C: Dir. Finance

City of NORFOLK

To the Honorable Council
City of Norfolk, Virginia

February 11, 2014

From: Alice M. Kelly, Director Department of Finance

Subject: Authorization to replace the Standby Bond Purchase Agreement and Remarketing Agreement in place with respect to the Series 2007 General Obligation Variable Rate Demand Bonds and authorization to procure an interest rate cap.

Reviewed: Sabrina Joy-Hogg, Assistant City Manager

Ward/Superward: Citywide

Approved: Marcus D. Jones, City Manager

Item Number: R-8

I. **Recommendation:** Adopt Ordinance

II. **Applicant:** City of Norfolk

III. **Description**

This agenda item is an Ordinance authorizing the replacement of the expiring current Standby Bond Purchase Agreement and the Remarketing Agent with respect to the Series 2007 General Obligation Variable Rate Demand Bonds (VRDBs) and the reissuance of the Bonds in connection with the foregoing transactions. Additionally this ordinance authorizes the City Manager to effect the procurement of an interest rate cap to manage the City's exposure to floating interest rates.

On March 29, 2007, the City issued $32,365,000 in General Obligation VRDBs, Series 2007 on March 29, 2007, to finance the Half Moone Cruise & Celebration Center. As of December 31, 2013, $29,050,000 remains outstanding. The Bonds are tax-exempt and are supported by a Liquidity Facility with Lloyds TSB Bank plc that expires on March 28, 2014.

VRDBs are long-term bonds that carry a short-term interest rate that is reset periodically (in this case, weekly) by the Remarketing Agent. At each reset period, bondholders are able to liquidate or tender their security and the Remarketing Agent is responsible for reselling the bond to a new investor(s). VRDBs require a specific source of liquidity to pay bondholders in the unexpected event that the bonds cannot be remarketed to a new bondholder to

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ensure that the original investor is able to liquidate their position. Since delivery in March 2007, the City has not experienced a failed remarketing and the interest rate garnered on the variable rate bonds has proven to be cost effective.

IV. Analysis

The existing Liquidity Facility, which takes the legal form of a "Standby Bond Purchase Agreement," expires on March 28, 2014. In preparation for the expiration of the current Liquidity Facility, the City issued a Request for Proposal (RFP) to select a qualified firm to replace the existing Liquidity Facility. The City received eight (8) responses to the RFP that closed December 4, 2013. Royal Bank of Canada Centura (RBC) provided the most advantageous proposal with an annual fee of 39 basis points (0.39%) for a five-year term. Additionally, RBC provided a rate of 8 basis points (0.08%) to serve as Remarketing Agent. Both fees are appropriate and competitive relative to the other proposals received and current credit market conditions.

V. Financial Impact

These variable rate bonds have proven to be cost-effective. On January 9, 2014, the interest rate was 0.04%, which is the lowest rate since the issuance of the Bonds in March 2007. Since issuance, the interest rate on the Bonds has averaged 0.94%.

Adding the annual liquidity fee of 0.39% of the outstanding bonds (or $113,250 per year) and the remarketing fee of 0.08% of the outstanding bonds (or $23,250 per year) to the weekly interest rate, variable rate bonds continue to provide the lowest cost of borrowing for the City.

Funding for these costs continue to be addressed in the cost of issuance portion of the General Fund debt service budget.

One of the primary risks of variable rate debt is interest rate risk. To mitigate this risk, an interest rate cap may be used to hedge against interest rate fluctuations. The City and its financial advisor, Public Financial Management, Inc., monitor interest rates and analyze the optimal time to seek procurement of an interest rate cap on an ongoing basis. To allow flexibility for the City to procure an interest rate cap should it be deemed in the best interest of the City, this ordinance authorizes the City Manager the ability to procure an interest rate cap and establishes a not-to-exceed of $450,000 for the premium for the purchase and a not-to-exceed cap rate of 6%.

VI. Environmental

n/a

VII. Community Outreach/Notification

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

VIII. Board/Commission Action

The Bond Commission has been notified of this procurement.

IX. Coordination/Outreach

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

1/24/2014 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

_____ 1/24/14
Director of Finance Date

NORFOLK, VIRGINIA

ORDINANCE No.

