

Ordinance No. 2770

AN ORDINANCE OF THE COUNCIL (THE "COUNCIL") OF THE CITY OF SALISBURY AMENDING AND SUPPLEMENTING ORDINANCE NO. 2223, PASSED BY THE COUNCIL ON OCTOBER 22, 2012, APPROVED BY THE MAYOR OF THE CITY ON OCTOBER 23, 2012 AND EFFECTIVE ON OCTOBER 23, 2012 ("ORDINANCE NO. 2223"), AS AMENDED AND SUPPLEMENTED TO DATE, IN ORDER TO (1) AUTHORIZE AND EMPOWER CITY OF SALISBURY (THE "CITY") TO USE AND APPLY CERTAIN INVESTMENT EARNINGS ON THE \$6,041,000 CITY OF SALISBURY TAXABLE PUBLIC IMPROVEMENTS BOND OF 2012 ISSUED ON DECEMBER 5, 2012 (THE "2012 TAXABLE BOND") TO A PROJECT IDENTIFIED HEREIN AS "RAW WATER LINE AT NAYLOR MILL ROAD" AND (2) IDENTIFYING SUCH ADDITIONAL PROJECT AS A "PROJECT" FOR ALL PURPOSES OF ORDINANCE NO. 2223 (AS AMENDED AND SUPPLEMENTED); PROVIDING THAT THIS TITLE IS A FAIR STATEMENT OF THE SUBSTANCE OF THIS ORDINANCE; PROVIDING THAT THE PROVISIONS OF THIS ORDINANCE SHALL BE LIBERALLY CONSTRUED; AND OTHERWISE GENERALLY RELATING TO THE USE OF PROCEEDS OF THE 2012 TAXABLE 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. 2223, passed by the Council of the City (the "Council") on October 22, 2012, approved by the Mayor of the City (the "Mayor") on October 23, 2012 and effective on October 23, 2012 ("Ordinance No. 2223"), 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 Six Million Fifty Thousand Dollars (\$6,050,000) (the "Authorized Bonds") in order to finance, reimburse or refinance "costs" (as defined in Section 3(b) of Ordinance No. 2223) of the projects and costs of issuance identified in Section 3(b) of Ordinance No. 2223 as Caustic Chemical Feed Building, Wastewater Treatment Plant Upgrade and Costs of Issuance (herein referred to as the "Original Authorized Projects" and referred to as the "Projects" in Ordinance No. 2223) in the maximum principal amounts set forth opposite each such Original Authorized Project in such Section 3(b); and

WHEREAS, pursuant to the authority of the Enabling Act, Sections SC7-45 and SC7-46 of the Charter, Ordinance No. 2223 and Resolution No. 2236, adopted by the Council on November 26, 2012, approved by the Mayor on November 28, 2012 and effective on November 28, 2012 ("Resolution No. 2236"), the City determined to borrow money for the public purpose of financing

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or reimbursing “costs” (as defined in Section 2(b) of Resolution No. 2236, which definition mirrors the definition of costs set forth in Section 3(b) of Ordinance No. 2223) of the projects specified in Section 2(a) of Resolution No. 2236 (which included all of the Original 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 Six Million Fifty Thousand Dollars (\$6,050,000.00): and

WHEREAS, 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,” who is now known as the “Director of Finance”), 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 \$6,050,000.00 was not needed; and

WHEREAS, in accordance with the provisions of Resolution No. 2236, 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 Six Million Forty-one Thousand Dollars (\$6,041,000.00), and such Authorized Bond as issued was designated as the City of Salisbury Taxable Public Improvements Bond of 2012 (the “2012 Taxable Bond”); and

WHEREAS, pursuant to the authority of the Enabling Act, Sections SC7-45 and SC7-46 of the Charter, Ordinance No. 2223 and Resolution No. 2236, the City issued and delivered the 2012 Taxable Bond to SunTrust Bank on December 5, 2012; and

