



MARYLAND

**SALISBURY CITY COUNCIL  
WORK SESSION AGENDA**

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**MAY 4, 2015  
COUNCIL CHAMBERS  
GOVERNMENT OFFICE BUILDING**

- 4:30 p.m. Community Presentation – SU Environmental Studies program
- 4:50 p.m. B & B Fee Schedule – Susan Phillips
- 5:10 p.m. Fire Service Agreement Discussion – Chief Hoppes
- 5:45 p.m. Flood Insurance Rate Maps – William Holland
- 6:00 p.m. Fixing the MWQFA loan amount for the WWTP – Mike Moulds
- 6:15 p.m. Accepting BNR and ENR Grants for the WWTP – Mike Moulds
- 7:00 p.m. Temporarily increasing the change order limits for the WWTP – Mike Moulds
- 7:15 p.m. Ben’s Red Swings Bathroom – Mike Moulds
- 7:30 p.m. CLOSED SESSION in accordance with Annotated Code of MD §10-508(a)(7)(8)(14)
- \_\_\_\_\_ Council discussion
- \_\_\_\_\_ Adjournment

*Times shown are approximate. Council reserves the right to adjust the agenda as circumstances warrant.  
The Council reserves the right to convene in Closed Session as permitted under the Annotated Code of Maryland 10-508(a).*

# Memo

To: Tom Stevenson  
From: Susan Phillips  
Date: April 29, 2015  
Re: Bed & Breakfast Fee Schedule Ordinance

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Attached you will find an ordinance adding a fee schedule as required in the Bed & Breakfast Ordinance # 2310.

Unless you or the mayor has any questions please forward this information to the city council for review and consideration.

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**CITY OF SALISBURY**  
**ORDINANCE NO. \_\_\_\_\_**

AN ORDINANCE of the Mayor and Council of the City of Salisbury to establish a fee schedule to obtain a permit to operate a Bed and Breakfast Inn.

**WHEREAS**, Chapter 17.04.120 Definitions. “Bed and Breakfast Inn” requires a Bed and Breakfast Inn in the City of Salisbury to obtain a permit to operate; and

**WHEREAS**, Section \_\_\_\_ requires that the owner of a Bed and Breakfast Inn register it with the City of Salisbury; and

**WHEREAS**, Section \_\_\_\_ establishes a fee shall be imposed for a permit to operate a Bed and Breakfast Inn; and

**WHEREAS**, Section \_\_\_\_ the City Council establishes a fee for non-compliance or delinquency; and

**WHEREAS**, the Department of Neighborhood Services and Code Compliance recommends approval of these proposed code changes.

**NOW, THEREFORE**, be it enacted and ordained by the Council of the City of Salisbury, Maryland, in regular session, that the fee schedule shall be as follows:

\$60.00            Bed and Breakfast Inn Permit

AND BE IT FURTHER ENACTED AND ORDAINED BY THE COUNCIL OF THE CITY OF SALISBURY, MARYLAND, that all fees contained herein shall be reviewed from time to time, but at least annually, for fairness and sufficiency.

AND BE IT FURTHER ENACTED AND ORDAINED BY THE COUNCIL OF THE CITY OF SALISBURY, MARYLAND, that the ordinance will take effect upon final passage.

THIS ORDINANCE was introduced and read at a meeting of the Council of the City of Salisbury held on the \_\_\_\_ day of \_\_\_\_\_, 201\_ and thereafter, a statement of the substance of the ordinance having been published as required by law, in the meantime, was finally passed by the Council on the \_\_\_ day of \_\_\_\_\_, 201\_\_, and shall take effect \_\_\_\_\_.

ATTEST:

\_\_\_\_\_  
Kimberly R. Nichols, City Clerk

\_\_\_\_\_  
Jake Day, City Council President

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Approved by me, this \_\_\_\_\_ day of \_\_\_\_\_, 201\_.

\_\_\_\_\_  
James Ireton, Jr.,  
Mayor

# Memorandum

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**To:** Tom Stevenson, City Administrator  
**From:** William T. Holland  
**Date:** 4/24/2015  
**Re:** Flood Insurance Rate Maps

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On February 17, 2015, the city was formally notified by the Federal Emergency Management Agency (FEMA) that the Flood Insurance Rate Maps (FIRMS) and the Maryland Model Floodplain Management Ordinance has been finalized.

On September 28, 1984, the Department of Homeland Security's FEMA issued FIRM's that identified Special Flood Hazard Areas (SFHA) for the city of Salisbury. Recently FEMA completed a re-evaluation of flood hazards for Wicomico County. Through FEMA's flood hazard mapping program, Risk Mapping, Assessment and Planning, FEMA identifies flood hazards, assesses flood risks and partners with states and communities to provide accurate flood hazard risk data to guide them to mitigation actions.

Flood hazard mapping is an important part of the National Flood Insurance Program (NFIP), as it is the basis of the NFIP regulations and flood insurance requirements. FEMA maintains and updates data through FIRM's and risk assessments. FIRM's include statistical information such as river flow, storm tides, rainfall and topographic surveys. FEMA the uses the best available technical data to create flood hazard maps that outline a communities flood risk.

