C: Dir. Finance

City of NORFOLK

To the Honorable Council
City of Norfolk, Virginia

June 23, 2015

From: Christine Garczynski, Acting Director of Finance

Subject: Authorization to Issue Water Revenue Refunding Bonds Through June 30, 2016

Reviewed: Sabrina Joy-Hogg, Deputy City Manager

Ward/Superward: Citywide

Approved: Marcus D. Jones, City Manager

Item Number: **R-2**

I. **Recommendation:** Adopt Ordinance

II. **Applicant:** City of Norfolk

III. **Description**

This agenda item is an Ordinance authorizing the sale of up to $75,000,000 of Water Revenue Refunding Bonds to refinance previously issued Water Revenue Bonds.

The City and its financial advisor, Public Financial Management, Inc., continually monitor interest rates and analyze existing bond issues for refunding opportunities that meet the City's primary goal to generate present value savings in excess of three percent.

Periodically, refunding opportunities generate sufficient present value savings for a limited time and it is beneficial to be able to act quickly to capture potential debt service savings.

IV. **Analysis**

The ordinance authorizes the City to issue Water Revenue Refunding Bonds in an amount not-to-exceed $75,000,000. Approval of an ordinance authorizing the issuance of Water Revenue Refunding Bonds is required for the City to proceed with the bond transaction. However, since this is a refunding of previously issued bonds only, a public hearing is not necessary under the *Code of Virginia*.

810 Union Street #1101 ▪ Norfolk, Virginia 23510
Phone: 757-664-4242 ▪ Fax: 757-664-4239

Financial Impact

The actual amount of refunding bonds issued and the savings produced will be market driven. The bond markets remain volatile; therefore the City will continue to monitor market conditions to identify refunding opportunities that generate net present value savings in excess of three percent.

V. Environmental

N/A

VI. Community Outreach/Notification

Public notification for this agenda item was conducted through the City of Norfolk's agenda notification process.

VII. Board/Commission Action

The Chair and the Vice Chair of the City's Bond Commission have been notified and recommend approval of this refunding authorization that will be ratified at the next Bond Commission meeting.

VIII. Coordination/Outreach

This ordinance has been coordinated with the Department of Finance and the City Attorney's Office.

6/5/15 tsv

Form and Correctness Approved:

By _____
Office of the City Attorney

Contents Approved:

By _____
DEPT.

Pursuant to Section 72 of the City Charter, I hereby certify that the money required for this item is in the city treasury to the credit of the fund from which it is drawn and not appropriated for any other purpose.

$ N/A N/A
Account

Acting Director of Finance 6/16/15
Date

NORFOLK, VIRGINIA

ORDINANCE No.

AN ORDINANCE AUTHORIZING THE ISSUANCE AND SALE BY THE CITY OF NORFOLK, VIRGINIA, OF UP TO $75,000,000 IN WATER REVENUE REFUNDING BONDS TO REFUND EARLIER BOND ISSUES

- - -

WHEREAS, the City of Norfolk, Virginia (the "City"), has executed and delivered to U.S. Bank National Association, as successor to SunTrust Bank and Crestar Bank by merger (the "Trustee"), a Master Indenture of Trust dated as of November 1, 1993 (as previously supplemented and amended, the "Master Indenture"), under which the City has provided for the issuance of its revenue bonds from time to time pursuant to the terms of separate supplemental indentures to provide funds for the acquisition, financing, construction, operation and maintenance of its water treatment, storage and distribution facilities and to refund bonds previously issued by it;

WHEREAS, the Council (the "Council") of the City has determined that it is advisable to borrow up to $75,000,000 and

to issue water revenue bonds of the City under the Master Indenture (the "Refunding Bonds") to provide funds (i) to refund certain outstanding water revenue bonds of the City, (ii) to fund any debt service reserve requirement under the Indenture, as hereinafter defined and (iii) to pay the costs of issuance related to the issuance and sale of the Refunding Bonds;

WHEREAS, the Refunding Bonds shall be issued pursuant to the Master Indenture and one or more supplemental indentures of trust (each a "Supplemental Indenture") to be dated a date selected by City Manager of the City (the "City Manager") or the Director of Finance of the City (the "Director of Finance"), between the City and the Trustee;

WHEREAS, the Master Indenture, as previously supplemented and amended and as further supplemented by each Supplemental Indenture will be referred to collectively below as the "Indenture;" and

WHEREAS, no public hearing is required on the Refunding Bonds under the Public Finance Act of 1991, Chapter 26 of Title 15.2 of the Code of Virginia of 1950, as amended (the "Virginia Code").

