

**ORDINANCE AUTHORIZING THE ISSUANCE OF THE CITY'S GENERAL OBLIGATION BONDS, IN ONE OR MORE SERIES ON A TAX-EXEMPT AND/OR TAXABLE BASIS, IN ORDER TO PROVIDE THE FUNDS NECESSARY TO REFUND CERTAIN OUTSTANDING GENERAL OBLIGATION BONDS OF THE CITY; PROVIDING FOR THE SALE OF THE BONDS; AND AUTHORIZING OTHER NECESSARY ACTION**

#4760

**Sponsors:**

**Council  
Members**

**Guy  
Turner  
Dixon  
Congo  
McCoy**

**WHEREAS**, the City of Wilmington (the "City") has determined to refund certain of the City's outstanding General Obligation Bonds (the "Refunded Bonds"), and in order to finance such refunding the City has determined to issue its General Obligation Bonds, Series 2020 (the "Refunding Bonds"), in an aggregate principal amount not to exceed \$50,000,000 (the "Refunding Project"); and

**WHEREAS**, the City has received a payment from the Diamond State Port Corporation, a Delaware corporation created in the Department of the State of the State of Delaware ("Diamond State"), in the approximate amount of \$2,600,000 (the "City Payment") in order to fully discharge Diamond State's obligation to the City associated with a certain portion of the Refunded Bonds; and

**WHEREAS**, the City has determined to reduce the amount of Refunding Bonds by applying the remaining of the City Payment to defease a portion of the Refunded Bonds by transferring the City Payment into an escrow fund (the "Escrow Fund") held by Wilmington Trust, National Association, as escrow agent (the "Escrow Agent") pursuant to a Pledge and Escrow Agreement (the "Escrow Agreement") between the City and the Escrow Agent; and

**WHEREAS**, the City has heretofore adopted the General Obligation Bond Ordinance, No. 83-019, Division 4 of Article VI of Chapter 2 of the Wilmington City Code (the "General Ordinance"), authorizing the City to issue General Obligation Bonds secured by a pledge of the City's full faith, credit and taxing power, for the purpose of, among other things, paying the costs of the refunding of outstanding indebtedness; and

**WHEREAS**, this Ordinance is a Supplemental Ordinance adopted pursuant to the General Ordinance and provides for the issuance and sale of the Refunding Bonds.

**NOW, THEREFORE, THE COUNCIL OF THE CITY OF WILMINGTON HEREBY ORDAINS:**

**SECTION 1. Defined Terms.** Terms used in this Ordinance and not otherwise defined shall have the meaning specified in the General Ordinance.

**SECTION 2. Authorization of General Obligation Bonds.** The City hereby authorizes the issuance of its General Obligation Bonds, Series of 2020, or such other designation as the City shall determine, in an aggregate principal amount not to exceed \$50,000,000 in one or more series on a tax-exempt and/or taxable basis, pursuant to and in accordance with the General Ordinance, as supplemented by this Ordinance and the Bond Committee Resolution (as defined herein) for the purpose of financing the Refunding Project, including the costs and expenses associated with issuing and providing for on-going continuing legal compliance of the Refunding Bonds and/or prior series of bonds. The Refunding Bonds shall be sold at private negotiated sale or competitive sale as determined by such Resolution of the Bond Committee.

The Refunding Bonds shall be awarded and sold by the Bond Committee to an underwriter or group of underwriters to be selected by the Bond Committee (the "Underwriter") at a purchase price and in accordance with such terms and conditions as will be set forth: (i) in the case of a negotiated sale, in a Bond Purchase Agreement to be entered into by the Underwriter and the City, or (ii) in the case of a competitive sale, in a Bid Form submitted to the Bond Committee in response to an Invitation to Bid prepared and distributed by the Bond Committee. In the case of clause (ii) above, the Bond Committee will accept the

Bid Form which represents the lowest true interest cost to the City. The City Treasurer is hereby authorized to enter into such Bond Purchase Agreement and to execute the Bond Purchase Agreement on behalf of the City, or to accept the most favorable Bid Form.

The Bonds shall bear such rate or rates of interest provided that the true interest cost of the Bonds does not exceed 7.0%, shall mature in such principal amounts and on such dates, shall be subject to redemption, shall bear such series designation, shall be sold at such price and in such manner, and shall be in such form and contain or be subject to such other terms and conditions, as shall be determined in the Resolution adopted by the Bond Committee (the "Bond Committee Resolution"). The Bond Committee Resolution shall set forth the prior general obligation bonds which will be funded or refunded as part of the Refunding Project.

