

Resolution No. 2033

A RESOLUTION OF THE COUNCIL OF THE CITY OF SALISBURY ENTITLED A RESOLUTION SUPPLEMENTING RESOLUTION NO. 1511, ADOPTED BY THE COUNCIL ON APRIL 9, 2007, APPROVED BY THE MAYOR ON APRIL 10, 2007 AND EFFECTIVE ON APRIL 10, 2007, AS AMENDED AND SUPPLEMENTED BY RESOLUTION NO. 1741, ADOPTED BY THE COUNCIL ON DECEMBER 22, 2008, APPROVED BY THE MAYOR ON DECEMBER 24, 2008 AND EFFECTIVE ON DECEMBER 24, 2008, IN ORDER TO AUTHORIZE AND EMPOWER CITY OF SALISBURY TO USE AND APPLY PORTIONS OF THE PROCEEDS OF THE \$4,950,000 CITY OF SALISBURY PUBLIC IMPROVEMENTS BOND OF 2007 ISSUED ON APRIL 12, 2007 (THE "2007 BOND") ORIGINALLY ALLOCATED TO THE PROJECTS IDENTIFIED IN RESOLUTION NOS. 1511 AND 1741 AS ISABELLA STREET-SHORELINE STABILIZATION AND ANIMAL HEALTH BUILDING/SALISBURY ZOO-ENGINEERING TO THE PUBLIC PURPOSE OF FINANCING, REIMBURSING OR REFINANCING COSTS RELATING TO ONE OR BOTH OF THE PROJECTS IDENTIFIED HEREIN AS BEAVERDAM DRIVE BRIDGE AND ISABELLA STREET WATER/SEWER/ROAD IMPROVEMENTS; AUTHORIZING, DIRECTING OR EMPOWERING CITY OFFICIALS AND EMPLOYEES TO TAKE CERTAIN ACTIONS WITH RESPECT TO THE 2007 BOND; AND OTHERWISE GENERALLY RELATING TO THE USE OF PROCEEDS OF THE 2007 BOND.

RECITALS

WHEREAS, City of Salisbury, a municipal corporation of the State of Maryland (the "City"), is authorized and empowered by Sections 31 to 37, inclusive, of Article 23A of the Annotated Code of Maryland, as replaced, supplemented or amended (the "Enabling Act"), and Sections SC7-45 and SC7-46 of the Charter of the City of Salisbury, as published in Municipal Charters of Maryland, as replaced, supplemented or amended (the "Charter"), to borrow money for any proper public purpose and to evidence such borrowing by the issuance and sale of its general obligation bonds; and

WHEREAS, pursuant to Ordinance No. 2020, adopted by the Council of the City (the "Council") on December 11, 2006, approved by the Mayor of the City (the "Mayor") on December 15, 2006 and effective on December 15, 2006 (the "Original Ordinance"), and Resolution No. 1511, adopted by the Council on April 9, 2007, approved by the Mayor on April 10, 2007 and effective on April 10, 2007 (the "Original Resolution"), the City determined to undertake the projects identified in Section 3(b) of the Original Ordinance and Section 2(a) of the Original Resolution; and the City determined to borrow money for the public purpose of financing, reimbursing or refinancing "costs" (as identified in Section 3(b) of the Original Ordinance and Section 2(b) of the Original Resolution) of such projects, and to evidence this borrowing by the issuance and sale of its Public Improvements Bond of 2007 in the principal amount of Four Million Nine Hundred Fifty Thousand Dollars (\$4,950,000) (the "2007 Bond"); and

WHEREAS, pursuant to the Enabling Act, the Charter, the Original Ordinance and the Original Resolution, the City issued and delivered the 2007 Bond to SunTrust Leasing Corporation on April 12, 2007; and

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WHEREAS, Section 3(b) of the Original Ordinance and Section 2(a) of the Original Resolution provide that proceeds of the 2007 Bond shall be appropriated and allocated as follows:

<u>Project Description</u>	<u>Maximum Principal Amount</u>
1 Isabella Street-Shoreline Stabilization	\$2,050,000.00
2 Water/Sewer/Stormwater Management -Acquisition	2,760,000.00
3 Animal Health Building/Salisbury Zoo-Engineering	67,500.00
4 Fire Station #2 Renovation – Engineering	42,500.00
5 Costs of Issuance	<u>30,000.00</u>
	<u>\$4,950,000.00</u>

and the projects set forth above are herein referred to as the “Original Projects” and are referred to as the “Projects” in the Original Ordinance and the Original Resolution; and

WHEREAS, by issuance of the 2007 Bond, the City utilized all of the bonding authority provided for in the Original Ordinance, and the terms “costs” and “Projects” as used in the Original Ordinance and the Original Resolution have identical meanings; and