The FIRM's for Wicomico County become effective on August 17, 2015. Before the effective date, FEMA will send final copies of the FIS report and the FIRM's. Prior to August 17, 2015, the city of Salisbury is required, as a condition of continued eligibility in the National Flood Insurance Program (NFIP), to adopt and show evidence of adoption of the floodplain management regulations that meet both the federal government and state of Maryland standards. The standards are the minimum requirements and do not supersede any State or local requirement of a more stringent nature.

Communities that fail to enact the necessary floodplain management regulations will be suspended from participation in the NFIP.

Please let me know if you have any questions.

  
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# City of Salisbury, Maryland Floodplain Management Ordinance (Tidal)

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# FLOODPLAIN MANAGEMENT ORDINANCE CITY OF SALISBURY, MARYLAND

## SECTION I GENERAL PROVISIONS

### 15.16.010 Findings

The Federal Emergency Management Agency has identified *special flood hazard areas* within the boundaries of the City of Salisbury, Maryland. *Special flood hazard areas* are subject to periodic inundation which may result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare. *Structures* that are inadequately elevated, improperly *floodproofed*, or otherwise unprotected from flood damage also contribute to flood losses.

The City of Salisbury, Maryland, by resolution, agreed to meet the requirements of the National Flood Insurance Program and was accepted for participation in the program on September 28, 1984. As of that date, or as of September 28, 1984, the initial effective date of the City of Salisbury, Maryland *Flood Insurance Rate Map*, all *development* and *new construction* as defined herein, are to be compliant with these regulations.

### 15.16.020 Statutory Authorization

The Maryland General Assembly, in Md. Code Ann., Land Use Article, Title 4, has established as policy of the State that the orderly development and use of land and structures requires comprehensive regulation through the implementation of planning and zoning control, and that planning and zoning controls shall be implemented by local government in order to, among other purposes, secure the public safety, promote health and general welfare, and promote the conservation of natural resources. Therefore, the City Council of Salisbury, Maryland does hereby adopt the following floodplain management regulations.

### 15.16.030 Statement of Purpose

It is the purpose of these regulations to promote the public health, safety and general welfare, and to:

- (A) Protect human life, health and welfare;
- (B) Encourage the utilization of appropriate construction practices in order to prevent or minimize flood damage in the future;
- (C) Minimize *flooding* of water supply and sanitary sewage disposal systems;
- (D) Maintain natural drainage;
- (E) Reduce financial burdens imposed on the *community*, its governmental units and its residents, by discouraging unwise design and construction of *development* in areas subject to *flooding*;

- (F) Minimize the need for rescue and relief efforts associated with *flooding* and generally undertaken at the expense of the general public;
- (G) Minimize prolonged business interruptions;
- (H) Minimize damage to public facilities and other utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges;
- (I) Reinforce that those who build in and occupy *special flood hazard areas* should assume responsibility for their actions;
- (J) Minimize the impact of *development* on adjacent properties within and near *flood-prone areas*;
- (K) Provide that the *flood* storage and conveyance functions of *floodplains* are maintained;
- (L) Minimize the impact of *development* on the natural and beneficial functions of *floodplains*;
- (M) Prevent *floodplain* uses that are either hazardous or environmentally incompatible; and
- (N) Meet community participation requirements of the National Flood Insurance Program as set forth in the Code of Federal Regulations (CFR) at 44 CFR Section 59.22.

**15.16.040 Areas to Which These Regulations Apply**

These regulations shall apply to all *special flood hazard areas* within the jurisdiction of the City of Salisbury, Maryland, and identified in Section 15.16.050.

**15.16.050 Basis for Establishing Special Flood Hazard Areas and BFEs**

- (A) For the purposes of these regulations, the minimum basis for establishing *special flood hazard areas* and *base flood elevations* is the *Flood Insurance Study* for Wicomico County, Maryland And Incorporated Areas dated August 17, 2015, or the most recent revision thereof, and the accompanying *Flood Insurance Rate Map(s)* and all subsequent amendments and revisions to the *FIRMs*. The *FIS* and *FIRMs* are retained on file and available to the public at the Department of Building, Permitting & Inspections.
- (B) Where field surveyed topography or digital topography indicates that ground elevations are below the closest applicable *base flood elevation*, even in areas not delineated as a special flood hazard on the *FIRM*, the area shall be considered as *special flood hazard area*.
- (C) To establish *base flood elevations* in *special flood hazard areas* that do not have such elevations shown on the *FIRM*, the Floodplain Administrator may provide the best available data for *base flood elevations*, may require the applicant to obtain available information from Federal, State or other sources, or may require the applicant to establish *special flood hazard areas* and *base flood elevations* as set forth in Section 15.16.130, Section 15.16.140, and Section 15.16.150 of these regulations.

**15.16.060 Abrogation and Greater Restrictions**

These regulations are not intended to repeal or abrogate any existing regulations and ordinances, including subdivision regulations, zoning ordinances, *building codes*, or any existing easements, covenants, or deed restrictions. In the event of a conflict between these regulations and any other ordinance, the more restrictive shall govern.

