

Resolution No. 3046

A RESOLUTION OF THE COUNCIL (THE "COUNCIL") OF THE CITY OF SALISBURY ENTITLED A RESOLUTION AMENDING AND SUPPLEMENTING RESOLUTION NO. 2160, ADOPTED BY THE COUNCIL ON APRIL 23, 2012, APPROVED BY THE MAYOR ON APRIL 24, 2012 AND EFFECTIVE ON APRIL 24, 2012 ("RESOLUTION NO. 2160"), IN ORDER TO AUTHORIZE AND EMPOWER CITY OF SALISBURY (THE "CITY") TO USE AND APPLY A PORTION OF THE PRINCIPAL AMOUNT OF THE \$7,693,000 CITY OF SALISBURY PUBLIC IMPROVEMENTS BOND OF 2012 ISSUED ON MAY 3, 2012 (THE "2012 BOND") TO PROJECTS IDENTIFIED HEREIN AS "CHEMICAL BUILDING HVAC", "PALEO FLUORIDE ROOM DOOR AND TANK REPLACEMENT", "WWTP OUTFALL INSPECTION AND REPAIRS", "PARK AERATOR BUILDING IMPROVEMENTS", AND "PARK WATER TREATMENT PLANT ROOF IMPROVEMENTS" IN ADDITION TO THE PROJECTS ORIGINALLY IDENTIFIED IN RESOLUTION NO. 2160, AND (2) IDENTIFY THE SOURCES FROM WHICH DEBT SERVICE ON THE 2012 BOND ALLOCABLE TO SUCH ADDITIONAL PROJECTS WILL BE PAYABLE IN THE FIRST INSTANCE; AUTHORIZING AND EMPOWERING CITY OFFICIALS AND EMPLOYEES TO TAKE CERTAIN ACTIONS WITH RESPECT TO THE 2012 BOND; PROVIDING THAT THE PROVISIONS OF THIS RESOLUTION SHALL BE LIBERALLY CONSTRUED; AND OTHERWISE GENERALLY RELATING TO THE USE OF PROCEEDS OF THE 2012 BOND.

RECITALS

WHEREAS, City of Salisbury, a municipal corporation of the State of Maryland (the "City"), was authorized and empowered by Sections 31 to 37, inclusive, of Article 23A of the Annotated Code of Maryland (now codified as Sections 19-301 to 19-309, inclusive, of the Local Government Article 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 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 the authority of the Enabling Act, Sections SC7-45 and SC7-46 of the Charter, and Ordinance No. 2140, passed by the Council of the City (the "Council") on March 14, 2011, approved by the Mayor of the City (the "Mayor") on March 18, 2011 and effective on March 18, 2011 ("Ordinance No. 2140"), the City authorized general obligation bonds to be issued from time to time in one or more series in an aggregate principal amount not to exceed Seven Million Seven Hundred Thousand Dollars (\$7,700,000.00) (the "Authorized Bonds") in order to finance, reimburse or refinance "costs" (as defined in Section 3(b) of Ordinance No. 2140) of the projects and costs of issuance identified in Section 3(b) of Ordinance No. 2140 as (i) "Riverwalk Repairs", (ii) "East Main Street Water Valve", (iii) "Isabella Street Water", (iv) "East Main Street Sewer", (v) "Isabella Street Sewer", (vi) "Lift Station Pump Replacement", (vii) "N. Division Street Sewer", (viii) "Wastewater Treatment Plant Upgrade", and (ix) "Costs of Issuance" (herein referred to as the "Authorized Projects" and referred to as the "Projects" in Ordinance No. 2140) in the maximum principal amounts set forth opposite each such Authorized Project in such Section 3(b); and