AN ORDINANCE AUTHORIZING THE REISSUANCE AND REMARKETING OF THE CITY OF NORFOLK, VIRGINIA, GENERAL OBLIGATION VARIABLE RATE DEMAND BONDS, SERIES 2007 AND THE REPLACEMENT OF OR AMENDMENT TO CERTAIN FINANCING DOCUMENTS RELATED THERETO

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WHEREAS, on March 29, 2007, the City of Norfolk, Virginia (the "City"), issued its General Obligation Variable Rate Demand Bonds, Series 2007 (AMT) with an original aggregate principal amount of $32,365,000 (the "Bonds") to finance the acquisition, construction and equipping of an approximately 80,000 square foot cruise ship center, including docking areas and meeting space, located at 1 Waterside Drive, Norfolk, Virginia, and owned and operated by the City (the "Project");

WHEREAS, on August 27, 2009, the City reissued the Bonds pursuant to, among other things, an Amended and

Restated Indenture of Trust dated August 1, 2009 (the "Indenture"), between the City and Regions Bank, as trustee;

WHEREAS, the Bonds that are tendered are remarketed by Raymond James & Associates, Inc. as the remarketing agent (the "Original Remarketing Agent") for the Bonds pursuant to a Remarketing Agreement dated as of March 1, 2007 (the "Original Agreement");

WHEREAS, the purchase price of the Bonds that are tendered but not remarketed is payable in part from advances under a Standby Bond Purchase Agreement dated as of March 1, 2007 (the "Original Standby Bond Purchase Agreement"), between the City and Lloyds TSB Bank plc, and which expires on March 28, 2014;

WHEREAS, the Council of the City (the "Council") has determined to enter into a new Standby Bond Purchase Agreement (the "Replacement Standby Bond Purchase Agreement"), with a counterparty selected in accordance with the terms of this Ordinance;

WHEREAS, the Council has determined to enter into a new Remarketing Agreement (the "Replacement Remarketing

Agreement" together with the Original Remarketing Agreement, the "Remarketing Agreement"), with a counterparty selected in accordance with the terms of this Ordinance (the "Replacement Remarketing Agent" together with the Original Remarketing Agent, the "Remarketing Agent"), if such an arrangement is necessary or appropriate in connection with entering into the Replacement Standby Bond Purchase Agreement;

WHEREAS, the Council desires to cause remarketing of the Bonds, either through a mandatory tender, purchase of the Bonds or other process, and the City desires the Remarketing Agent and the City, to prepare for the remarketing of the Bonds;

WHEREAS, the Council has previously approved the plan of financing for the Bonds, for purposes of Chapter 514 of the Acts of Assembly of 1983, and Section 147(f) of the Internal Revenue Code of 1986, as amended (the "Tax 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 (i) to enter into the Replacement Standby Bond Purchase Agreement, (ii) to enter into a Replacement Remarketing Agreement and (iii) to reissue the Bonds in connection with the foregoing transactions, all upon the terms established pursuant to this Ordinance and the Indenture.

Section 2:- That the pledge of the full faith and credit of the City for the payment of the principal of, premium, if any, and interest on the Bonds is hereby reaffirmed. The Council is hereby authorized to and shall levy and collect annually, at the same time and in the same manner as other taxes of the City are assessed, levied and collected, a tax upon all taxable property within the City, over and above all other taxes authorized or limited by law, and without limitation as to rate or amount, sufficient to pay when due the principal of, premium, if any, and interest on the Bonds to the extent other funds of the City are not lawfully available and appropriated for such purpose.

Section 3:- That the Bonds shall be dated as of a customary date or dates as shall be determined by the City Manager. The City Manager, in consultation with the Director of Finance, is hereby authorized and directed to determine the aggregate principal amount of the reissued Bonds (the "Principal Amount"), whether the Bonds bear interest that is includible or excludable from gross income for federal income tax purposes, the payment dates for the principal of, premium, if any, and interest on the Bonds, the maturity dates for the Bonds and the redemption provisions for the Bonds; provided that (i) the Principal Amount, after the reissuance authorized hereby, may not exceed $29,050,000, (ii) the interest rate on the Bonds may not exceed 12.0% (exclusive of default interest or any fees associated with any interest rate cap), (iii) the optional redemption premium, if any, may not exceed 3.0% of the principal

amount of any Bonds to be redeemed and (iv) the final maturity of the Bonds may not be later than 36 years from the original issuance date of the Bonds.

Section 5:- That the Bonds 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 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 Mayor of the City (the "Mayor"), the City Treasurer of the City (the "City Treasurer") and the City Manager are hereby authorized and directed to execute the reissued Bonds, if necessary. The Clerk of the Council (the "Clerk") is hereby authorized and directed to affix the seal of the City to the reissued Bonds and to attest to the seal, if necessary. 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 Treasurer, the City Manager and the Clerk are all by facsimile, the 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 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 Replacement Standby Bond Purchase Agreement on the City's behalf.

