

Ordinance No. 2317

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SALISBURY (THE "COUNCIL") ENTITLED AN ORDINANCE AMENDING AND SUPPLEMENTING ORDINANCE NO. 1870, PASSED BY THE COUNCIL ON JANUARY 27, 2003, APPROVED BY THE MAYOR ON FEBRUARY 3, 2003 AND EFFECTIVE ON FEBRUARY 3, 2003, AS AMENDED BY ORDINANCE NO. 1888, PASSED BY THE COUNCIL ON DECEMBER 22, 2003, APPROVED BY THE MAYOR ON JANUARY 5, 2004 AND EFFECTIVE ON JANUARY 5, 2004, AND AS FURTHER AMENDED BY ORDINANCE NO. 2081, PASSED BY THE COUNCIL ON AUGUST 10, 2009, APPROVED BY THE MAYOR ON AUGUST 10, 2009 AND EFFECTIVE ON AUGUST 10, 2009, IN ORDER TO AUTHORIZE AND EMPOWER CITY OF SALISBURY (THE "CITY") TO USE AND APPLY A PORTION OF THE PROCEEDS OF THE \$5,614,000 THE CITY OF SALISBURY INFRASTRUCTURE BOND, 2003 SERIES A ISSUED ON JUNE 18, 2003 (THE "2003 BOND") AND HELD BY THE TRUSTEE FOR CERTAIN BONDS OF THE COMMUNITY DEVELOPMENT ADMINISTRATION IDENTIFIED HEREIN FOR THE PUBLIC PURPOSE OF FUNDING COSTS OF CERTAIN PROJECTS IDENTIFIED AS FOLLOWS: (I) CITY PARK TENNIS COURT LIGHTING IMPROVEMENTS AND (II) MARINA SIGNAGE AND FENCE IMPROVEMENTS, IN ADDITION TO THE PROJECTS IDENTIFIED IN ORDINANCE NO. 1870, AS AMENDED BY ORDINANCE NO. 1888 AND ORDINANCE NO. 2081; AUTHORIZING AND DIRECTING OFFICIALS OF THE CITY TO APPROVE, EXECUTE AND DELIVER AMENDMENTS, MODIFICATIONS OR SUPPLEMENTS TO CERTAIN DOCUMENTS, AGREEMENTS, CERTIFICATES AND INSTRUMENTS EXECUTED AND DELIVERED IN CONNECTION WITH THE ISSUANCE OF THE 2003 BOND OR THE \$4,828,000 CITY OF SALISBURY PUBLIC IMPROVEMENTS REFUNDING BOND, SERIES 2011B BOND (THE "2011B BOND"), PROCEEDS OF WHICH WERE APPLIED TO REFUND AND REDEEM THE 2003 BOND, AND SUCH ADDITIONAL DOCUMENTS, AGREEMENTS, CERTIFICATES OR INSTRUMENTS AS MAY BE NECESSARY OR DESIRABLE IN ORDER TO REFLECT OR EFFECTUATE MATTERS PROVIDED FOR IN THIS ORDINANCE; PROVIDING THAT THE PROVISIONS OF THIS ORDINANCE SHALL BE LIBERALLY CONSTRUED; PROVIDING THAT THIS TITLE IS A FAIR STATEMENT OF THE SUBSTANCE OF THIS ORDINANCE; AND OTHERWISE GENERALLY RELATING TO THE USE OF PROCEEDS OF THE 2003 BOND AND THE 2011B BOND.

RECITALS

WHEREAS, City of Salisbury (the "Issuer" or the "City") is a municipal corporation of the State of Maryland organized and operating under a charter (the "Charter") adopted in accordance with Article XI-E of the Constitution of Maryland and Article 23A of the Annotated Code of Maryland, as amended (now codified in the Local Government Article of the Annotated Code of Maryland, as amended); and

WHEREAS, pursuant to Ordinance No. 1870, passed by the Council of the Issuer (the "Council") on January 27, 2003, approved by the Mayor of the Issuer (the "Mayor") on February 3, 2003 and effective on February 3, 2003 ("Ordinance No. 1870") and the authority of Subtitle 2 of Title 2 of Article 83B of the Annotated Code of Maryland (now codified at Subtitle 2 of Title 4 of the