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WHEREAS, pursuant to the authority of the Enabling Act, Sections SC7-45 and SC7-46 of the Charter, Ordinance No. 2140 and Resolution No. 2160, adopted by the Council on April 23, 2012, approved by the Mayor on April 24, 2012 and effective on April 24, 2012 (“Resolution No. 2160”), the City determined to borrow money for the public purpose of financing or reimbursing “costs” (as defined in Section 2(b) of Resolution No. 2160, which definition mirrors the definition of costs set forth in Section 3(b) of Ordinance No. 2140) of the projects specified in Section 2(a) of Resolution No. 2160 (which included all of the Authorized Projects), and to evidence this borrowing by the issuance and sale of a single series of the Authorized Bonds in the form of a single general obligation bond in the maximum principal amount of Seven Million Seven Hundred Thousand Dollars (\$7,700,000.00): and

WHEREAS, pursuant to Resolution No. 2160, the Mayor, with the assistance of the financial advisor to the City, the City Administrator of the City (the “City Administrator”) and the Director of Internal Services of the City (the Director of Internal Services”), was authorized to reduce the maximum principal amount of such Authorized Bond prior to issuance if it was determined that the entire authorized principal amount of \$7,700,000.00 was not needed due to any reduction in the amount needed for costs of issuance; and

WHEREAS, in accordance with the provisions of Resolution No. 2160, the Mayor, with the assistance of the City Administrator and the Director of Internal Services, determined to reduce the final original principal amount of such Authorized Bond to Seven Million Six Hundred Ninety-three Thousand Dollars (\$7,693,000.00) due to a reduction in the amount needed for costs of issuance, and such Authorized Bond as issued was designated as the City of Salisbury Public Improvements Bond of 2012 (the “2012 Bond”); and

WHEREAS, pursuant to the authority of the Enabling Act, Sections SC7-45 and SC7-46 of the Charter, Ordinance No. 2140 and Resolution No. 2160, the City issued and delivered the 2012 Bond to SunTrust Bank on May 3, 2012; and

WHEREAS, Section 2 of Resolution No. 2160 provides that proceeds of the 2012 Bond (which is referred to as the “Bond” in Resolution No. 2160) shall be appropriated and allocated to the specified Authorized Projects identified therein (the “Original Projects”), subject to the further provisions of such Section 2 (which Original Projects are referred to as the “Projects” in Resolution No. 2160); and

WHEREAS, after giving effect to issuance of the 2012 Bond, only \$7,000.00 of bonding authority remains unused under Ordinance No. 2140; accordingly, for all practical purposes the 2012 Bond constitutes the only “Bonds” that will be issued pursuant to authority of Ordinance No. 2140 and the only “Authorized Bonds” as referred to in this Resolution, and no BANs (as defined in Ordinance No. 2140) will be issued pursuant to the authority set forth in Ordinance No. 2140; and

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WHEREAS, pursuant to Ordinance No. 2381, passed by the Council on April 11, 2016 and approved by the Mayor on April 12, 2016 (“Ordinance No. 2381”), the City reallocated \$1,996,355.00 of the principal amount of the Authorized Bonds originally allocated to the Authorized Project identified as “N. Division Street Sewer” to the Authorized Project identified as “Lift Station Pump Replacement”, such that the maximum principal amount of the Authorized Bonds was reallocated as follows:

	<u>Project Name</u>	<u>Maximum Principal Amount</u>
1.	Riverwalk Repairs	\$ 500,000.00
2.	East Main Street Water Valve	100,000.00
3.	Isabella Street Water	435,000.00
4.	East Main Street Sewer	100,000.00
5.	Isabella Street Sewer	66,000.00
6.	Lift Station Pump Replacement	2,346,355.00
7.	N. Division Street Sewer	103,645.00
8.	Wastewater Treatment Plant Upgrade	4,000,000.00
9.	Costs of Issuance	49,000.00
	TOTAL	<u>\$7,700,000.00</u>

; and

WHEREAS, pursuant to Ordinance No. 2391, passed by the Council on June 20, 2016 and approved by the Mayor on June 22, 2016 (“Ordinance No. 2391”), the City reallocated \$118,906.00 of the principal amount of the Authorized Bonds originally allocated to the Authorized Project identified as “Wastewater Treatment Plant Upgrade” to the Authorized Project identified as “East Main Street Sewer”, such that the maximum principal amount of the Authorized Bonds was reallocated as follows:

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	<u>Project Name</u>	<u>Maximum Principal Amount</u>
1.	Riverwalk Repairs	\$ 500,000.00
2.	East Main Street Water Valve	100,000.00
3.	Isabella Street Water	435,000.00
4.	East Main Street Sewer	218,906.00
5.	Isabella Street Sewer	66,000.00
6.	Lift Station Pump Replacement	2,346,355.00
7.	N. Division Street Sewer	103,645.00
8.	Wastewater Treatment Plant Upgrade	3,881,094.00
9.	Costs of Issuance	49,000.00
TOTAL		<u>\$7,700,000.00</u>

; and

WHEREAS, on July 28, 2016, the City issued its \$20,030,000 Public Improvement and Refunding Bonds of 2016 (the “2016 Bonds”), a portion of the proceeds of which were applied to currently refund the then-outstanding principal amount of the 2012 Bond; and

WHEREAS, at the time of issuance of the 2016 Bonds, a portion of the proceeds of the 2012 Bond remained unexpended, and such unexpended proceeds of the 2012 Bond were considered “transferred proceeds” of the 2016 Bonds for purposes of the Internal Revenue Code of 1986, as amended, and the U.S. Treasury Regulations promulgated thereunder (collectively, the “Code”); and

WHEREAS, the outstanding 2012 Bond was prepaid in whole on July 28, 2016; and

WHEREAS, at the time of issuance of the 2016 Bonds, the City expected to promptly expend the then-unexpended proceeds of the 2012 Bonds, but due to unforeseen circumstances, certain proceeds of the 2012 Bond (including investment earnings thereon) remain unexpended as of the date of introduction of this Resolution; and

WHEREAS, while the remaining unexpended proceeds of the 2012 Bond (including investment earnings thereon) are treated as “transferred proceeds” of the 2016 Bonds for purposes of the Code, they are referred to as proceeds of the 2012 Bond for purposes of this Resolution; and

WHEREAS, an aggregate \$328,711.00 of the principal amount of the 2012 Bond originally allocated among the Original Projects identified as “East Main Street Water Valve”, “Isabella Street Water”, and Wastewater Treatment Plant Upgrade” in Ordinance No. 2140 and Resolution No. 2160 remains unspent, and the Council wishes to reallocate such unexpended principal amount, together with certain investment earnings on proceeds of the 2012 Bond, to certain projects referred to in the

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City’s fiscal year 2020 budget as “Chemical Building HVAC”, “Paleo Fluoride Room Door and Tank Replacement”, “WWTP Outfall Inspection and Repairs”, “Park Aerator Building Improvements”, and “Park Water Treatment Plant Roof Improvements” (collectively, the “2020 Additional Projects”); and

WHEREAS, accordingly, the City desires to expand the list of the Original Projects as set forth in Resolution No. 2160 in order to allow a portion of the principal amount of the 2012 Bond, together with certain investment earnings thereon, to be applied to costs of the 2020 Additional Projects.

WHEREAS, pursuant to Ordinance No. 2588, adopted by the Council on April 27, 2020 and approved by the Mayor on May 6, 2020 (“Ordinance No. 2588”), the City amended and supplemented Ordinance No. 2140, as supplemented to date prior to the introduction of Ordinance No. 2588, to allow in effect proceeds of the 2012 Bond to be applied to costs of the 2020 Additional Projects.

SECTION 1. NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SALISBURY, MARYLAND that:

(a) The Recitals hereto constitute an integral part of this Resolution and are incorporated herein by reference. Capitalized terms used in the Recitals to this Resolution and not otherwise defined herein shall have the meanings given to such terms in the Recitals.