Section 7:- 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 (i) to execute and deliver a Replacement Standby Bond Purchase Agreement with a counterparty selected by the

City Manager and the Director of Finance, in consultation with the City's financial advisor, (ii) to execute and deliver a Replacement Remarketing Agreement with the Replacement Remarketing Agent, if the City Manager and the Director of Finance determine such arrangement is necessary or appropriate in connection with entering into the Replacement Standby Bond Purchase Agreement and (iii) to enter into an interest rate cap (the "Interest Rate Cap") related to the Bonds with a counterparty to be selected through a competitive process to protect the City against increases in the variable interest rate on the Bonds; provided that (1) the initial facility fee under the Replacement Standby Bond Purchase Agreement may not exceed 0.5% of the Principal Amount, (2) the annual fees of the Replacement Remarketing Agent (if any) may not exceed 0.1% of the Principal Amount, (3) the notional amount of any Interest Rate Cap may not exceed the Principal Amount, (4) the premium for the purchase of any Interest Rate Cap may not exceed $450,000 and (5) the cap rate of the Interest Rate Cap may not exceed 6.0%. In addition, the City Manager and the Director of Finance are hereby authorized if they deem it to be in the best interests of the City to enter into an Interest Rate Cap that is subject to termination payments. The documents evidencing the Replacement Standby Bond Purchase Agreement, Replacement Remarketing Agreement (if any) and Interest Rate Cap (if any) must be in forms permitted under the Indenture and typical for such arrangements.

Section 8:- That the Council hereby authorizes the reissuance of the Bonds in accordance with the Indenture and the Remarketing Agreement. The City Manager and the Director of Finance are hereby authorized and directed to prepare such remarketing materials as are necessary or appropriate, including a remarketing circular that supplements the official statement of the Bonds, or new official statement, and such officers are further authorized to deem such disclosure documents final for purposes of

Securities and Exchange Commission Rule 15c2-12 ("Rule 15c2-12").

Section 9:- That the appropriate officers and agents of the City are hereby authorized and directed to execute and deliver simultaneously with the reissuance of the Bonds, if the interest on which is intended to be excludable from gross income for federal income tax purposes, a Non-Arbitrage Certificate and Tax Compliance Agreement setting forth the expected use and investment of the proceeds of the 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 reissuance of the Bonds shall be invested and expended and the Project shall be used all as set forth in the City's Non-Arbitrage Certificate and Tax Compliance Agreement and that the City shall comply with the other covenants and representations contained in it.

Section 10:- That the City Manager and Director of Finance, or either of them, are hereby authorized and directed to execute and deliver simultaneously with the reissuance of the Bonds a replacement or amended 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 Rule 15c2-12 with respect to the Bonds.

Section 11:- 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 (i) to execute and deliver such supplements or amendments, or both, to the Indenture or the Bonds, or both, as may be necessary or appropriate in connection with the transactions authorized hereby and (ii) to take

such further action as each deems necessary or appropriate regarding the reissuance or credit enhancement of the Bonds and the other transactions authorized hereby, including, without limitation, (A) the preparation, execution and delivery of any agreement relative to the tax-exempt status of the Bonds and the use of the proceeds thereof and other instruments, agreements and documents related to the reissuance of the Bonds and (B) the purchase of one or more credit enhancements for the Bonds if market or other conditions so warrant. All actions taken by officers and agents of the City in connection with the transaction authorized herein are hereby ratified and confirmed. The authorizations granted in this Ordinance to the Mayor, the City Treasurer, the Clerk, the City Manager and the Director of Finance may be carried out by the Vice Mayor, the Chief Deputy Treasurer, the Chief Deputy City Clerk, any Acting or Assistant City Manager or any Acting or Assistant Director of Finance, as appropriate, in the absence of the primary officer.

Section 12:- That the officers and agents of the City are hereby authorized and directed to take such further actions as each deems necessary regarding the reissuance of the Bonds and the transactions authorized herein and all actions taken by such officers and agents in connection therewith are hereby ratified and confirmed.

Section 13:- 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 Code of Virginia.

Section 14:- That the Council hereby elects pursuant to Section 15.2-2601 of the Code of Virginia to proceed under the Public Finance Act of 1991, Chapter 26, Title 15.2 of the Code of Virginia without regard to the requirements, restrictions or other provisions contained in the Charter of the City.

Section 15:- That this Ordinance shall take effect from and after its adoption.