

Resolution No. 1874

A RESOLUTION OF THE COUNCIL OF THE CITY OF SALISBURY ENTITLED A RESOLUTION SUPPLEMENTING AND AMENDING RESOLUTION NO. 1850, ADOPTED BY THE COUNCIL ON OCTOBER 26, 2009, APPROVED BY THE MAYOR ON OCTOBER 26, 2009 AND EFFECTIVE ON OCTOBER 26, 2009, IN ORDER TO AUTHORIZE AND EMPOWER CITY OF SALISBURY TO USE AND APPLY A PORTION OF THE PROCEEDS OF THE \$2,600,000 CITY OF SALISBURY PUBLIC IMPROVEMENTS BOND OF 2009 ISSUED ON NOVEMBER 6, 2009 (THE "2009 BOND") FOR THE PUBLIC PURPOSE OF FINANCING, REIMBURSING OR REFINANCING COSTS OF THE PLANNING, DESIGN, ENGINEERING, RETROFITTING, REWORKING AND MODIFICATION OF EXISTING AND PLANNED COMPONENTS OF THE CITY'S WASTEWATER TREATMENT PLANT AND SYSTEM AND, IN CONNECTION THEREWITH, ACQUIRING OR PAYING FOR, AS THE CASE MAY BE, NECESSARY PROPERTY RIGHTS AND EQUIPMENT, RELATED SITE AND UTILITY IMPROVEMENTS, RELATED ARCHITECTURAL, FINANCIAL, LEGAL, PLANNING, DESIGN, ENGINEERING, CONSTRUCTION, RECONSTRUCTION, RENOVATION, MODIFICATION, IMPROVEMENT AND EQUIPPING EXPENSES AND COSTS OF ANY RELATED STUDIES IN ADDITION TO THE PURPOSES ORIGINALLY CONTEMPLATED BY RESOLUTION NO. 1850; AUTHORIZING, DIRECTING OR EMPOWERING CITY OFFICIALS AND EMPLOYEES TO TAKE CERTAIN ACTIONS WITH RESPECT TO THE 2009 BOND; AND OTHERWISE GENERALLY RELATING TO THE USE OF PROCEEDS OF THE 2009 BOND.

RECITALS

WHEREAS, City of Salisbury, a municipal corporation of the State of Maryland (the "City"), is authorized and empowered by Sections 31 to 37, inclusive, of Article 23A 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 published in Municipal Charters of Maryland, Volume 7, 20008 Replacement Edition, 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 Ordinance No. 2071, adopted by the Council of the City on January 26, 2009, approved by the Mayor on January 27, 2009 and effective on January 27, 2009 ("Ordinance No. 2071"), the City authorized the issuance and sale from time to time of its general obligation bonds in one or more series in an aggregate principal amount not to exceed Three Million Eight Hundred Twenty Thousand Dollars (\$3,820,000.00) for the public purpose of financing, reimbursing or refinancing costs of upgrading and improving the City's wastewater treatment plant and system by undertaking one or more of the following activities: adding odor control improvements at various pump stations, adding diminutors and comminutors at various pump stations, upgrading lift stations, and undertaking other improvements in order to generally upgrade and improve such plant and system, and, in connection therewith, acquiring or paying for, as the case may be, necessary property rights and equipment, related site and utility improvements, related architectural, financial, legal, planning, design, engineering, construction, improvement and equipping expenses and costs of issuance and, to the extent determined by the

Council pursuant to the Resolution (as defined in Section 6 of Ordinance No. 2071) paying interest during construction and for a reasonable period thereafter; and

WHEREAS, pursuant to the authority of Ordinance No. 2071, Ordinance No. 2044, passed by the Council of the City on December 17, 2007, approved by the Mayor on December 19, 2007 and effective on December 19, 2007 (“Ordinance No. 2044”), as supplemented, and Resolution No. 1850, adopted by the Council of the City on October 26, 2009, approved by the Mayor on October 26, 2009 and effective on October 26, 2009 (“Resolution No. 1850”), on November 6, 2009 the City issued and delivered to Hebron Savings Bank its Public Improvements Bond of 2009 in the principal amount of Two Million Six Hundred Thousand Dollars (\$2,600,000.00) (the “2009 Bond”); and

