the issuance of the Special Obligation Bonds is necessary or expedient;

(b) that the not to exceed stated principal amount of the Special Obligation Bonds will be adequate but is not excessive, when added to other moneys available to the City, for the proposed refinancing of a portion of the 2018 Project;

(c) that the 2018 Projects and the proposed refunding are feasible;

(d) that the City's debt management procedure and policies are good;

(e) that the increase in taxes, if any, necessary to service the Special Obligation Bonds will not be excessive; and

(f) that the Special Obligation Bonds can be marketed at a reasonable interest cost to the City.

Section 6. ***Other Acts Authorized.*** That the Mayor, the City Manager, the Deputy City Manager, the City Attorney, the Chief Financial Officer and the City Clerk, and their respective designees, are hereby authorized, individually and collectively, to do any and all other things necessary to complete the steps necessary for the issuance of the Special Obligation Bonds.

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

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

Read, approved and adopted this 23rd day of February, 2021.

_____ _____

City Clerk Mayor

APPROVED AS TO FORM:

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City Attorney