WHEREAS, Section 2 of Resolution No. 2236 provides that proceeds of the 2012 Taxable Bond (which is referred to as the “Bond” in Resolution No. 2236) shall be appropriated and allocated to costs of the specified Original Authorized Projects identified therein, subject to the further provisions of such Section 2 (which Original Authorized Projects are referred to as the “Projects” in Resolution No. 2236); and

WHEREAS, after giving effect to issuance of the 2012 Taxable Bond, only \$9,000.00 of bonding authority remained unused under Ordinance No. 2223; accordingly, for all practical purposes the 2012 Taxable Bond constitutes the only “Bonds” that will be issued pursuant to authority of Ordinance No. 2223 and the only “Authorized Bonds” as referred to in this Ordinance, and no BANs (as defined in Ordinance No. 2223) will be issued pursuant to the authority set forth in Ordinance No. 2223; and

WHEREAS, pursuant to Ordinance No. 2475, adopted by the Council on February 26, 2018, approved by the Mayor on February 28, 2018 and effective on February 28, 2018 (“Ordinance No. 2475”), the City amended and supplemented Ordinance No. 2223 in order to allow for the reallocation of an unexpended portion of the original principal amount of the 2012 Taxable Bond to certain projects referred to in the City’s fiscal year 2018 budget as “Sewer Infiltration and Inflow Remediation”, “Replace Distribution Piping and Valves”, “Restore Park Well Field”, “Tank and

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Reservoir Mixing System”, “Paleo Water Treatment Plant Roof Improvements”, “Pump Station Building Improvements”, “Park Water Treatment Electrical Gear Replacement”, “Glen Avenue Lift Station, and “Sewer Extension in Mt. Herman Road” (collectively, the “2018 Additional Projects” and, together with the Original Authorized Projects, the “Existing Projects”); and

WHEREAS, pursuant to Ordinance No. 2524, passed by the Council on January 28, 2019, approved by the Mayor on January 29, 2019 and effective on January 29, 2019 (“Ordinance No. 2524”), the City reallocated a portion of the original principal amount of the 2012 Taxable Bond among the Existing Projects; and

WHEREAS, pursuant to the authority of Ordinance No. 2223 (as then amended and supplemented to date), Resolution No. 3117, adopted by the Council on August 9, 2021, approved by the Mayor on August 10, 2021 and effective on August 10, 2021, and an Order of Award executed by the Mayor on August 18, 2021, the City issued its City of Salisbury Taxable Refunding Bonds of 2021 in the original principal amount of \$2,895,000 on September 1, 2021 (the “2021 Taxable Refunding Bonds”); and

WHEREAS, sale proceeds of the 2021 Taxable Refunding Bonds were applied to (i) currently refund and prepay in whole on September 1, 2021 the then-outstanding 2012 Taxable Bond, and (ii) pay or reimburse costs of issuance of the 2021 Taxable Refunding Bonds; and

WHEREAS, to the extent that unspent proceeds of the 2012 Taxable Bond (including investment earnings thereon) are treated as “transferred proceeds” of the 2021 Taxable Refunding Bonds for purposes of any applicable law, they are referred to as proceeds of the 2012 Taxable Bond for purposes of this Ordinance; and

WHEREAS, the City now wishes to allocate a \$180,000.00 portion of investment earnings on the 2012 Taxable Bond to a project that is not an Existing Project, which project is identified in the City’s fiscal year 2023 budget as “Raw Water Line at Naylor Mill Road” (the “2022 Additional Project”); and

WHEREAS, accordingly, the City desires to expand the list of the Projects, as set forth in Ordinance No. 2223, as amended and supplemented to date, in order to allow certain investment earnings on proceeds of the 2012 Taxable Bond to be applied to costs of the 2022 Additional Project, and to identify such 2022 Additional Project as a “Project” for all purposes of Ordinance No. 2223, as amended and supplemented.