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Norfolk:

Section 1:- That the Council hereby determines that it is advisable and will benefit the inhabitants of the City through the promotion of their safety, health, welfare and prosperity to contract a debt and to issue and sell the Refunding Bonds in an original aggregate principal amount not to exceed $75,000,000. The Council hereby authorizes the issuance and sale of the Refunding Bonds in one or more series from time to time in accordance with the terms of this Ordinance. Each series of Refunding Bonds shall be styled "City of Norfolk, Virginia, Water Revenue Refunding Bonds," with an appropriate series designation. The proceeds from the issuance and sale of the Refunding Bonds, together with other available funds, shall be used (i) to refund all or a portion of the refundable portion of any outstanding water revenue bonds or other obligations outstanding under the Indenture of the City (collectively, the "Prior Obligations") as may be selected by the City Manager or the Director of Finance, subject to the parameters in Section 3 and Section 4, (ii) to fund any debt service reserve requirement under the Indenture, and (iii) to pay the costs of issuance related to the issuance and sale of the Refunding Bonds. The authorization of the issuance and sale of the Refunding Bonds in an original aggregate principal amount not to exceed the amount contained in this Section 1 shall expire on June 30, 2016; provided however, any Refunding Bonds sold before June 30, 2016, pursuant to a "forward" refunding structure as described in Section 14(b) may be issued subsequent to such date.

Section 2:- That the Refunding Bonds shall be limited obligations of the City as to which principal of, premium, if any, and interest shall be payable solely from the net revenues (i.e., revenues less operating expenses) derived by the City from its water system, as such system may exist from time to time, in accordance with the specific provisions of the Indenture and from other funds that have been or may be pledged for such purpose under the terms and conditions of the Indenture. Nothing in this Ordinance, the Refunding Bonds or the Indenture shall be deemed to pledge the full faith and credit of the City to the payment of the Refunding Bonds.

Section 3:- That approval of refunding and redemption of all or a portion of the Prior Obligations will be as follows:

(a) the Council hereby approves the use of the proceeds of the Refunding Bonds to refund all or a portion of the Prior Obligations;

(b) the Council hereby authorizes and directs the City Manager or the Director of Finance to exercise his or her discretion in selecting the particular Prior Obligations to be refunded (the "Refunded Prior Obligations");

(c) the Council hereby authorizes and directs the City Manager or the Director of Finance to call each of the Refunded Prior Obligations for optional redemption on such dates as may be permissible under the Prior Obligations and, to the extent applicable, the Internal Revenue Code of 1986, as amended (the "Tax Code") with the redemption proceedings, including the giving of redemption notices to the holders of the Refunded Prior Obligations, to be done pursuant to the terms of the Prior Obligations;

(d) the Council hereby authorizes the City Manager or the Director of Finance to execute and deliver one or more Escrow Agreements (individually, and collectively, the "Escrow Agreement") between the City and an escrow agent to be selected by the City Manager or the Director of Finance providing for the irrevocable deposit of the proceeds of the Refunding Bonds and other available funds in an amount sufficient, when invested as set forth in the Escrow Agreement, to provide for the payment of the principal of, premium, if any, and interest on the Refunded Prior Obligations, if such arrangement is necessary or desirable in connection with refunding any Refunded Prior Obligations; and

(e) each Escrow Agreement shall be dated as of the dated date or delivery date of the applicable series of Refunding Bonds and shall be substantially in the form on file with the Director of Finance, with such completions, changes and deletions as may be consented to by the City Manager or the Director of Finance, whose consent shall be conclusively evidenced by his or her execution and delivery of the Escrow Agreement.

Section 4:- That the Refunding Bonds shall be dated as of a customary date or dates as shall be determined by the City Manager. The Refunding Bonds shall be issued in fully registered form in denominations of $5,000 each or whole multiples thereof, or such other denominations as the City Manager or the Director of Finance deems advisable. The Refunding Bonds of any series shall be numbered from R-1 upward consecutively or in such other manner as determined by the City Manager. The City Manager, in consultation with the Director of Finance, is hereby authorized and directed to determine the principal amount of the Refunding Bonds, whether the Refunding Bonds bear interest that is includible or excludable from gross income for federal income tax purposes, whether to sell the Refunding Bonds, or any portion thereof, to the public by negotiated sale to the Underwriter, as hereinafter defined, or by competitive bidding, or to a private purchaser by a direct sale, the payment dates for the principal, premium, if any, and interest on the Refunding Bonds and the maturity dates for the Refunding Bonds; provided that:

(a) the original aggregate principal amount of the Refunding Bonds shall not exceed the amount set forth in Section 1;

(b) for any Refunded Prior Obligations the aggregate net present value debt service savings as a percentage of the principal amount of such refunded bonds shall be not less than 3.0%; and

(c) the final maturity of any series of Refunding Bonds shall not be later than the end

of the last fiscal year in which a Refunded Prior Obligation matures.