WHEREAS, Section 2(a) of Resolution No. 1850 provides that proceeds of the 2009 Bond shall be appropriated and allocated for the public purpose of financing or reimbursing the following, in the maximum principal amount indicated in parentheses in each of the following clauses (i) through (iii) (exclusive of any investment earnings that may be applied for such purposes): (i) costs (as defined in Section 3(b) of Ordinance No. 2044) of the project identified therein as “Salisbury Zoo – Animal Health Building Construction” (maximum principal amount: \$500,000.00), (ii) costs of upgrading and improving the City’s wastewater treatment plant and system by undertaking one or more of the following activities: adding odor control improvements at various pump stations, adding diminutors and comminutors at various pump stations, and undertaking other improvements in order to generally upgrade and improve such plant and system, and, in connection therewith, acquiring or paying for, as the case may be, necessary property rights and equipment, related site and utility improvements, related architectural, financial, legal, planning, design, engineering, construction, improvement and equipping expenses (maximum principal amount: \$2,083,000.00), and (iii) costs of issuance (maximum principal amount: \$17,000.00, \$3,400.00 being allocable to the project identified in clause (i) and \$13,600.00 being allocable to the project identified in clause (ii)); and

WHEREAS, the project described in clause (i) of the preceding Recital and the allocable portion of the costs of issuance of the 2009 Bond identified in clause (iii) of the preceding Recital was authorized by Ordinance No. 2044, and the project described in clause (ii) of the preceding Recital and the allocable portion of the costs of issuance of the 2009 Bond identified in clause (iii) of the preceding Recital was authorized by Ordinance No. 2071; and

WHEREAS, since the passage of Ordinance No. 2071, the adoption of Resolution No. 1850 and the issuance of the 2009 Bond, the City has determined to expand the purposes to which the portion of the proceeds of the 2009 Bond as described in clause (ii) of the second preceding WHEREAS clause may be applied; and

WHEREAS, on December 14, 2009, the Council introduced Ordinance No. 2093 (“Ordinance No. 2093”) providing for an expansion of the project authorized by Ordinance No. 2071; and

WHEREAS, accordingly, the City desires to revise the description of that component of the project identified in clause (ii) of Section 2(a) of Resolution No. 1850 in order to expand the scope

of activities to which a portion of the proceeds of the 2009 Bond may be applied, as further described herein; and

WHEREAS, by the adoption of this Resolution, the City does *not* intend to amend, modify or supplement the purposes to which the portion of the proceeds of the 2009 Bond issued pursuant to the authority of Ordinance No. 2044 (relating to the Salisbury Zoo – Animal Health Building Construction and allocable costs of issuance) may be applied.

SECTION 1. NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SALISBURY, MARYLAND that (a) pursuant to the authority of the Enabling Act, the Charter and Ordinance No. 2071, subsection (a) of Section 2 of Resolution No. 1850 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, Ordinance No. 2044 and Ordinance No. 2071, the City hereby determines to borrow money and incur indebtedness for the public purpose of financing or reimbursing the following, in the maximum principal amount indicated in parentheses in each of the following clauses (i) through (iii) (exclusive of any investment earnings that may be applied for such purposes): (i) costs (as defined in Section 3(b) of Ordinance No. 2044) of the project identified therein as “Salisbury Zoo – Animal Health Building Construction” (maximum principal amount: \$500,000.00), (ii)(A) costs of the planning, design, engineering, retrofitting, reworking, and modification of existing and planned components of the City’s wastewater treatment plant and system and, in connection therewith, acquiring or paying for, as the case may be, necessary property rights and equipment, related site and utility improvements, related architectural, financial, legal, planning, design, engineering, construction, reconstruction, renovation, modification, improvement and equipping expenses and costs of any related studies and (B) costs of upgrading and improving the City’s wastewater treatment plant and system by undertaking one or more of the following activities: adding odor control improvements at various pump stations, adding diminutors and comminutors at various pump stations, upgrading lift stations, and undertaking other improvements in order to generally upgrade and improve such plant and system, and, in connection therewith, acquiring or paying for, as the case may be, necessary property rights and equipment, related site and utility improvements, related architectural, financial, legal, planning, design, engineering, construction, improvement and equipping expenses (maximum principal amount: \$2,083,000.00), and (iii) costs of issuance (maximum principal amount: \$17,000.00, \$3,400.00 being allocable to the project identified in clause (i) and \$13,600.00 being allocable to the project identified in clause (ii)) (collectively, the “Project”).