(b) References in this Resolution to any official by title shall be deemed to refer (i) to any official authorized under the Charter, the code of ordinances of the City (the “City Code”) or other applicable law or authority to act in such titled official’s stead during the absence or disability of such titled official, (ii) to any person who has been elected, appointed or designated to fill such position in an acting or interim capacity under the Charter, the City Code or other applicable law or authority, (iii) to any person who serves in a “deputy”, “associate” or “assistant” capacity as such an official, provided that the applicable responsibilities, rights or duties referred to herein have been delegated to such deputy, associate or assistant in accordance with the Charter, the City Code or other applicable law or authority, and/or (iv) to the extent an identified official commonly uses another title not provided for in the Charter or the City Code, the official, however known, who is charged under the Charter, the City Code or other applicable law or authority with the applicable responsibilities, rights or duties referred to herein.

(c) References in Resolution No. 2160 to the Director of Internal Services shall be construed to refer to the official of the City now known as the Director of Finance (the “Director of Finance”).

(d) References in this Resolution to “principal amount” shall be construed to mean par amount.

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(e) References in the Sections of this Resolution to Resolution No. 2160 shall be construed to mean Resolution No. 2160, as the allocation of the principal amount of the 2012 Bond provided for therein has been reallocated pursuant to Ordinance Nos. 2381 and 2391 prior to the introduction of this Resolution; and

(f) References in this Resolution to the application or use of proceeds of the 2012 Bond to fund costs of the 2020 Revised Projects (as defined in Section 2(e) hereof) shall be construed to mean (i) for purposes of the Enabling Act, Sections SC7-45 and SC7-46 of the Charter, Ordinance No. 2140 and Resolution No. 2160, as the same may be amended, modified or supplemented (including as provided for herein), use of such proceeds (including investment earnings) to finance or reimburse costs of the 2020 Revised Projects, and (ii) to the extent applicable for purposes of the Code, expenditure or application of such proceeds as “transferred proceeds” of the 2016 Bonds.

SECTION 2. BE IT FURTHER RESOLVED that (a) pursuant to the authority of the Enabling Act, Sections SC7-45 and SC7-46 of the Charter and Resolution No. 2160, Section 2 of Resolution No. 2160 is hereby deleted in its entirety 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, subject to any reallocation of proceeds of the Bond made to date, and subject to the provisions of Section 3 hereof, the City hereby determines to borrow money and incur indebtedness for the public purpose of financing or reimbursing the costs of the following public purpose projects in the maximum principal amount set forth opposite each such project:

	<u>Project Name</u>	<u>Maximum Principal Amount</u>
1.	Riverwalk Repairs	\$ 500,000.00
2.	East Main Street Water Valve	75,294.00
3.	Isabella Street Water	144,169.00
4.	East Main Street Sewer	218,906.00
5.	Isabella Street Sewer	66,000.00
6.	Lift Station Pump Replacement	2,346,355.00
7.	N. Division Street Sewer	103,645.00
8.	Wastewater Treatment Plant Upgrade	3,867,920.00
9.	Chemical Building HVAC	48,000.00
10.	Paleo Fluoride Room Door and Tank Replacement	60,000.00

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11.	WWTP Outfall Inspection and Repairs	78,030.00
12.	Park Aerator Building Improvements	81,600.00
13.	Park Water Treatment Plant Roof Improvements	61,081.00
14.	Costs of Issuance	42,000.00
TOTAL		\$7,693,000.00

The projects and costs of issuance identified in items 1-14 above are collectively referred to herein as the “Projects”.

(b) With respect to the Projects listed above, the word “costs” shall include, as applicable, land and right-of-way acquisition and development; site and utility improvements; acquisition, construction, expansion, demolition, reconstruction, replacement, renovation, rehabilitation, improvement, installation, furnishing and equipping activities and expenses; planning, design, engineering, architectural, feasibility, inspection, surveying, financial and legal expenses, and related or similar costs; costs of issuance (which may include costs of bond insurance or other credit or liquidity enhancement); capitalized interest (whether or not expressly so stated); and any such costs that may represent the City’s share or contribution to the financing, reimbursement or refinancing of any such project.