Section 5:- That the Refunding Bonds shall be issued upon the terms established pursuant to this Ordinance and as set forth in the Indenture and shall be in substantially the form on file with the Director of Finance, with such appropriate variations, omissions and insertions as are permitted or required by this Ordinance. There may be endorsed on the Refunding Bonds such legend or text as may be necessary or appropriate to conform to any applicable rules and regulations of any governmental authority or any usage or requirement of law with respect thereto.

Section 6:- That the City Manager and the Director of Finance are hereby authorized and directed to approve such optional redemption provisions with respect to each series of the Refunding Bonds as either may deem advisable, including provisions that preclude any series of the Refunding Bonds from optional redemption.

Section 7:- That the Mayor of the City (the "Mayor") and the City Manager are hereby authorized and directed to execute the Refunding Bonds. The Clerk of the Council (the "Clerk") is hereby authorized and directed to affix the seal of the City to each series of the Refunding Bonds and to attest to the seal. The manner of execution, attestation to and affixation of the seal may be by facsimile; provided, however, that if the signatures of the Mayor, the City Manager and the Clerk are all by facsimile, the Refunding Bonds will not be valid until signed at the foot thereof by the manual signature of the Bond Registrar. The City Manager's approval or determination of the details and provisions of the Refunding Bonds that the City Manager has been authorized or directed to approve under this Ordinance shall be evidenced conclusively by the City Manager's execution and delivery of the Refunding Bonds on the City's behalf.

Section 8:- That the Refunding Bonds may have CUSIP identification numbers printed on them. No such number will constitute a part of the contract evidenced by the Refunding Bond on which it is imprinted and no liability will attach to the City, or

any of its officers or agents by reason of such numbers or any use made of them, including any use made by the City and any of its officers or agents, by reason of any inaccuracy, error or omission.

Section 9:- (a) That the Council hereby authorizes the sale of all or any series of the Refunding Bonds to an underwriter or group of underwriters with demonstrated experience in underwriting municipal securities (individually and collectively, the "Underwriter") to be selected by the City Manager or, if the City Manager so elects, by competitive bidding to the bidder with the lowest true interest cost to the City. The City Manager or the Director of Finance is hereby authorized and directed to execute and deliver a Bond Purchase Agreement with the Underwriter, or, if sold by competitive bidding, other appropriate documents with the successful bidder (the "Bid Documents") providing for the sale and delivery of the Refunding Bonds upon terms and conditions to be approved by the City Manager or the Director of Finance, subject to the parameters set forth in Section 1, Section 3 and Section 4. The approval of the final terms and conditions of the Refunding Bonds sold by negotiated sale shall be evidenced conclusively by the execution and delivery of the Bond Purchase Agreement by the City Manager or the Director of Finance and the Underwriter, or, if sold by competitive bidding, the Bid Documents. The City Manager and the Director of Finance are hereby authorized and directed to deem each preliminary official statement "final" for purposes of Securities and Exchange Commission Rule 15c2-12 (the "Rule").

(b) That the Council hereby authorizes the sale of all or any series of the Refunding Bonds directly to a purchaser or purchasers to be selected by the City Manager, including in a "forward" refunding structure whereby the City would agree to issue one or more series of Refunding Bonds on or within 90 days before the redemption date of any of the Refunded Bonds. The City Manager and the Director of Finance, or either of them, are hereby authorized and directed to execute and deliver such purchase and loan documents as may be necessary or desirable in connection with the direct sale or sales authorized hereby (the "Purchase Documents"). The approval of

the final terms and conditions of any Refunding Bonds sold by direct sale shall be evidenced conclusively by the execution and delivery of the Purchase Documents by the City Manager or the Director of Finance, subject to the parameters set forth in Section 1, Section 3 and Section 4. If any Refunding Bonds are sold by a direct sale, the principal, premium, if any, and interest on such Refunding Bonds may be payable pursuant to payment instructions provided by the purchaser and approved by the City Manager. If any Refunding Bonds are sold pursuant to a direct sale, such Refunding Bonds shall be registered in the name of the purchaser thereof, or, if the City Manager approves of such designee, a designee selected by the purchaser, and such Refunding Bonds may be delivered to the registered owner.