WHEREAS, subsequent to the passage of the Original Ordinance and the Original Resolution and the issuance of the 2007 Bond, the City determined that instead of applying \$2,760,000.00 of the proceeds of the 2007 Bond (exclusive of investment earnings that may be applied for such purpose) to acquire completed water, sewer and stormwater management facilities as contemplated by the Original Project identified as number 2 in the preceding WHEREAS clause, the City would apply such 2007 Bond proceeds to the costs of planning, designing, developing, acquiring, constructing, improving, installing and/or equipping such facilities and any related costs (the “2008 Modified Project”); and

WHEREAS, pursuant to Ordinance No. 2068, passed by the Council on December 22, 2008, approved by the Mayor on December 24, 2008 and effective on December 24, 2008 (“Ordinance No. 2068”), and Resolution No. 1741, adopted by the Council on December 22, 2008, approved by the Mayor on December 24, 2008 and effective on December 24, 2008 (“Resolution No. 1741”), the City respectively amended and supplemented the Original Ordinance and the Original Resolution in order to provide for the application of \$2,760,000.00 of the proceeds of the 2007 Bond (exclusive of investment earnings that may be applied for such purpose) to costs of the 2008 Modified Project; and

WHEREAS, the term “costs” has identical meanings as used in the Original Ordinance, Ordinance No. 2068, the Original Resolution and Resolution No. 1741; and

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WHEREAS, the Original Ordinance, as amended and supplemented by Ordinance No. 2068, is herein referred to as the “Existing Ordinance”, and the Original Resolution, as amended and supplemented by Resolution No. 1741, is herein referred to as the “Existing Resolution”; and

WHEREAS, the Existing Ordinance and the Existing Resolution provide that \$2,050,000.00 of the proceeds of the 2007 Bond (exclusive of investment earnings that may be applied for such purpose) are to be applied to costs of a project identified therein as “Isabella Street–Shoreline Stabilization” and \$67,500.00 of the proceeds of the 2007 Bond (exclusive of investment earnings that may be applied for such purpose) are to be applied to costs of a project identified therein as “Animal Health Building/Salisbury Zoo-Engineering” ; and

WHEREAS, costs of the projects identified in the Existing Ordinance and the Existing Resolution as “Isabella Street–Shoreline Stabilization” and “Animal Health Building/Salisbury Zoo-Engineering” were less than expected and, accordingly, approximately \$244,932.00 of the proceeds of the 2007 Bond originally allocated to such projects remains unspent; and

WHEREAS, the City desires to allow \$242,432.00 of the proceeds of the 2007 Bond originally allocated to the Isabella Street-Shoreline Stabilization project and \$2,500.00 of the proceeds of the 2007 Bond originally allocated to the Animal Health Building/Salisbury Zoo-Engineering project to be applied for payment of costs of one or both of the projects identified herein as “Beaverdam Drive Bridge”, which involves the repair and/or replacement of the Beaverdam Drive Bridge and related activities, and “Isabella Street Water/Sewer/Road Improvements”, which involves replacement of water mains and sewer laterals in the Isabella Street area, together with road repaving and related activities (collectively, the “2011 Modified Projects”); and

WHEREAS, accordingly, the City desires to revise the description of the projects as set forth in the Existing Resolution in order to allow certain proceeds of the 2007 Bond to be applied to costs of the 2011 Modified Projects.

SECTION 1. NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SALISBURY, MARYLAND that the Recitals to this Resolution are incorporated by reference herein and deemed a substantive part of this Resolution. Capitalized terms used in

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the Sections of this Resolution that are not defined therein shall have the meanings given to such terms in the Recitals.

SECTION 2. BE IT FURTHER RESOLVED that (a) pursuant to the authority of the Enabling Act, the Charter and the Original Resolution, Section 2(a) of the Original Resolution and Section 1(a) of Resolution No. 1741 are hereby deleted in their respective entireties and inserted in place thereof shall be the following:

“SECTION 2. BE IT FURTHER RESOLVED that (a) pursuant to the authority of the Enabling Act, the Charter and the Ordinance, the City hereby determines to borrow money and incur indebtedness for the public purpose of financing, reimbursing or refinancing the costs of the following public purpose projects in the maximum principal amount set forth opposite each such project, subject to subsection (c) below:

<u>Project Description</u>	<u>Maximum Principal Amount</u>
1 Isabella Street-Shoreline Stabilization	\$1,807,568.00
2 Water/Sewer/Stormwater Management	2,760,000.00
3 Animal Health Building/Salisbury Zoo-Engineering	65,000.00
4 Fire Station #2 Renovation – Engineering	42,500.00
5 Costs of Issuance	30,000.00
6 Beaverdam Drive Bridge and/or Isabella Street Water/Sewer/Road Improvements	<u>244,932.00</u>
TOTAL	<u>\$4,950,000.00</u>

The projects identified in items 1 - 6 above are collectively referred to herein as the “Projects”. With respect to the two Projects identified in item 6 above, the City, without notice to or the consent of the holders of the Bond (as defined in Section 3 hereof), may determine in compliance with applicable budgetary procedures or applicable law how much of the maximum principal amount of the Bond allocated to the two Projects identified in item 6 above shall be spent on each such Project, which determination may include a decision not to expend any proceeds of the Bond on one of such Projects. Further, it is the intention of the City that proceeds of the Bond may be spent on any applicable costs (as defined in subsection (b) below) relating to the Projects identified in items 1-6 above.”