(c) Proceeds of the Bond identified in Section 3 below are hereby appropriated and allocated to pay costs of the Projects in the maximum principal amount specified for each Project in subsection (a) above (exclusive of any investment earnings that may be applied for such purposes); provided that, the City, without notice to or the consent of the registered owner of the Bond, may reallocate the maximum principal amount of the proceeds of the Bond to be spent among the Projects identified in such subsection (a) in compliance with applicable City budgetary procedures or applicable law, including, to the extent applicable, by resolution. Further, it is the intention of the Council that proceeds of the Bond may be spent on any applicable costs (as defined above) relating to the Projects identified in items 1-14 in the table set forth in subsection (a) above, notwithstanding the descriptive names used for such Projects in the table set forth in subsection (a) above, including, without limitation, costs related to changes in the scopes of activities relating to the Projects and/or the names of the Projects, as such scopes of activities or names may have already been, or may in the future be, amended or modified in accordance with applicable budgetary procedures or applicable law.”

(b) Pursuant to the authority of the Enabling Act, Sections SC7-45 and SC7-46 of the Charter and Resolution No. 2160, Section 12(a) of Resolution No. 2160 is hereby deleted in its entirety and inserted in place thereof shall be the following:

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“SECTION 12. BE IT FURTHER RESOLVED that (a) that portion of the principal and interest on the Bond allocated to the costs of the Projects identified as (i) “East Main Street Water Valve”, “Isabella Street Water”, “Chemical Building HVAC”, “Paleo Fluoride Room Door and Tank Replacement”, “Park Aerator Building Improvements”, and “Park Water Treatment Plant Roof Improvements” in Section 2(a) of this Resolution will be payable in the first instance from water system revenues (including moneys received for use of or connection to such system) to the extent such revenues are available for such purpose, and (ii) “East Main Street Sewer”, “Isabella Street Sewer”, “Lift Station Pump Replacement”, “N. Division Street Sewer”, “Wastewater Treatment Plant Upgrade” and “WWTP Outfall Inspection and Repairs” in Section 2(a) of this Resolution will be payable in the first instance from sewer system revenues (including moneys received for use of or connection to such system) to the extent such revenues are available for such purpose. Notwithstanding the foregoing sentence, for the purpose of paying the principal of and interest on the Bond when due, the City shall levy or cause to be levied in all fiscal years in which the Bond is outstanding, upon all real and tangible personal property within its corporate limits subject to assessment for unlimited municipal taxation, ad valorem taxes in rate and amount sufficient to provide for the prompt payment of the principal of and interest on the Bond due in each such fiscal year, provided that, to the extent of any funds received or receivable as described in the first sentence of this Section 12(a) in any fiscal year, the taxes hereby required to be levied may be reduced proportionately. If the proceeds from the taxes so levied in any such fiscal year are inadequate for such payment, additional taxes shall be levied in the succeeding fiscal year to make up such deficiency.”

(c) As provided in Ordinance No. 2588, the Council has appropriated and allocated \$120,478.91 of investment earnings on the 2012 Bond to be applied to costs of the 2020 Additional Project identified in the table in subsection (a) above as “Park Water Treatment Plant Roof Improvements”.

(d) By undertaking the amendments to Resolution No. 2160 provided for in this Section 2, the City is in effect (i) reducing the principal amount of the 2012 Bond to be applied to costs of the Original Projects identified as (A) “East Main Street Water Valve” from \$100,000.00 to \$75,294.00, (B) “Isabella Street Water” from \$435,000.00 to \$144,169.00, and (C) “Wastewater Treatment Plant Upgrade” from \$3,881,094.00 to \$3,867,920.00; (ii) adding the 2020 Additional Projects identified as items 9-13 in the table set forth in subsection (a) above to the list of projects the costs of which may be financed or reimbursed from the principal amount of the 2012 Bond; (iii) reallocating portions of the principal amount of the 2012 Bond previously allocated to the projects identified as “East Main Street Water Valve”, “Isabella Street Water” and “Wastewater Treatment Plant Upgrade” to the 2020 Additional Projects; (iv) recognizing that the original principal amount of the 2012 Bond was reduced from \$7,700,000.00 to \$7,693,000.00 between the effective date of Resolution No. 2160 and the date of delivery of the 2012 Bond to reflect a reduction in the principal amount of the 2012 Bond to be

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applied to the Original Project identified as Costs of Issuance; and (v) identifying the sources from which allocable debt service on the 2012 Bond will be payable in the first instance.