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

(a) The Recitals to this Ordinance are incorporated by reference herein and deemed a substantive part of this Ordinance. Capitalized terms used in the Sections of this Ordinance that are not defined therein shall have the meanings given to such terms in the Recitals.

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(b) References in this Ordinance 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 this Ordinance to the application or use of proceeds of the 2012 Taxable Bond to fund costs of the 2022 Revised Projects (as defined in Section 2(e) hereof) shall be construed to refer to proceeds of the 2021 Taxable Refunding Bonds being used for such purpose to the extent such proceeds are treated as proceeds of the 2021 Taxable Refunding Bonds under applicable law.

(d) References in this Ordinance to “investment earnings” shall be construed to include interest income.

SECTION 2. BE IT FURTHER ORDAINED that:

(a) Pursuant to the authority of the Enabling Act, Sections SC7-45 and SC7-46 of the Charter and Ordinance No. 2223 (as amended and supplemented to date), from and after the effective date of this Ordinance, and subject to Sections 2(f) and 8 hereof, Section 3(b) of Ordinance No. 2223 is hereby deleted in its entirety and inserted in place thereof shall be the following:

“(b) With respect to the projects listed below, the word “costs” as used in Section 2 hereof shall include, as applicable, land and right-of-way acquisition and development; acquisition of other property rights; site and utility improvements, including, without limitation, grading, landscaping, paving, sidewalk, curb, gutter, storm drain, water and sewer improvements, and related or similar activities and expenses; demolition, razing and removal; acquisition, construction, expansion, reconstruction, replacement, renovation, rehabilitation, improvement, installation, furnishing and equipping activities and expenses, and related or similar activities and expenses; planning, design, engineering, architectural, feasibility, surveying, bidding, permitting, inspection, construction management, surveying, financial, legal and administrative expenses, and related or similar activities and expenses; 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. The total Bond (or BANs, as identified in Section 6 hereof) funds to

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be appropriated or applied to the costs of such projects (exclusive of any investment earnings that may be applied for such purposes) shall be allocated among the following public purpose projects in the maximum principal amount set forth opposite each, except as otherwise herein provided:

	<u>Project Name</u>	<u>Maximum Principal Amount</u>
1.	Caustic Chemical Feed Building	\$1,200,000.00
2.	Wastewater Treatment Plant Upgrade	2,360,300.00
3.	Sewer Infiltration and Inflow Remediation	900,000.00
4.	Replace Distribution Piping and Valves	100,000.00
5.	Restore Park Well Field	165,700.00
6.	Tank and Reservoir Mixing System	84,000.00
7.	Paleo Water Treatment Plant Roof Improvements	46,000.00
8.	Pump Station Building Improvements	610,000.00
9.	Park Water Treatment Electrical Gear Replacement	306,500.00
10.	Glen Avenue Lift Station	127,500.00
11.	Sewer Extension in Mt. Herman Road	100,000.00
12.	Costs of Issuance	50,000.00
13.	Raw Water Line at Naylor Mill Road	0(1)
	TOTAL	\$6,050,000.00

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

The projects and costs of issuance identified in items 1-13 above are collectively referred to herein as the “Projects”. The Projects described in items 1-13 above are identified by approximately the same names as such Projects are identified in City budget materials. The City, without notice to or the consent of any registered owners of the Bonds (or the registered owners of any of the BANs, as applicable), may reallocate the maximum principal amount of the Bonds (and of any of the BANs, as applicable) to be spent among any of the Projects identified herein in compliance with applicable budgetary procedures or applicable law, including, to the extent applicable, by resolution. Further, it is the intention of the Council that proceeds of the Bonds (or of any of the BANs, as applicable) may be spent on any applicable costs (as defined above) relating to the Projects identified in items 1-13 above, notwithstanding the descriptive names used for such Projects in the table above, including, without limitation, as the definitions of and/or the scopes of activities relating to the Projects may have already been, or may in the future be, amended or modified in accordance with applicable budgetary procedures or applicable law.”