Housing and Community Development Article of the Maryland Code, and as amended, the "Act"), the Issuer on June 18, 2003 issued its The City of Salisbury Infrastructure Bond, 2003 Series A in the aggregate principal amount of \$5,614,000 (the "2003 Bond") in order to provide a portion of funds needed for costs of certain projects identified in Ordinance No. 1870, issuance costs, bond insurance premiums and other related costs (collectively, the "Original Project"); and

WHEREAS, the 2003 Bond constitutes the "Bonds" as identified in Ordinance No. 1870 and was sold to the Community Development Administration, an agency in the Division of Development Finance of the Department of Housing and Community Development, a principal department of the government of the State of Maryland (the "Administration"), in connection with the Local Government Infrastructure Financing Program of the Administration (the "Program") in order to evidence a loan from the Administration to the Issuer to finance Development Costs of the Original Project (which is referred to in the Original Repayment Agreement identified below as the "Project"); and

WHEREAS, the 2003 Bond, together with certain obligations of other borrowers issued to the Administration pursuant to the Program, secures the repayment of the \$14,560,000 Community Development Administration Local Government Infrastructure Bonds (Ambac Insured), 2003 Series A (the "2003 Administration Bonds"); and

WHEREAS, in connection with the issuance of the 2003 Bond to the Administration, (i) the Issuer and the Administration entered into a Repayment Agreement dated as of March 1, 2003 (the "Original Repayment Agreement") and a Pledge Agreement dated as of March 1, 2003 (the "Original Pledge Agreement"), and (ii) the Issuer executed and delivered certain additional documents, agreements, certificates or instruments (collectively with the Original Pledge Agreement and the Original Repayment Agreement, the "Original Program Documents"), including, without limitation, a Local Government General Certificate dated June 18, 2003 (the "Original General Certificate"), which Original General Certificate, among other matters, contains certain representations and covenants of the Issuer as to the use of the proceeds of the 2003 Bond and the Original Project and as to compliance with the provisions of the Internal Revenue Code of 1986, as amended and the Income Tax Regulations promulgated thereunder (collectively, the "Code"); and

WHEREAS, pursuant to Ordinance No. 1888, passed by the Council on December 22, 2003, approved by the Mayor on January 5, 2004 and effective on January 5, 2004 ("Ordinance No. 1888" and, together with Ordinance No. 1870, the "2004 Amended Ordinance"), the Issuer amended Ordinance No. 1870 in order to allow proceeds of the 2003 Bond to be applied to an additional project described in Ordinance No. 1888 as the Northeast Collector Road Project (the "2004 Additional Project" and, together with the Original Project, the "2004 Modified Project"); and

WHEREAS, although the Issuer enacted Ordinance No. 1888 to modify the definition of the Project as set forth in Ordinance No. 1870 to include the 2004 Additional Project, and proceeds of the 2003 Bond were subsequently applied to fund Development Costs of the 2004 Additional Project, the Issuer and the Administration, as applicable, did not execute and deliver amendments, modifications or supplements to the 2003 Bond or the Original Program Documents in 2004 to reflect use of the 2003 Bond for such purpose; and

WHEREAS, due to achieved costs savings with respect to 2004 Modified Project, pursuant to Ordinance No. 2081, passed by the Council on August 10, 2009, approved by the Mayor on August 10, 2009 and effective on August 10, 2009 (“Ordinance No. 2081” and, together with the 2004 Amended Ordinance, the “Existing Ordinance”), the Issuer amended the 2004 Amended Ordinance in order to allow proceeds of the 2003 Bond to be applied to additional projects identified in Ordinance No. 2081 as (i) Mill Street Storm Drain Upgrade Engineering, (ii) South Baptist Street Storm Drain Construction, (iii) Northeast Collector Road Hike and Bike Trail, (iv) Circle Avenue Bridge Repair, and (v) Springfield Circle Storm Drain Repair Construction (collectively, the “2009 Additional Project” and, together with the 2004 Modified Project, the “2009 Modified Project”); and