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(b) By undertaking the amendments to Section 2(a) of the Original Resolution and Section 1(a) of Resolution No. 1741 provided for in subsection (a) of this Section 2, the City is reducing the maximum principal amount of the 2007 Bond allocated to the projects identified as numbers 1 and 3 in Section 2(a) of the Original Resolution and Section 1(a) of Resolution No. 1741 and (ii) adding the projects identified as number 6 in the chart set forth in subsection (a) above as projects to the costs of which proceeds of the 2007 Bond may be applied. By undertaking the amendments provided for in subsection (a) of this Section 2, the City is superseding the amendments to Section 2(a) of the Original Resolution provided for in Section 1(a) of Resolution No. 1741, without undoing the intended effect of Section 1(a) of Resolution No. 1741 with respect to the project identified therein as “Water/Sewer/Stormwater Management”.

(c) The projects identified in the chart set forth in subsection (a) above are collectively referred to herein as the “2011 Revised Projects”. From and after the effective date of this Resolution, all references to the Projects in the Existing Resolution shall be deemed to be references to the 2011 Revised Projects, as identified in this Resolution. From and after the effective date of this Resolution, the provisions of this Section 2 shall supersede the provisions of Section 2(a) of the Original Resolution and Section 1(a) of Resolution No. 1741 with respect to the application of proceeds of the 2007 Bond.

(d) Notwithstanding the foregoing provisions of this Section 2, proceeds of the 2007 Bond may not be applied to costs of the 2011 Modified Projects unless and until the City enacts an ordinance making corresponding amendments to the provisions of Section 3(b) of the Original Ordinance, as amended and supplemented by Ordinance No. 2068, to allow proceeds of the 2007 Bond to be applied to costs of the 2011 Modified Projects.

SECTION 3. BE IT FURTHER RESOLVED that, subject to the provisions of Section 2(d) of this Resolution, any two of the Mayor, the City Administrator and the Director of Internal Services are hereby authorized and empowered to supplement the Tax and Section 148 Certificate dated April 12, 2007, as the same may have been supplemented to date, executed and delivered in connection with the issuance of the 2007 Bond, in order to evidence the expectations of the City as to the application of the proceeds of the 2007 Bond following the effective date of this Resolution.

SECTION 4. BE IT FURTHER RESOLVED that, subject to the provisions of Section 2(d) of this Resolution, the Mayor, the City Administrator, the Director of Internal Services, the City Clerk and all other appropriate officials and employees of the City, as applicable, are hereby authorized and directed to take any and all action necessary to provide for application of the proceeds of the 2007 Bond to finance, reimburse or refinance the costs of the 2011 Revised Projects and to execute and deliver all documents, certificates and instruments necessary or appropriate in connection therewith or in connection with the transactions contemplated by this Resolution.

SECTION 5. BE IT FURTHER RESOLVED that, subject to the provisions of Section 2(d) of this Resolution, from and after the effective date of this Resolution, the Existing Resolution

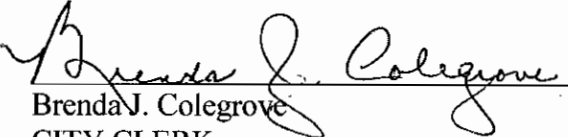
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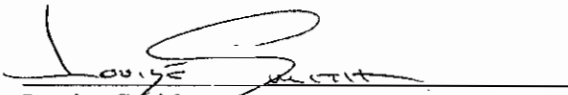
shall be deemed supplemented as provided herein and all other terms and provisions of the Existing Resolution shall remain in full force and effect.

SECTION 6. BE IT FURTHER RESOLVED that this Resolution shall become effective upon adoption by the Council and approval by the Mayor; provided, however, in the event the City fails to enact an ordinance making corresponding amendments to the provisions of Section 3(b) of the Original Ordinance, as amended and supplemented by Ordinance No. 2068, to allow proceeds of the 2007 Bond to be applied to costs of the 2011 Modified Projects, the City may not apply proceeds of the 2007 Bond for such purpose, notwithstanding the effective date of this Resolution. Pursuant to Charter Section SC7-46A, this Resolution may not be petitioned to referendum.

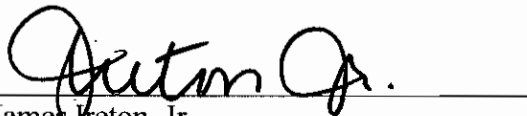
THIS RESOLUTION was introduced and read at a meeting of the Council of the City of Salisbury held on the 28th day of February, 2011, and was adopted by the Council as introduced on the 28th day of February, 2011.

ATTEST:


Brenda J. Colegrove
CITY CLERK


Louise Smith
PRESIDENT, City Council

Approved by me this 1st day of
March, 2011.


James Breton, Jr.
MAYOR, City of Salisbury