(e) The projects identified in items 1-14 in the table set forth in subsection (a) above (which in part amends Section 2(a) of Resolution No. 2160) are collectively referred to herein as the “2020 Revised Projects”. Subject to the provisions of subsection (f) below and Section 6 of this Resolution, from and after the effective date of this Resolution, all references to the Projects in Resolution No. 2160 shall be deemed to be references to the 2020 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 Sections 2 with respect to the application of proceeds of the 2012 Bond.

(f) Notwithstanding the foregoing provisions of this Section 2, proceeds of the 2012 Bond (including investment earnings thereon) may not be applied to costs of the 2020 Additional Projects, nor will the amendments to Resolution No. 2160 provided for in this Section 2 be applicable, until this Resolution becomes effective in accordance with applicable law.

(g) As provided in Ordinance No. 2588, subject to the provisions of subsection (f) above and Section 6 of this Resolution, it is the intention of the Council that any interest income or investment earnings earned on the principal amount of the 2012 Bond (i) prior to the effective date of Ordinance No. 2588, to the extent not already spent in accordance with the provisions of the Ordinance No. 2140, Resolution No. 2160 or applicable budgetary procedures or applicable law and (ii) on and after the effective date of Ordinance No. 2588, shall be applied to costs of any of the 2020 Revised Projects, except as otherwise provided in Ordinance No. 2588; provided that, any such interest income or investment earnings may be allocated otherwise in accordance with applicable budgetary procedures or applicable law, including, to the extent applicable, by resolution.

SECTION 3. BE IT FURTHER RESOLVED that, subject to the provisions of Section 2(f) and Section 6 of this Resolution, the following officials of the City: the Mayor, the City Administrator, the Director of Finance, the City Clerk and all other appropriate officials and employees of the City, as applicable, are hereby authorized and empowered to take any and all action necessary to provide for application of the proceeds of the 2012 Bond to finance or reimburse the costs of the 2020 Revised Projects and to approve, execute and deliver all documents, certificates and instruments necessary or appropriate in connection therewith or in connection with the transactions contemplated by this Resolution. In particular, any one or more of the Mayor, the City Administrator and the Director of Finance may approve, execute and deliver a certificate supplementing the Tax and Section 148 Certificate executed and delivered by the City in connection with the issuance of the 2016 Bonds.

SECTION 4. BE IT FURTHER RESOLVED that from and after the effective date of this Resolution, Resolution No. 2160 shall be deemed amended and supplemented as provided herein and all other terms and provisions of Resolution No. 2160 shall remain in full force and effect.


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SECTION 5. BE IT FURTHER RESOLVED that the provisions of this Resolution shall be liberally construed in order to effectuate the transactions contemplated by this Resolution.

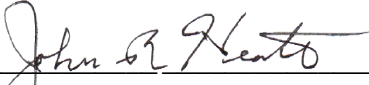
SECTION 6. BE IT FURTHER RESOLVED that this Resolution shall become effective upon adoption by the Council and approval by the Mayor. Pursuant to Charter Section SC7-46A, this Resolution may not be petitioned to referendum.

THIS RESOLUTION was introduced and read at a meeting of the Council of the City of Salisbury held on the 13th day of July, 2020, and was adopted by the Council X [as introduced] _____ [as amended] [CHECK APPLICABLE LINE] on the 13th day of July, 2020.

ATTEST:




Kimberly R. Nichols, City Clerk



John R. Heath, President
Salisbury City Council

APPROVED BY ME THIS 17th DAY OF July , 2020



Jacob R. Day, Mayor

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