

Resolution No. 3086

A RESOLUTION OF THE COUNCIL (THE “COUNCIL”) OF THE CITY OF SALISBURY ENTITLED A RESOLUTION AMENDING AND SUPPLEMENTING RESOLUTION NO. 2569, ADOPTED BY THE COUNCIL ON NOVEMBER 23, 2015, APPROVED BY THE MAYOR ON NOVEMBER 23, 2015 AND EFFECTIVE ON NOVEMBER 23, 2015 (“RESOLUTION NO. 2569”), IN ORDER TO (1) AUTHORIZE AND EMPOWER CITY OF SALISBURY (THE “CITY”) TO USE AND APPLY CERTAIN INVESTMENT EARNINGS ON THE \$4,726,200 CITY OF SALISBURY PUBLIC IMPROVEMENTS BOND OF 2015 ISSUED ON DECEMBER 1, 2015 (THE “2015 BOND”), TO PROJECTS IDENTIFIED HEREIN AS “GOB ROOF AND AIR HANDLER REPLACEMENT” AND “WWTP HVAC” IN ADDITION TO THE PROJECTS ORIGINALLY IDENTIFIED IN RESOLUTION NO. 2569, AND (2) IDENTIFY SUCH ADDITIONAL PROJECTS AS “PROJECTS” FOR ALL PURPOSES OF RESOLUTION NO. 2569; AUTHORIZING AND EMPOWERING CITY OFFICIALS AND EMPLOYEES TO TAKE CERTAIN ACTIONS WITH RESPECT TO THE 2015 BOND; PROVIDING THAT THE PROVISIONS OF THIS RESOLUTION SHALL BE LIBERALLY CONSTRUED; AND OTHERWISE GENERALLY RELATING TO THE USE OF PROCEEDS OF THE 2015 BOND.

RECITALS

WHEREAS, City of Salisbury, a municipal corporation of the State of Maryland (the “City”), was authorized and empowered by 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. 2357, passed by the Council of the City (the “Council”) on October 12, 2015, approved by the Mayor of the City (the “Mayor”) on October 14, 2015 and effective on October 14, 2015 (“Ordinance No. 2357”), 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 Four Million Seven Hundred Twenty-Six Thousand Two Hundred Dollars (\$4,726,200.00) (the “Authorized Bonds”) in order to finance, reimburse or refinance “costs” (as defined in Section 3(b) of Ordinance No. 2357) of the projects identified in Section 3(b) of Ordinance No. 2357 as (1) “Main Street Master Plan”, (2) “East Main St Storm Drain”, (3) “Beaverdam Creek Tidal Dam Repair”, and (4) “24” W in Gordy Rd” (herein referred to as the “Authorized Projects” and referred to as the “Projects” in Ordinance No. 2357) 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. 2357 and Resolution No. 2569, adopted by the Council on November 23, 2015, approved by the Mayor on November 23, 2015 and effective on November 23, 2015 (“Resolution No. 2569”), the City determined to borrow money for the public purpose of financing or reimbursing “costs” (as defined in Section 2(b) of Resolution No. 2569, which definition mirrors the definition of “costs” set forth in Section 3(b) of Ordinance No. 2357) of the projects specified in Section 2(a) of Resolution No. 2569 (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 Four Million Seven Hundred Twenty-Six Thousand Two Hundred Dollars (\$4,726,200.00): and

WHEREAS, pursuant to Resolution No. 2569, such Authorized Bond was issued in the original principal amount of \$4,726,200.00 and was designated as the City of Salisbury Public Improvements Bond of 2015 (the “2015 Bond”); and

WHEREAS, pursuant to the authority of the Enabling Act, Sections SC7-45 and SC7-46 of the Charter, Ordinance No. 2357 and Resolution No. 2569, the City sold and delivered the 2015 Bond to Bank of America, N.A. on December 1, 2015; and

WHEREAS, Section 2(a) of Resolution No. 2569 provides that proceeds of the 2015 Bond (which is referred to as the “Bond” in Resolution No. 2569) shall be appropriated and allocated to the specified Authorized Projects identified below (the “Original Projects”) in the maximum principal amount set forth opposite each such Original Project, subject to the further provisions of such Section 2 (which Original Projects are referred to as the “Projects” in Resolution No. 2569); and

	<u>Project Name</u>	<u>Maximum Principal Amount</u>
1.	Main Street Master Plan	\$2,240,000.00
2.	East Main St Storm Drain	350,200.00
3.	Beaverdam Creek Tidal Dam Repair	1,136,000.00
4.	24” W in Gordy Rd	<u>1,000,000.00</u>
	TOTAL	<u>\$4,726,200.00</u>

; and

WHEREAS, pursuant to Ordinance No. 2411, passed by the Council on January 23, 2017 and approved by the Mayor on January 24, 2017 (“Ordinance No. 2411”), the City reallocated an aggregate of \$548,117.00 (rounded to the nearest whole dollar) of the principal amount of the Authorized Bonds originally allocated to the Authorized Project identified as “Beaverdam Creek Tidal Dam Repair” to the Authorized Project identified as “Main Street Master Plan”, 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.	Main Street Master Plan	\$2,788,117
2.	East Main St Storm Drain	350,200.00
3.	Beaverdam Creek Tidal Dam Repair	587,883.00
4.	24" W in Gordy Rd	<u>1,000,000.00</u>
	TOTAL	<u>\$4,726,200.00</u>