Section 10:- That the appropriate officers and agents of the City are hereby authorized and directed to execute and deliver simultaneously with the issuance of any series of the Refunding Bonds the interest on which is intended to be excludable from gross income for federal income tax purposes a Non-Arbitrage Certificate and Tax Covenants setting forth the expected use and investment of the proceeds of the Refunding Bonds and containing such covenants as may be necessary in order to comply with the provisions of the Tax Code, including the provisions of Section 148 of the Tax Code and applicable regulations relating to "arbitrage bonds." The Council hereby agrees on behalf of the City that the proceeds from the issuance and sale of any such series of the Refunding Bonds will be invested and expended as set forth in the City's Non-Arbitrage Certificate and Tax Covenants and that the City will comply with the other covenants and representations contained in it.

Section 11:- That the Mayor, the City Manager and Director of Finance are hereby authorized and directed to execute and deliver simultaneously with the issuance of each series of the Refunding Bonds a Supplemental Indenture in substantially the form on file with the Director of Finance, with such changes, insertions or omissions as may be approved by the Mayor, the City Manager or the Director of Finance, whose approval shall be evidenced conclusively by the execution and delivery of such Supplemental Indenture.

The Clerk is hereby authorized and directed to affix the seal of the City to each Supplemental Indenture and to attest to the seal.

Section 12:- That the City Manager and Director of Finance, or either of them, are hereby authorized and directed to execute and deliver simultaneously with the issuance of any or all series of the Refunding Bonds a Continuing Disclosure Agreement in substantially the form on file with the Director of Finance, setting forth the reports and notices to be filed by the City and containing such covenants as may be necessary in order to comply with the provisions of the Rule with respect to the Refunding Bonds.

Section 13:- That the City Manager, the Director of Finance and such other officers and agents of the City as the City Manager or the Director of Finance may designate, are hereby authorized and directed to take further action as each deems necessary or appropriate regarding the issuance, credit enhancement and sale of the Refunding Bonds and the refunding and redemption of the Refunded Prior Obligations, including, without limitation, (i) the preparation, execution and delivery of any agreement relative to the tax-exempt status of the Refunding Bonds and the use of the proceeds thereof and other instruments, agreements and documents related to the issuance and sale of any series of the Refunding Bonds, (ii) the structure of or amounts to be maintained in the debt service reserve fund established under the Indenture, (iii) the purchase of one or more credit enhancements for any series of the Refunding Bonds if market or other conditions so warrant, (iv) the acquisition of supply arrangements relating to the investment of the proceeds of any series of the Refunding Bonds, (v) the application for CUSIP identification numbers and the execution and delivery of replacement bonds in connection with any partial refunding of Prior Obligations and (vi) the selection of a verification agent and escrow agent in connection with any series of Refunding Bonds. All actions taken by officers and agents of the City in connection with the issuance and sale of the Refunding Bonds are hereby ratified and confirmed. The authorizations granted in this Ordinance to the Mayor, the Clerk, the City Manager and the Director of

Finance may be carried out by the Vice Mayor, the Chief Deputy or Deputy City Clerk, any Acting, Deputy or Assistant City Manager or any Acting or Assistant Director of Finance, as appropriate, in the absence of the primary officer.

Section 14:- That the officers and agents of the City are hereby authorized and directed to take such further actions as each deems necessary regarding the issuance and sale of the Refunding Bonds and all actions taken by such officers and agents in connection with the issuance and sale of the Refunding Bonds are hereby ratified and confirmed.

Section 15:- That the appropriate officers or agents of the City are hereby authorized and directed to file a certified copy of this Ordinance with the Circuit Court of the City pursuant to Sections 15.2-2607 and 15.2-2627 of the Virginia Code.

Section 16:- That the Council hereby elects pursuant to Section 15.2-2601 of the Virginia Code to issue the Refunding Bonds under the Public Finance Act of 1991, Chapter 26, Title 15.2 of the Virginia Code without regard to the requirements, restrictions or other provisions contained in the Charter of the City.

Section 17:- That this Ordinance shall take effect from and after its adoption.