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(b) Pursuant to the authority of the Enabling Act, Sections SC7-45 and SC7-46 of the Charter and Ordinance No. 2223 (as amended and supplemented to date), from and after the effective date of this Ordinance, and subject to Sections 2(f) and 8 hereof, Section 8(a) of Ordinance No. 2223 is hereby deleted in its entirety and inserted in place thereof shall be the following:

“SECTION 8. BE IT FURTHER ORDAINED that (a) unless otherwise provided by ordinance or resolution of the Council, as applicable, that portion of the principal of and interest on any series of the Bonds, the BANs or the Refunding Bonds, as applicable (each, a series of the “Obligations”), allocated to the costs of the Projects identified as (i) “Caustic Chemical Feed Building”, “Replace Distribution Piping and Valves”, “Restore Park Well Field”, “Tank and Reservoir Mixing System”, “Paleo Water Treatment Plant Roof Improvements”, “Pump Station Building Improvements,” “Park Water Treatment Electrical Gear Replacement” and “Raw Water Line at Naylor Mill Road” in Section 3(b) of this Ordinance 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) “Wastewater Treatment Plant Upgrade”, “Sewer Infiltration and Inflow Remediation”, “Glen Avenue Lift Station” and “Sewer Extension in Mt. Herman Road” in Section 3(b) of this Ordinance 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 Obligations when due, the City shall levy or cause to be levied, for each and every fiscal year during which any series of the Obligations may be outstanding, ad valorem taxes upon all real and tangible personal property within its corporate limits subject to assessment for unlimited municipal taxation in rate and amount sufficient to provide for the prompt payment, when due, of the principal of and interest on such series of the Obligations 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 8(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) Subject to the further provisions of this Ordinance, the Council hereby appropriates and allocates \$180,000.00 of investment earnings on the 2012 Taxable Bond to be applied to the costs of the 2022 Additional Project.

(d) By undertaking the amendments to Ordinance No. 2223, as amended and supplemented to date, provided for in subsections (a) and (b) above, the City is in effect (i) adding the 2022 Additional Project identified as “Raw Water Line at Naylor Mill Road” in subsection (a) above to the list of projects the costs of which may be financed or reimbursed from the original principal

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amount of the 2012 Taxable Bond and investment earnings thereon, (ii) allocating a \$180,000.00 portion of the investment earnings on the 2012 Taxable Bond to the 2022 Additional Project, (iii) to the extent any portion of the original principal amount of the 2012 Taxable Bond is subsequently reallocated to the 2022 Additional Project, identifying the source from which allocable debt service on such portion of the 2012 Taxable Bond will be payable in the first instance, and (iv) accounting for the reallocation of a portion of the original principal amount of the 2012 Taxable Bond previously provided for in Ordinance No. 2524.

(e) The projects identified in the table set forth in subsection (a) above (which amends Section 3(b) of Ordinance No. 2223, as amended and supplemented to date) are collectively referred to herein as the “2022 Revised Projects.” Subject to the provisions of subsection (f) below and Section 8 of this Ordinance, from and after the effective date of this Ordinance, all references to the Projects in Ordinance No. 2223, as amended and supplemented to date, shall be deemed to be references to the 2022 Revised Projects, as identified in this Ordinance. Subject to the provisions of subsection (f) below and Section 8 of this Ordinance, from and after the effective date of this Ordinance, the provisions of this Section 2 shall supersede the provisions of Section 3(b) of Ordinance No. 2223, as amended and supplemented to date, with respect to the application of the principal amount of the Authorized Bonds (which is the 2012 Taxable Bond because the maximum principal amount of “Bonds” authorized by Ordinance No. 2223 was issued as the 2012 Taxable Bond).

(f) Notwithstanding the foregoing provisions of this Section 2, 2012 Taxable Bond proceeds (including investment earnings thereon) may not be applied to costs of the 2022 Additional Project unless and until the City adopts a resolution making corresponding amendments to the provisions of Section 2(a) of Resolution No. 2236 (as amended and supplemented to date) to include the 2022 Additional Project in the list of Projects identified in Resolution No. 2236 (as amended and supplemented to date), thereby allowing proceeds of the 2012 Taxable Bond and investment earnings on the 2012 Taxable Bond to be applied to costs of the 2022 Additional Project.