**SECTION 3.** Authorization of Paying Agent's Agreement. A fiscal agent, paying agent and registrar for the Refunding Bonds (the "Paying Agent") may be selected and appointed by the Bond Committee. In the event that it is determined that it is advantageous to use a Paying Agent, the City Treasurer is hereby authorized to contract with the Paying Agent in connection with the performance of duties as paying agent and registrar on the usual and customary terms. The Paying Agent Agreement shall be in such form as shall be approved by the Bond Committee.

**SECTION 4.** Authorization of Transfer and Escrow Agent. The City hereby authorizes the City Treasurer to transfer the City Payment from the City's General Fund, and proceeds from the Refunding Bonds, to the Escrow Agent for deposit in the Escrow Fund, and to take other necessary actions, for the purpose of defeasing a portion of the Refunded Bonds; and for the same purpose, to enter into the Escrow Agreement in form and substance

as determined by the City's Treasurer and the City Solicitor, pursuant to which the City Payment will be held and invested by the Escrow Agent until it is applied to pay certain of the Refunded Bonds.

**SECTION 5. Preparation of Preliminary Official Statement.** The Bond Committee is authorized and directed to prepare, approve and "deem final" a Preliminary Official Statement and an Official Statement with respect to the Refunding Bonds to be used in connection with the public sale of the Refunding Bonds. The final Official Statement shall contain the final terms of the Refunding Bonds and shall be prepared for use in the public offering and sale of the Refunding Bonds.

**SECTION 6. Execution of Bonds.** The Refunding Bonds shall be executed by the manual or facsimile signatures of the Mayor, the City Treasurer and the City Auditor, and by the actual or facsimile impression of the seal of the City, both attested by the manual or facsimile signatures of the City Clerk or Deputy City Clerk.

**SECTION 7. Security for the Bonds.** The full faith, credit and taxing power of the City is hereby pledged to the prompt payment of the principal of, premium, if any, and the interest on the Refunding Bonds. The Refunding Bonds shall be the direct and unlimited obligations of the City, and unless paid from other sources, the City shall levy ad valorem taxes upon all taxable property in the City for the payment of the Refunding Bonds without limitation as to rate or amount.

**SECTION 8. Federal Tax Covenants.** In the event that part or all of the Refunding Bonds are issued on a tax-exempt basis, the City hereby covenants not to take or omit to take any action so as to cause interest on the Refunding Bonds to be no longer excluded from gross income for purposes of federal income taxation and to otherwise comply with the

requirements of Sections 103 and 141 through 150 of the Internal Revenue Code of 1986, as amended (the "Code"), and all applicable regulations promulgated with respect thereto, throughout the term of the Refunding Bonds. The City further covenants with the registered owners of the Refunding Bonds that it will make no investments or other use of the proceeds of the Refunding Bonds which would cause such Refunding Bonds to be "arbitrage bonds" as defined in Section 148 of the Code. The City further covenants to comply with the rebate requirements (including the prohibited payment provisions) contained in Section 148(f) of the Code in any regulations promulgated thereunder, to the extent applicable, and to pay any interest or penalty imposed by the United States for failure to comply with rebate requirements, to the extent applicable. In the event the Refunding Bonds could be issued on a bank-eligible basis, the Bond Committee is hereby delegated the authority to designate the Refunding Bonds pursuant to Section 265 of the Code.

**SECTION 9.** Further Action. The appropriate officers of the City are hereby authorized and directed to take all such action, execute, deliver, file and record all such documents, publish all notices and otherwise carry out the intent of the General Ordinance and this Ordinance in the name of and on behalf of the City.

**SECTION 10.** Inconsistent Provisions. In the event that any provision of the Refunding Bonds, or any term or condition contained in any agreement relating to the Refunding Bonds or in this Supplemental Ordinance, shall be inconsistent with any of the provisions of the General Ordinance, the provision of the Refunding Bonds, such agreements and this Supplemental Ordinance shall be controlling with respect to the Refunding Bonds, such agreements and this Supplemental Ordinance.

**SECTION 11. Relation to General Ordinance.** This Ordinance is supplemental to the General Ordinance and all sections of the General Ordinance, except as modified herein in accordance therewith, are applicable to the Refunding Bonds authorized hereunder. This Ordinance shall take effect immediately upon its passage.

**SECTION 12. Effective Date.** This Ordinance shall become effective upon its passage by Council and approval by the Mayor.

First Reading..... January 16, 2020  
Second Reading..... January 16, 2020  
Third Reading.....

Passed by City Council,

\_\_\_\_\_  
President of City Council

ATTEST: \_\_\_\_\_  
City Clerk

Approved this \_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
Mayor

**SYNOPSIS:** This Ordinance is presented by the City Treasurer for City Council's consideration and approval and authorizes the issuance of up to \$50,000,000 aggregate principal amount of the City's General Obligation Bonds in order to finance certain outstanding debt of the City for possible, present value savings up to \$7,000,000.

W0109046