; and

WHEREAS, there remains unspent \$203,500.00 of investment earnings on proceeds of the 2015 Bond, and the Council wishes to allocate such unspent investment earnings as provided herein to (i) a project referred to in the City’s fiscal year 2021 budget as originally adopted as “GOB Roof and Air Handler Replacement”, and (ii) a project referred to as “WWTP HVAC” that is expected to be added to the fiscal year 2021 budget by amendment prior to or contemporaneously with the passage of this Ordinance (collectively, the “2021 Additional Projects”); and

WHEREAS, prior to the introduction of this Resolution, the Council passed Ordinance No. 2648 expanding the list of the Authorized Projects set forth in Ordinance No. 2357 to include the 2021 Additional Projects and amending Ordinance No. 2357 to allow certain investment earnings on the Authorized Bonds (meaning the 2015 Bond) to be applied to costs of the 2021 Additional Projects (the “Companion Ordinance”); and

WHEREAS, accordingly, the City desires to expand the list of the Original Projects as set forth in Resolution No. 2569 in order to allow certain investment earnings on proceeds of the 2015 Bond to be applied to costs of the 2021 Additional Projects, and to identify such 2021 Additional Projects as “Projects” for all purposes of Resolution No. 2569.

**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,

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(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 this Resolution to “principal amount” shall be construed to mean par amount.

(d) References in the Sections of this Resolution to Ordinance No. 2357 shall be construed to mean Ordinance No. 2357 as the allocation of the proceeds of the Authorized Bonds provided for therein has been reallocated pursuant to Ordinance No. 2411 and as Ordinance No. 2357 has been further supplemented and amended pursuant to the Companion Ordinance.

(e) References in the Sections of this Resolution to Resolution No. 2569 shall be construed to mean Resolution No. 2569, as the allocation of the proceeds of the 2015 Bond provided for therein has been reallocated pursuant to Ordinance No. 2357, Ordinance No. 2411 and the Companion Ordinance.

(f) References in this Resolution to the application or use of proceeds of the 2015 Bond to fund costs of the 2021 Revised Projects (as defined in Section 2(d) hereof) shall be construed to mean for purposes of the Enabling Act, Sections SC7-45 and SC7-46 of the Charter, Ordinance No. 2357 and Resolution No. 2569, 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 2021 Revised Projects.

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. 2569, subsections (a), (b) and (d) of Section 2 of Resolution No. 2569 are hereby deleted in their respective entireties and inserted in place thereof shall be the following (with no modifications being made to subsection (c) of Section 2 of Resolution No. 2569):

“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, the City hereby determines to borrow money and incur indebtedness for the public purpose of financing or reimbursing costs (as defined in subsection (b) below) of the following public purpose projects in the maximum principal amount set forth opposite each such

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project (exclusive of any investment earnings that may be applied for such purposes, except as otherwise expressly provided herein):

	<u>Project Name</u>	<u>Maximum Principal Amount</u>
1.	Main Street Master Plan	\$2,788,117
2.	East Main St Storm Drain	350,200
3.	Beaverdam Creek Tidal Dam Repair	587,883
4.	24" W in Gordy Rd	1,000,000
5.	GOB Roof and Air Handler Replacement	0(1)
6.	WWTP HVAC	0(2)
	TOTAL	<u>\$4,726,200</u>

(1) The City intends to allocate certain investment earnings on the Bond to this project.

(2) The City intends to allocate certain investment earnings on the Bond to this project.

The projects identified in items 1-6 above are collectively referred to herein as the "Projects" and individually as a "Project".

(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, and related or similar activities and expenses; planning, design, engineering, architectural, feasibility, inspection, construction management, surveying, permitting, 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); interest during construction and for a reasonable period thereafter (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.

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(d) Proceeds of the Bond are hereby appropriated and allocated to pay costs of the Projects in the maximum principal amount specified for each Project in

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subsection (a) above (exclusive of any investment earnings that may be applied for such purposes, except as otherwise expressly noted); 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 in subsection (b) above), notwithstanding the descriptive names used for the Projects in the table set forth in subsection (a) above, including, without limitation, changes in scopes of the Projects effected through applicable budgetary procedures or applicable law.”

(b) By the Companion Ordinance, the Council has appropriated and allocated (i) \$113,500.00 of investment earnings on the 2015 Bond to be applied to costs of the 2021 Additional Project identified in the table in subsection (a) above as “GOB Roof and Air Handler Replacement”, and (ii) \$90,000.00 of investment earnings on the 2015 Bond to be applied to costs of the 2021 Additional Project identified in the table in subsection (a) above as “WWTP HVAC”. Notwithstanding the foregoing sentence, no investment earnings on the 2015 Bond may be applied to costs of the 2021 Additional Project identified in the table in subsection (a) above as “WWTP HVAC” unless and until the applicable budget of the City is amended to include such 2021 Additional Project and funding therein.