WHEREAS, in order to allow for application of proceeds of the 2003 Bond to the 2009 Additional Project, the Issuer (i) executed and delivered a Supplemental Local Government General Certificate dated August 20, 2009, supplementing the Original General Certificate (the “2009 Supplemental General Certificate” and, together with the Original General Certificate, the “2009 Modified General Certificate”), (ii) entered into a First Amendment and Supplement to Repayment Agreement dated as of August 1, 2009 with the Administration, amending and supplementing the Original Repayment Agreement (the “2009 Repayment Agreement Amendment” and, together with the Original Repayment Agreement, the “2009 Modified Repayment Agreement”), and (iii) entered into an Agreement to Amend The City of Salisbury Infrastructure Bond, 2003 Series A dated as of August 1, 2009 with the Administration in order to add the 2004 Additional Project and the 2009 Additional Project to the list of projects set forth in the third paragraph of the bond certificate for the 2003 Bond; and

WHEREAS, the 2009 Supplemental General Certificate and the 2009 Repayment Agreement Amendment contain certain covenants, representations, certifications and agreements of the Issuer with respect to the 2004 Additional Project in addition to the 2009 Additional Project; and

WHEREAS, on December 13, 2011, the Issuer issued its \$4,828,000 City of Salisbury Public Improvements Refunding Bond, Series 2011B (the “2011B Bond”), proceeds of which were applied, in part, to advance refund the then-outstanding principal amount of the 2003 Bond; and

WHEREAS, as of the date of issuance of the 2011B Bond, the Issuer expected to have fully expended proceeds of the 2003 Bond prior to June 1, 2013; and

WHEREAS, the 2003 Bond was fully redeemed and retired as of June 1, 2013 in accordance with the provisions thereof, but due to unforeseen circumstances, certain proceeds of the 2003 Bond remain unexpended and are held by the trustee for the 2003 Administration Bonds (the “2003 Trustee”); and

WHEREAS, pursuant to the provisions of the Code, the unexpended proceeds of the 2003 Bond are considered “transferred proceeds” of the 2011B Bond; and

WHEREAS, notwithstanding the prior redemption and retirement of the 2003 Bond, the Issuer has not satisfied all the Local Government Requirements as provided for and defined in the 2009 Modified Repayment Agreement, and, accordingly, the Issuer must obtain the Administration’s consent and approval with regard to application of the unexpended proceeds of the 2003 Bond; and

WHEREAS, the Issuer desires to amend and supplement the Existing Ordinance in order to allow unexpended proceeds of the 2003 Bond to be applied to fund costs of certain additional projects identified as follows: (i) City Park Tennis Lighting Improvements and (ii) Marina Signage and Fence Improvements; and

WHEREAS, accordingly, the Issuer desires to revise the description of the 2009 Modified Project as set forth in the Existing Ordinance and certain other documents, agreements, certificates and instruments executed and delivered by the Issuer in connection with the 2003 Bond or the 2011B Bond and to make or ratify certain covenants, agreements and representations with respect to the use of proceeds of the 2003 Bond, the 2003 Administration Bonds and the 2011B Bond as described herein and related matters.

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 this Ordinance and defined in the Recitals shall have the meanings given to such terms in the Recitals except as otherwise provided in this Ordinance.

(b) References in this Ordinance to any official by title shall be deemed to refer (i) to any official authorized under the Charter of the City (the “Charter”) or other applicable law 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 capacity under the Charter, the code of City ordinances (the “City Code”) or other applicable law, (iii) to any person who serves in a “Deputy” or “Assistant” capacity as such an official, provided that the applicable responsibilities, rights or duties referred to herein have been delegated to such deputy or assistant in accordance with 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.

SECTION 2. BE IT FURTHER ORDAINED that (a) from and after the effective date of this Ordinance the projects identified as follows shall be added to the description of the 2009 Modified Project contained in the Existing Ordinance and proceeds of the 2003 Bond may be applied to fund Development Costs (as defined in the Original Repayment Agreement) of such additional projects in accordance with the Original Program Documents, as amended, modified or supplemented to date and as the same may be further amended, modified or supplemented as provided for herein: (i) City Park Tennis Lighting Improvements and (ii) Marina Signage and Fence Improvements (collectively, the “2015 Additional Project” and, together with the 2009 Modified Project, the “2015 Modified

Project”). It is the intention of the Issuer that proceeds of the 2003 Bond may be applied to fund any expenditures of the 2015 Additional Project that are contemplated by applicable City budgets and that are permitted by the Administration as Development Costs of the 2015 Additional Project. The Issuer, by enactment of this Ordinance, expressly acknowledges the Administration’s authority to approve expenditure of proceeds of the 2003 Bond.

