

Ordinance No. 2772

AN ORDINANCE OF THE COUNCIL (THE “COUNCIL”) OF THE CITY OF SALISBURY AMENDING AND SUPPLEMENTING ORDINANCE NO. 2394, PASSED BY THE COUNCIL ON JULY 18, 2016, APPROVED BY THE MAYOR OF CITY OF SALISBURY (THE “CITY”) ON JULY 19, 2016 AND EFFECTIVE ON JULY 19, 2016 (“ORDINANCE NO. 2394”), AS SUPPLEMENTED TO DATE, IN ORDER TO (1) AUTHORIZE AND EMPOWER THE CITY TO USE AND APPLY CERTAIN INVESTMENT EARNINGS ON THE \$20,030,000 CITY OF SALISBURY PUBLIC IMPROVEMENTS AND REFUNDING BONDS OF 2016 ISSUED ON JULY 28, 2016 (THE “2016 BONDS”) 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. 2394 (AS 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 2016 BONDS.

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. 2394, passed by the Council of the City (the “Council”) on July 18, 2016, approved by the Mayor of the City (the “Mayor”) on July 19, 2016 and effective on July 19, 2016 (“Ordinance No. 2394”), 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 Fifty-one Thousand Five Hundred Dollars (\$4,751,500.00) (the “Authorized Bonds”) in order to finance, reimburse or refinance “costs” (as defined in Section 3(b) of Ordinance No. 2394) of the projects identified in Section 3(b) of Ordinance No. 2394 as (1) “Spine Rail Trail”, (2) “Community Centers”, (3) “Riverside Circle”, (4) “Service Center Facility Plan Phase 1”, (5) “E-7 Inspector’s Truck”, (6) “S-14 2001 F-150 Dump Truck”, (7) “S-32 Hot Patch Trail Improvements”, (8) “Replacement of 1998 Roller”, (9) “Lemmon Hill Standpipe”, (10) “Fitzwater Street Lift Station – Phase II”, (11) “Belt Filter Press Rehabilitation”, (12) “Dump Truck”, (13) “Dump Truck WWTP”, (14) “Parking Garage Façade and Landscaping”, and (15) “Aquatic Weed Harvester with Unloading Conveyor” (herein collectively referred to as the “Original Authorized Projects” and referred to as the “Projects” in Ordinance No. 2394) in the maximum principal amounts set forth opposite each such Original 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. 2394, certain other ordinances identified in Resolution No. 2645 (defined herein), and Resolution No. 2645, adopted by the Council on July 18, 2016, approved by the Mayor on July 19, 2016 and effective on July 19, 2016 (“Resolution No. 2645”), the City issued on July 28, 2016 its \$20,030,000 City of Salisbury Public Improvement and Refunding Bonds of 2016 (the “2016 Bonds”): and

WHEREAS, the 2016 Bonds were issued in order to (i) finance or reimburse costs of the Original Authorized Projects, including allocable costs of issuance, and (ii) currently refund on the date of issuance of the 2016 Bonds certain outstanding obligations of the City and pay allocable costs of issuance, all as described in the Tax and Section 148 Certificate of the City dated July 28, 2016 (the “2016 Tax Certificate”); and

WHEREAS, that portion of the 2016 Bonds applied or to be applied for new money purposes (including paying allocable costs of issuance) was authorized by Ordinance No. 2394; and

WHEREAS, because the 2016 Bonds were sold by public sale at competitive bid, the City realized net original issue premium in connection with the sale of the 2016 Bonds that allowed it to reduce the par amount of the 2016 Bonds needed for new money purposes from the maximum par amount authorized for such purposes by Ordinance No. 2394, and thereby to allocate a portion of such net original issue premium, together with the par amount of the 2016 Bonds allocated to new money purposes, to fund the Original Authorized Projects in the maximum aggregate principal amount of \$4,751,500 contemplated by Ordinance No. 2394; and

WHEREAS, \$4,300,000 in par amount of the 2016 Bonds (which constitute the Authorized Bonds for purposes of Ordinance No. 2394), together with a portion of the net original issue premium paid with respect to the 2016 Bonds, was appropriated and allocated to the specified Original Authorized Projects identified below (which Original Authorized Projects are referred to as the “New Money Projects” in Resolution No. 2645), in the amounts set forth below, exclusive of allocable costs of issuance:

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	<u>Project Name</u>	<u>Maximum Amount</u>
1.	Spine Rail Trail	\$150,000
2.	Community Centers	500,000
3.	Riverside Circle	175,000
4.	Service Center Facility Plan Phase 1	102,000
5.	E-7 Inspector's Truck	30,000
6.	S-14 2001 F-150 Dump Truck	48,500
7.	S-32 Hot Patch Trailer Improvements	40,000
8.	Replacement of 1998 Roller	50,000
9.	Lemmon Hill Standpipe	100,000
10.	Fitzwater Street Lift Station – Phase II	2,690,000
11.	Belt Filter Press Rehabilitation	357,000
12.	Dump Truck	90,000
13.	Dump Truck WWTP	90,000
14.	Parking Garage Façade and Landscaping	200,000
15.	Aquatic Weed Harvester with Unloading Conveyor	129,000
	TOTAL	<u>\$4,751,500.00</u>

; and

WHEREAS, Ordinance No. 2394 provides that, without notice to or the consent of any registered owners of the Authorized Bonds, the City may reallocate the maximum principal amount of the Authorized Bonds to be spent among any of the Original Authorized Projects in compliance with applicable budgetary procedures or applicable law; and

WHEREAS, the 2016 Tax Certificate identifies that portion of the par amount of the 2016 Bonds, together with that portion of the net original issue premium on the 2016 allocated to costs of the Original Authorized Projects (which are identified as the “New Money Projects” in the 2016 Tax Certificate), including allocable costs of issuance, as the “New Money Portion” of the 2016 Bonds; and

WHEREAS, pursuant to Ordinance No. 2544, passed by the Council on June 10, 2019 (“Ordinance No. 2544”), the City in effect supplemented Ordinance No. 2394 to (i) reallocate \$129,000.00 of the total amount of the New Money Portion of the 2016 Bonds allocated to the Original Authorized Project identified as “Aquatic Weed Harvester with Unloading Conveyor” to the Original Authorized Project identified as “Riverside Circle,” (ii) reallocate \$500.00 of the total amount of the New Money Portion of the 2016 Bonds allocated to the Original Authorized Project identified as “Spine Rail Trail” to the Original Authorized Project identified as “Riverside Circle,” (iii) reallocate \$4,189.10 of the New Money Portion of the 2016 Bonds originally allocated to costs of issuance to the Original Authorized Project identified as “Riverside Circle,” and (iv) allocate

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\$42,225.38 of investment earnings on the New Money Portion of the 2016 Bonds to the Original Authorized Project identified as “Riverside Circle,” without differentiating between the principal amount of the New Money Portion of the 2016 Bonds and the net original issue premium constituting a portion of the New Money Portion of the 2016 Bonds so allocated to costs of the Original Authorized Projects; and

WHEREAS, pursuant to Ordinance No. 2544, the Council in effect provided that no portion of the proceeds of the New Money Portion of the 2016 Bonds would be applied to the Original Authorized Project identified “Aquatic Weed Harvester with Unloading Conveyor;” and

WHEREAS, the City now wishes to allocate a \$40,000.00 portion of investment earnings on the New Money Portion of the 2016 Bonds to a project that is not one of the Original Authorized Projects, 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, the City desires to expand the list of the Projects as set forth in Ordinance No. 2394, as supplemented to date, in order to allow certain investment earnings on the New Money Portion of the 2016 Bonds 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. 2394, as amended 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.

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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. 2394 (as 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. 2394 (as supplemented to date) 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, 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, bidding, inspection, construction management, surveying, permitting, financial and legal expenses, and related or similar activities and expenses; 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 premium realized upon sale or 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:

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	<u>Project Name</u>	<u>Maximum Principal Amount</u>
1.	Spine Rail Trail	\$149,500
2.	Community Centers	500,000
3.	Riverside Circle	304,500
4.	Service Center Facility Plan Phase 1	102,000
5.	E-7 Inspector's Truck	30,000
6.	S-14 2001 F-150 Dump Truck	48,500
7.	S-32 Hot Patch Trailer Improvements	40,000
8.	Replacement of 1998 Roller	50,000
9.	Lemmon Hill Standpipe	100,000
10.	Fitzwater Street Lift Station – Phase II	2,690,000
11.	Belt Filter Press Rehabilitation	357,000
12.	Dump Truck	90,000
13.	Dump Truck WWTP	90,000
14.	Parking Garage Façade and Landscaping	200,000
15.	Aquatic Weed Harvester with Unloading Conveyor	0
16.	Raw Water Line at Naylor Mill Road	0(1)
	TOTAL	<u>\$4,751,500.00</u>

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

The projects identified in items 1-16 above are collectively referred to herein as the “Projects”. The Projects described in items 1-16 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 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 1-16 above, 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.”

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(b) Subject to the further provisions of this Ordinance, the Council hereby appropriates and allocates \$40,000.00 of investment earnings on the New Money Portion of the 2016 Bonds to be applied to costs of the 2022 Additional Project.

(c) By undertaking the amendments to Section 3(b) of Ordinance No. 2394, as 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 16 “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 Bonds contemplated by Ordinance No. 2394 and investment earnings thereon, without taking into account the fact that a portion of net original issue premium allocated to the New Money Portion of the 2016 Bonds is being applied to pay costs of the Original Authorized Projects, and (ii) recognizing that investment earnings on the New Money Portion of the 2016 Bonds will be allocated to the 2022 Additional Project. Such amendments also reflect the reallocation of a portion of the New Money Portion of the 2016 Bonds made by Ordinance No. 2544 among the Original Authorized Projects, without taking into account the fact that net original issue premium constituting a component of the New Money Portion of the 2016 Bonds was applied to fund a portion of the costs of such Original Authorized Projects. Such amendments do not specifically account for the application of investment earnings on the New Money Portion of the 2016 Bonds to the Original Authorized Project identified as “Riverside Circle” as previously provided for by Ordinance No. 2544. While to date no proceeds of the New Money Portion of the 2016 Bonds have been spent on the Original Authorized Project identified as “Aquatic Weed Harvester with Unloading Conveyor” in Ordinance No. 2394, the City is not removing that Original Authorized Project from the list of Projects identified in Ordinance No. 2394, as amended and supplemented, including by this Ordinance.

(d) The projects identified in the table set forth in subsection (a) above (which amends Section 3(b) of Ordinance No. 2394, as 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. 2394, as 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. 2394, as supplemented to date, with respect to the application of the principal amount of the Authorized Bonds as authorized by Ordinance No. 2394.

(e) Notwithstanding the foregoing provisions of this Section 2, proceeds of the New Money Portion of the 2016 Bonds (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. 2645 to include the 2022 Additional Project in the list of Projects identified in Resolution No. 2645, thereby allowing proceeds of the New Money Portion of the 2016 Bonds (including investment earnings thereon) to be applied to costs of the 2022 Additional Project.

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(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 New Money Portion of the 2016 Bonds (i) prior to the effective date of this Ordinance, to the extent not already spent in accordance with the provisions of the Ordinance No. 2394 (as supplemented to date), Resolution No. 2645 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, \$40,000.00 of investment earnings on the 2016 Bonds 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			
96017	456110	Investment Interest		Unassigned	Revenue	Decrease	-40,000
96017	456110	Investment Interest	50048	Raw Water Line at Naylor Mill Road	Revenue	Increase	40,000
96017	513026	Construction	50048	Raw Water Line at Naylor Mill Road	Expenditure	Increase	40,000

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 2016 Bonds 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 2016 Bonds.

SECTION 5. BE IT FURTHER ORDAINED that from and after the effective date of this Ordinance, Ordinance No. 2394 (as supplemented to date) shall be deemed amended and supplemented as provided herein and all other terms and provisions of Ordinance No. 2394 (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 New Money Portion of the 2016 Bonds or investment earnings thereon may be applied to costs of the 2022 Additional Project unless Resolution No. 2645 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 9<sup>th</sup> 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 23<sup>rd</sup> day of January, 2023.

ATTEST:

  
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Kimberly R. Nichols, City Clerk

  
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Muir Boda, President  
Salisbury City Council

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

  
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Jaqob R. Day, Mayor

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