

Ordinance No. 2771

AN ORDINANCE OF THE COUNCIL (THE “COUNCIL”) OF THE CITY OF SALISBURY AMENDING AND SUPPLEMENTING ORDINANCE NO. 2357, PASSED BY THE COUNCIL ON OCTOBER 12, 2015, APPROVED BY THE MAYOR OF CITY OF SALISBURY (THE “CITY”) ON OCTOBER 14, 2015 AND EFFECTIVE ON OCTOBER 14, 2015 (“ORDINANCE NO. 2357”), AS AMENDED AND SUPPLEMENTED TO DATE, IN ORDER TO (1) AUTHORIZE AND EMPOWER 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 THE PROJECT IDENTIFIED HEREIN AS “RAW WATER LINE AT NAYLOR MILL ROAD”, AND (2) IDENTIFY SUCH ADDITIONAL PROJECT AS A “PROJECT” FOR ALL PURPOSES OF ORDINANCE NO. 2357 (AS AMENDED AND SUPPLEMENTED); PROVIDING THAT THIS TITLE IS A FAIR STATEMENT OF THE SUBSTANCE OF THIS ORDINANCE; AUTHORIZING CERTAIN CITY OFFICIALS TO TAKE CERTAIN ACTIONS IN CONNECTION WITH THE TRANSACTIONS CONTEMPLATED BY THIS ORDINANCE; PROVIDING THAT THE PROVISIONS OF THIS ORDINANCE 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”), is 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 collectively referred to as the “Original Authorized Projects” and referred to as the “Projects” in Ordinance No. 2357) 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. 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

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("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 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 installment 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 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 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. 2569); 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 original principal amount of the Authorized Bonds originally allocated to the Original Authorized Project identified as "Beaverdam Creek Tidal Dam Repair" to costs of the Original Authorized Project identified as "Main Street Master Plan;" and

WHEREAS, pursuant to Ordinance No. 2648, passed by the Council on January 25, 2021, approved by the Mayor on January 27, 2021 and effective on January 27, 2021 ("Ordinance No. 2648"), the City amended and supplemented Ordinance No. 2357 (as then amended and supplemented to date) to (i) allocate \$113,500.00 of investment earnings on the 2015 Bond to be applied to costs of a new project identified therein as "GOB Roof and Air Handler Replacement" and (ii) allocate \$90,000.00 of investment earnings on the 2015 Bond to be applied to costs of a new project identified therein as "WWTP HVAC," subject to the further provisions of Ordinance No. 2648; and

WHEREAS, the projects referred to in Ordinance No. 2648 as "GOB Roof and Air Handler Replacement" and "WWTP HVAC" are collectively referred to herein as the "2021 Additional Projects", and the Original Authorized Projects and the 2021 Additional Projects are collectively referred to herein as the "Existing Projects;" and

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WHEREAS, the City now wishes to allocate an \$80,000.00 portion of investment earnings on the 2015 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. 2357, as amended and supplemented to date, in order to allow certain investment earnings on proceeds of the 2015 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. 2357, 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.

(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 “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. 2357 (as amended and supplemented to date), from and after the effective date of this Ordinance, and subject to Sections 2(e) and 8 hereof, Section 3(b) of Ordinance No. 2357 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; site and utility improvements; acquisition, construction, expansion,

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demolition, reconstruction, replacement, renovation, rehabilitation, improvement, installation, furnishing and equipping activities and expenses, and related or similar costs; 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. The total Bond (or BANs, as identified in Section 6 hereof) funds to 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.	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)
7.	Raw Water Line at Naylor Mill Road	<u>0(3)</u>
	TOTAL	<u>\$4,726,200</u>

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

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

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

The projects identified in items 1-7 above are collectively referred to herein as the “Projects”. The Projects described in items 1-7 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 in compliance with applicable budgetary procedures or applicable law, including, to the extent applicable, by resolution. Further, it is the intention of the

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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, notwithstanding the descriptive names used for such Projects in the table above, including, without limitation, changes in scopes of the Projects identified above effected through applicable budgetary procedures or applicable law.”

(b) Subject to the further provisions of this Ordinance, the Council hereby appropriates and allocates \$80,000.00 of investment earnings on the 2015 Bond to be applied to costs of the 2022 Additional Project.

(c) By undertaking the amendments to Section 3(b) of Ordinance No. 2357, as amended and supplemented to date, provided for in subsection (a) of this Section 2, the City is in effect (i) adding the 2022 Additional Project identified as item 7 “Raw Water Line at Naylor Mill Road” 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 original principal amount of the 2015 Bond and investment earnings thereon, and (ii) allocating an \$80,000.00 portion of investment earnings on the 2015 Bond to the 2022 Additional Project. Such amendments also reflect (i) the reallocation of a portion of the original principal amount of the 2015 Bond provided for by Ordinance No. 2411 and (ii) the allocation of a portion of investment earnings on the 2015 Bond provided for in Ordinance No. 2648.

(d) The projects identified in the table set forth in subsection (a) above (which amends Section 3(b) of Ordinance No. 2357, as amended and supplemented to date) are collectively referred to herein as the “2022 Revised Projects.” Subject to the provisions of subsection (e) below and Section 8 of this Ordinance, from and after the effective date of this Ordinance, all references to the Projects in Ordinance No. 2357, 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 (e) 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. 2357, as amended and supplemented to date, with respect to the application of the principal amount of the Authorized Bonds (which is the 2015 Bond because the maximum principal amount of “Bonds” authorized by Ordinance No. 2357 was issued as the 2015 Bond).

(e) Notwithstanding the foregoing provisions of this Section 2, 2015 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. 2569 (as amended and supplemented to date) to include the 2022 Additional Project in the list of Projects identified in Resolution No. 2569 (as amended and supplemented to date), thereby allowing proceeds of the 2015 Bond and investment earnings on the 2015 Bond to be applied to costs of the 2022 Additional Project.

(f) 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 2015 Bond (i) prior to the effective date of this Ordinance, to the extent not already spent in

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accordance with the provisions of the Ordinance No. 2357 (as amended and supplemented to date), Resolution No. 2569 (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(e) and 8 of this Ordinance, \$80,000.00 of investment earnings on the 2015 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):

Org	Object	Object Desc.	Project	Project Description			
96016	456110	Investment Interest		Unassigned	Revenue	Decrease	-80,000
96016	456110	Investment Interest	50048	Raw Water Line at Naylor Mill Road	Revenue	Increase	80,000
96016	513026	Construction	50048	Raw Water Line at Naylor Mill Road	Expenditure	Increase	80,000

SECTION 4. BE IT FURTHER ORDAINED that, subject to the provisions of Sections 2(e) and 8 of this Ordinance, the Mayor, the City Administrator, the Director of Finance and all other appropriate officials and employees of the City, to the extent acting within the scope of their respective authority, are hereby authorized and empowered to take any and all action necessary or appropriate to provide for the application of the proceeds of the 2015 Bond to finance or reimburse costs of the 2022 Revised Projects and to approve, 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 2015 Bond.

SECTION 5. BE IT FURTHER ORDAINED that from and after the effective date of this Ordinance, Ordinance No. 2357 (as amended and supplemented to date) shall be deemed amended and supplemented as provided herein and all other terms and provisions of Ordinance No. 2357 (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.


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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 2015 Bond or investment earnings thereon may be applied to costs of the 2022 Additional Project unless Resolution No. 2569 is amended and supplemented as described herein. Pursuant to Charter Section SC2-16, this Ordinance shall not be subject to petition to referendum.

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, City Clerk



Muir Boda, President
Salisbury City Council

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



Jacob R. Day, Mayor

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