(b) By undertaking the amendments to the Existing Ordinance provided for in subsection (a) of this Section 2, the Issuer is revising the definition of the “Project” as contained in Ordinance No. 1870 (referred to herein as the Original Project), as modified by the 2004 Additional Project identified in Ordinance No. 1888 and the 2009 Additional Project identified in Ordinance No. 2081, to include the 2015 Additional Project, and proceeds of the 2003 Bond may be applied to fund Development Costs of the 2015 Additional Project in addition to Development Costs of the Original Project, the 2004 Additional Project and the 2009 Additional Project as previously identified in the Existing Ordinance. From and after the effective date of this Ordinance, all references to the “Project” in the Existing Ordinance shall be deemed to include the 2015 Additional Project. From and after the effective date of this Ordinance, the provisions of this Section 2 shall amend the provisions of the Recitals of and Section 6 of Ordinance No. 1870, the provisions of Ordinance No. 1888 and the provisions of Section 2 of Ordinance No. 2081 with respect to the application of proceeds of the 2003 Bond, and it is intended that proceeds of the 2003 Bond may be applied to fund Development Costs of the 2015 Modified Project.

(c) References in this Ordinance to the application or use of proceeds of the 2003 Bond to fund Development Costs of the 2015 Modified Project shall be construed to mean (i) for purposes of the Act, the 2009 Modified Repayment Agreement and the 2009 Modified General Certificate, as the same may be amended, modified or supplemented as provided for herein, use of such proceeds held by the 2003 Trustee to finance or reimburse Development Costs of the 2015 Modified Project and (ii) to the extent applicable for purposes of the Code, expenditure or application of such proceeds as “transferred proceeds” of the 2011B Bond.

SECTION 3. BE IT FURTHER ORDAINED that (a) the Mayor is hereby authorized and directed to approve, execute and deliver, on behalf of the Issuer, any amendments, modifications or supplements to the 2009 Modified Repayment Agreement or the Original Pledge Agreement deemed necessary or desirable by the Administration in order to provide for or reflect the use of proceeds of the 2003 Bond to fund Development Costs of the 2015 Additional Project and related matters, including, without limitation, to modify the definition of “Project” contained therein to include the 2015 Additional Project. Any such amendments, modifications or supplements shall be in such form and shall contain such terms and conditions as shall be approved by the Mayor and acceptable to the Administration, and the execution thereof by the Mayor shall be conclusive evidence of his approval of the form and substance thereof.

(b) The appropriate official or officials of the Issuer are hereby authorized and directed to approve, execute and deliver, on behalf of the Issuer, any amendments, modifications or supplements to the Original Program Documents, as the same may have been amended, modified or supplemented to date (other than the 2009 Modified Repayment Agreement and the Original Pledge Agreement) including, without limitation, the 2009 Modified General Certificate, deemed necessary or desirable by the Administration or its counsel in order to provide for or reflect the use of proceeds of the 2003

Bond to fund Development Costs of the 2015 Modified Project and related matters, including, without limitation, to modify the definition of "Project" contained therein to include the 2015 Additional Project or to provide for or ratify and confirm compliance with the provisions of the Code. Any such amendments, modifications or supplements shall be in such form and shall contain such terms and conditions as shall be approved by such appropriate official or officials and acceptable to the Administration, and the execution thereof by such appropriate official or officials shall be conclusive evidence of his, her or their approval of the form and substance thereof.

(c) In connection with the transactions contemplated by this Ordinance, the appropriate official or officials of the Issuer are hereby authorized and directed to approve, execute and deliver, on behalf of the Issuer, any amendments, modifications or supplements to any documents, certificates or instruments executed and delivered by the Issuer in connection with the issuance of the 2011B Bond deemed necessary or desirable by bond counsel to the City.