(b) By undertaking the amendments to Section 2(a) of Resolution No. 1850 provided for in subsection (a) of this Section 1, the City is modifying and expanding the description of that portion of the Project (as defined in Resolution No. 1850) described in clause (ii) of Section 2(a) of Resolution No. 1850 in order to change and expand the scope of activities for which a portion of the proceeds of the 2009 Bond may be applied. From and after the effective date of this Resolution, all references to the Project in Resolution No. 1850 shall be deemed to be references to the Project as identified in subsection (a) above. Subject to the provisions of subsection (c) below, from and after the effective date of this Resolution, the provisions of this Section 1 shall supersede the provisions of the Recitals of and Section 2(a) of Resolution No. 1850 with respect to the application of the proceeds of the 2009 Bond.

(c) Notwithstanding the foregoing provisions of this Section 1, proceeds of the 2009 Bond may not be applied to costs of the Project, as so modified and expanded in subsection (a) above, unless and until Ordinance No. 2093 becomes effective in accordance with its terms.

SECTION 2. BE IT FURTHER RESOLVED that, subject to the provisions of Section 1(c) of this Resolution, the City Administrator and the Director of Internal Services are hereby authorized and empowered to supplement the Tax and Section 148 Certificate dated November 6, 2009, executed and delivered in connection with the issuance of the 2009 Bond, in order to evidence the expectations of the City as to the application of the proceeds of the 2009 Bond following the effective date of this Resolution.

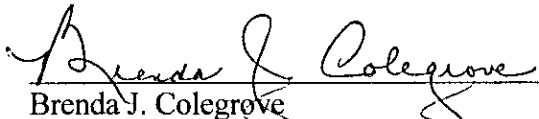
SECTION 3. BE IT FURTHER RESOLVED that, subject to the provisions of Section 1(c) of this Resolution, the Mayor, the City Administrator, the Director of Internal Services, the City Clerk and all other appropriate officials and employees of the City, as applicable, are hereby authorized and directed to take any and all action necessary to provide for application of the proceeds of the 2009 Bond to finance or reimburse the costs of the Project, as modified and expanded in Section 1(a) hereof, and to execute and deliver all documents, certificates and instruments necessary or appropriate in connection therewith or in connection with the transactions contemplated by this Resolution.


SECTION 4. BE IT FURTHER RESOLVED that, subject to the provisions of Section 1(c) of this Resolution, from and after the effective date of this Resolution, Resolution No. 1850 shall be deemed supplemented and amended as provided herein and all other terms and provisions of Resolution No. 1850 shall remain in full force and effect.

SECTION 5. BE IT FURTHER RESOLVED that this Resolution shall become effective upon adoption by the Council and approval by the Mayor; provided, however, in the event Ordinance No. 2093 making corresponding amendments to the provisions of Section 2 of Ordinance No. 2071 to allow proceeds of the 2009 Bond to be applied to costs of the Project, as modified and expanded as provided for in Section 1(a) of this Resolution, fails to become effective in accordance with its terms and the Charter, the City may not apply proceeds of the 2009 Bond for such purpose, notwithstanding the effective date of this Resolution. 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 21st day of December, 2009, and was adopted by the Council as introduced on the 21st day of December, 2009.

ATTEST:


Brenda J. Colegrove
CITY CLERK


Louise Smith
PRESIDENT, City Council

Approved by me this 24th day of
December, 2009.


James Ireton, Jr.
MAYOR, City of Salisbury