(c) By undertaking the amendments to Section 2(a) of Resolution No. 2569 provided for in subsection (a) of this Section 2, the City is in effect (i) adding the 2021 Additional Projects identified as items 5-6 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 2015 Bond and investment earnings thereon and (ii) allocating (A) \$113,500.00 of investment earnings on the 2015 Bond to the 2021 Additional Project identified as “GOB Roof and Air Handler Replacement” and (B) \$90,000.00 of investment earnings on the 2015 Bond to the 2021 Additional Project identified as “WWTP HVAC”.

(d) The Projects identified in items 1-6 in the table set forth in subsection (a) above (which in part amends Section 2(a) of Resolution No. 2569) are collectively referred to herein as the “2021 Revised Projects”. Subject to the provisions of subsection (e) below and Section 6 of this Resolution, from and after the effective date of this Resolution, all references to the Projects in Resolution No. 2569 shall be deemed to be references to the 2021 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 of Resolution No. 2569 with respect to the application of proceeds of the 2015 Bond.

(e) Notwithstanding the foregoing provisions of this Section 2, proceeds of the 2015 Bond (including investment earnings thereon) may not be applied to costs of the 2021 Additional Projects,

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nor will the amendments to Resolution No. 2569 provided for in this Section 2 be applicable, until (i) the Companion Ordinance becomes effective in accordance with applicable law, and (ii) this Resolution becomes effective in accordance with applicable law.

(f) As provided in the Companion Ordinance, subject to the provisions of subsection (e) 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 2015 Bond (i) prior to the effective date of the Companion Ordinance, to the extent not already spent in accordance with the provisions of the Ordinance No. 2357, Resolution No. 2569 or applicable budgetary procedures or applicable law and (ii) on and after the effective date of the Companion Ordinance, shall be applied to costs of any of the 2021 Revised Projects, except as otherwise provided in the Companion Ordinance; 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(e) and Section 6 of this Resolution, the following officials of the City: the Mayor, the City Administrator, the Director of Finance (which official was known at the time of adoption of Resolution No. 2569 as the Director of Internal Services), 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 2015 Bond to finance or reimburse the costs of the 2021 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 2015 Bond.

SECTION 4. BE IT FURTHER RESOLVED that from and after the effective date of this Resolution, Resolution No. 2569 shall be deemed amended and supplemented as provided herein and all other terms and provisions of Resolution No. 2569 shall remain in full force and effect.

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.

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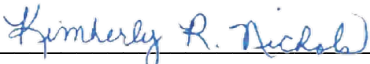
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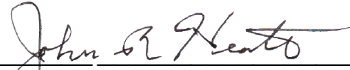
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SECTION 6. BE IT FURTHER RESOLVED that this Resolution shall become effective upon adoption by the Council and approval by the Mayor; provided, however, that in the event (i) the City fails to amend the applicable budget of the City to include therein the 2021 Additional Project identified in this Resolution as “WWTP HVAC”, the City may not apply 2015 Bond proceeds (including investment earnings thereon) to costs of such 2021 Additional Project, and (ii) the Companion Ordinance does not become effective in accordance with applicable law, the City may not apply 2015 Bond proceeds (including investment earnings thereon) to costs of either of the 2021 Additional Projects.. 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 25<sup>th</sup> day of January, 2021, and was adopted by the Council   X   [as introduced] \_\_\_\_\_ [as amended] [CHECK APPLICABLE LINE] on the 25<sup>th</sup> day of January, 2021.

ATTEST:

  
\_\_\_\_\_  
Kimberly R. Nichols, City Clerk

  
\_\_\_\_\_  
John R. Heath, President  
Salisbury City Council

APPROVED BY ME THIS   27th   DAY OF   January  , 2021

  
\_\_\_\_\_  
Jacob R. Day, Mayor

#220294;58111.001

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OFFICE

# MEMO

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## *Department of Finance*

**To:** Julia Glanz, City Administrator  
**From:** Keith Cordrey, Director of Finance *KAC*  
**Subject:** Allocation of FY16 Bond proceeds for GOB Roof Improvements and WWTP HVAC  
**Date:** January 20, 2021

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Please find attached the companion resolution by bond counsel which supplements the ordinance allocating \$113,500 of interest accrued on FY16 bond proceed to be used for GOB Roof Improvements and \$90,000 to be used for the WWTP Main Building HVAC project.

Schedule B of the FY21 Budget Ordinance (No. 2593) established an appropriation of \$175,000 for GOB Roof Improvements using bond proceeds to be reallocated. A summary of funding sources for the GOB Roof improvements follows:

<b>Funding Source</b>	<b>Amount</b>
FY16 Bond Interest	113,500
FY18 Bond Interest	6,100
Police Communication Equipment Project	55,400
Total	175,000

A separate ordinance has been submitted to establish an appropriation for the WWTP Main Building HVAC project since it was not included in the City' FY21 Budget Ordinance.

After your review, if you do not have questions or concerns, please forward this ordinance to council for their consideration.