(d) The appropriate officials, officers and employees of the Issuer are hereby authorized and directed to do all acts and things required of them by the provisions of this Ordinance, for the full, punctual and complete performance of all of the terms, covenants and provisions of the 2009 Modified Repayment Agreement, the Original Pledge Agreement, the 2009 Modified General Certificate, the 2011B Bond and the agreements, documents, certificates or instruments respectively related thereto, as the same may have been to date, or as the same may be further, amended, modified or supplemented in accordance with the provisions of this Ordinance, and to do and perform all acts and to approve, execute, seal and deliver all additional documents, agreements, certificates or instruments which may be necessary or desirable to carry out the full intent and purposes of this Ordinance, the 2009 Modified Repayment Agreement, the Original Pledge Agreement, the 2009 Modified General Certificate, the 2011B Bond and such related agreements, documents, certificates or instruments, as so amended, modified or supplemented.

SECTION 4. BE IT FURTHER ORDAINED that the Issuer covenants with the Administration and for the benefit of the owners from time to time of the 2003 Administration Bonds and the 2011B Bond that so long as the 2003 Administration Bonds or the 2011B Bond remain outstanding and unpaid, the Issuer will not (i) make any use of the proceeds of the 2003 Bond or the 2011B Bond or any moneys, securities or other obligations on deposit to the credit of the Issuer or otherwise which may be deemed by the Internal Revenue Service to be proceeds of the 2003 Bond or the 2011B Bond pursuant to Section 148 of the Code which would cause the 2003 Bond, the 2003 Administration Bonds or the 2011B Bond to be an "arbitrage bond" within the meaning of Section 148 of the Code, or (ii)(A) take any action, (B) fail to take any action, or (C) make any use of the proceeds of the 2003 Bond or the 2011B Bond which would cause the interest on the 2003 Bond, the 2003 Administration Bonds or the 2011B Bond to be or become includible in gross income for federal income tax purposes in the hands of the owners thereof.

SECTION 5. BE IT FURTHER ORDAINED that as required by the Administration, prior to the passage of this Ordinance, the Issuer shall publish in a newspaper of general circulation in the jurisdiction of the Issuer a notice of the nature of the 2015 Additional Project to be funded from proceeds of the 2003 Bond, the time and place of the public hearing, and the name and address where written comments may be sent, and the Issuer shall hold a public hearing on the proposed use of proceeds of the 2003 Bond to fund Development Costs of the 2015 Additional Project.

SECTION 6. BE IT FURTHER ORDAINED that from and after the effective date of this Ordinance, the Existing Ordinance shall be deemed amended and supplemented as provided herein and all other terms and provisions of the Existing Ordinance shall remain in full force and effect.

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

SECTION 8. 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 or publication and all other purposes.

SECTION 9. BE IT FURTHER ORDAINED that this Ordinance shall become effective following approval by the Mayor or subsequent passage by the Council in accordance with the provisions of Section SC2-12 of the Charter. 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 March, 2015, 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 ✓ [as introduced] _____ [as amended] [CHECK APPLICABLE LINE] on the 23rd day of March, 2015.

ATTEST:

Kimberly R. Nichols
Kimberly R. Nichols, City Clerk

Jacob R. Day
Jacob R. Day, City Council President

APPROVED BY ME THIS 30th DAY OF March, 2015:

James Keeton, Jr.
James Keeton, Jr., Mayor

#171094;58111.029

City of Salisbury



MARYLAND

Salisbury



2010

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KEITH A. CORDREY
DIRECTOR OF INTERNAL SERVICES

JAMES IRETON, JR.
MAYOR

TOM STEVENSON
CITY ADMINISTRATOR

To: Tom Stevenson, City Administrator

From: Keith Cordrey, Director of Internal Services 

Date: Feb 24 2015

Re: 2003 CDA Bond Reallocation

Please find attached an Ordinance which reallocates proceeds from the 2003 CDA Bond proceeds for the purpose of the following projects: (i) City Park Tennis Lighting Improvements and (ii) Marina Signage and Fence Improvements.

If you have no additional questions, please forward this ordinance to Council.