(g) Subject to the provisions of the subsections above and Section 8 of this Ordinance, it is the intention of the Council that any investment earnings earned on the original principal amount of the 2012 Taxable Bond (i) prior to the effective date of this Ordinance, to the extent not already spent in accordance with the provisions of the Ordinance No. 2223 (as amended and supplemented to date), Resolution No. 2236 (as amended and supplemented to date) or applicable budgetary procedures or applicable law, and (ii) on and after the effective date of this Ordinance, shall be applied to costs of any of the 2022 Revised Projects; provided that, any such 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 ORDAINED that, subject to the provisions of Sections 2(f) and 8 of this Ordinance, \$180,000.00 of investment earnings on the 2012 Taxable Bond shall be allocated to the 2022 Additional Project as follows (for purposes of the City’s customary practice of allocating or reallocating sources of funding):

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Org	Object	Object Desc.	Project	Project Description			
96013	456110	Investment Interest		Unassigned	Revenue	Decrease	-180,000
96013	456110	Investment Interest	50048	Raw Water Line at Naylor Mill Road	Revenue	Increase	180,000
96013	513026	Construction	50048	Raw Water Line at Naylor Mill Road	Expenditure	Increase	180,000

SECTION 4. BE IT FURTHER ORDAINED that the Mayor, the City Administrator, the Director of Finance and all other appropriate officials and employees of the City are hereby authorized and empowered to take any and all action necessary or appropriate to provide for the application of proceeds of the 2012 Taxable Bond to finance or reimburse costs of the 2022 Additional Project and to execute and deliver all documents, certificates or instruments necessary or appropriate in connection therewith or in connection with the transactions contemplated by this Ordinance including, without limitation, any amendments, modifications or supplements to any documents, certificates or instruments delivered in connection with the 2012 Taxable Bond.

SECTION 5. BE IT FURTHER ORDAINED that from and after the effective date of this Ordinance, Ordinance No. 2223 (as amended and supplemented to date) shall be deemed amended and supplemented as provided herein and all other terms and provisions of Ordinance No. 2223 (as amended and supplemented to date) shall remain in full force and effect.

SECTION 6. BE IT FURTHER ORDAINED that the title of this Ordinance shall be deemed to be, and is, a fair statement of the substance of this Ordinance for posting and all other purposes.

SECTION 7. BE IT FURTHER ORDAINED that the provisions of this Ordinance shall be liberally construed in order to effectuate the transactions contemplated by this Ordinance.

SECTION 8. BE IT FURTHER ORDAINED that this Ordinance shall become effective following approval by the Mayor or subsequent passage by the Council following the Mayor's veto in accordance with the provision of Section SC2-12 of the Charter; provided, however, that, notwithstanding the effective date of this Ordinance, no portion of the original principal amount of the 2012 Taxable Bond or investment earnings thereon may be applied to costs of the 2022 Additional Project unless Resolution No. 2236 is amended and supplemented as described herein. Pursuant to Charter Section SC2-16, this Ordinance shall not be subject to petition to referendum.

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THIS ORDINANCE was introduced and read at a meeting of the Council of the City of Salisbury held on the 9th day of January, 2023, and thereafter, a statement of the substance of this Ordinance having been posted or published as required by law, was finally passed by the Council X [as introduced] _____ [as amended] [CHECK APPLICABLE LINE] on the 23rd day of January, 2023.

ATTEST:

Kimberly R. Nichols
Kimberly R. Nichols, City Clerk

Muir Boda
Muir Boda, President
Salisbury City Council

APPROVED BY ME THIS 24th DAY OF January , 2023.

Jacob R. Day
Jacob R. Day, Mayor

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