**15.16.070 Interpretation**

In the interpretation and application of these regulations, all provisions shall be:

- (A) Considered as minimum requirements;
- (B) Liberally construed in favor of the governing body; and,
- (C) Deemed neither to limit nor repeal any other powers granted under State statutes.

Notes referencing publications of the Federal Emergency Management Agency refer to the most recent edition of those publications, are intended only as guidance, and do not bind or alter the authority of the Floodplain Administrator to interpret and apply these regulations.

**15.16.080 Warning and Disclaimer of Liability**

The degree of *flood* protection required by these regulations is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur, and *flood* heights may be increased by man-made or natural causes. These regulations do not imply that land outside of the *special flood hazard areas* or uses that are permitted within such areas will be free from *flooding* or *flood* damage.

These regulations shall not create liability on the part of the City of Salisbury, Maryland, any officer or employee thereof, the Maryland Department of the Environment (MDE) or the Federal Emergency Management Agency (FEMA), for any *flood* damage that results from reliance on these regulations or any administrative decision lawfully made hereunder.

**15.16.090 Severability**

Should any section or provision of these regulations be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the regulations as a whole, or any part thereof other than the part so declared to be unconstitutional or invalid.

**SECTION II DEFINITIONS**

**15.16.100 Definitions**

Unless specifically defined below, words or phrases used in these regulations shall be interpreted to have the meaning they have in common usage and to give these regulations the most reasonable application.

**Accessory Structure:** A building or *structure* on the same lot with, and of a nature customarily incidental and subordinate to, the principal *structure*. For the purposes of these regulations, an accessory structure shall be used solely for parking of vehicles and limited storage.

**Agreement to Submit an Elevation Certificate:** A form on which the applicant for a permit to construct a building or *structure*, to construct certain horizontal additions, to place or replace a *manufactured home*, to substantially improve a building, *structure*, or *manufactured home*, agrees to have an *Elevation Certificate* prepared by a *licensed* professional surveyor, as specified by the Floodplain Administrator, and to submit the certificate:

- (1) Upon placement of the *lowest floor* and prior to further vertical construction; and
- (2) Prior to the final inspection and issuance of the Certificate of Occupancy.

**Alteration of a Watercourse:** For the purpose of these regulations, alteration of a watercourse includes, but is not limited to widening, deepening or relocating the channel, including excavation or filling of the channel. Alteration of a watercourse does not include construction of a road, bridge, culvert, dam, or in-stream pond unless the channel is proposed to be realigned or relocated as part of such construction.

**Area of Shallow Flooding:** A designated Zone AO on the *Flood Insurance Rate Map* with a 1-percent annual chance or greater of *flooding* to an average depth of one to three feet where a clearly defined channel does not exist, where the path of *flooding* is unpredictable, and where velocity flow may be evident; such *flooding* is characterized by ponding or sheet flow.

**Base Building:** The building to which an addition is being added. This term is used in provisions relating to additions.

**Base Flood:** The *flood* having a one-percent chance of being equaled or exceeded in any given year; the base flood also is referred to as the 1-percent annual chance (100-year) *flood*.

**Base Flood Elevation:** The water surface elevation of the *base flood* in relation to the datum specified on the *community's Flood Insurance Rate Map*. In *areas of shallow flooding*, the base flood elevation is the highest adjacent natural grade elevation plus the depth number specified in feet on the *Flood Insurance Rate Map*, or at least four (4) feet if the depth number is not specified.

**Basement:** Any area of the building having its floor subgrade (below ground level) on all sides.

**Building Code(s):** The effective Maryland Building Performance Standards (COMAR 05.02.07), including the building code, residential code, and existing building code.

**Community:** A political subdivision of the State of Maryland (county, city or town) that has authority to adopt and enforce floodplain management regulations within its jurisdictional boundaries.

**Critical and Essential Facilities:** Buildings and other *structures* that are intended to remain operational in the event of extreme environmental loading from flood, wind, snow or earthquakes. [Note: See Maryland Building Performance Standards, Sec. 1602 and Table 1604.5.] Critical and essential facilities typically include hospitals, fire stations, police stations,

storage of critical records, facilities that handle or store hazardous materials, and similar facilities.

**Declaration of Land Restriction (Nonconversion Agreement):** A form signed by the owner to agree not to convert or modify in any manner that is inconsistent with the terms of the permit and these regulations, certain *enclosures below the lowest floor* of elevated buildings and certain *accessory structures*. The form requires the owner to record it on the property deed to inform future owners of the restrictions.

**Development:** Any manmade change to improved or unimproved real estate, including but not limited to buildings or other *structures*, placement of *manufactured homes*, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

**Elevation Certificate:** FEMA form on which surveyed elevations and other data pertinent to a property and a building are identified and which shall be completed by a Maryland *licensed* professional land surveyor as specified by the Floodplain Administrator. When used to document the height above grade of buildings in *special flood hazard areas* for which *base flood elevation* data are not available, the Elevation Certificate shall be completed in accordance with the instructions issued by FEMA. [Note: FEMA Form 086-0-33 and instructions are available online at <http://www.fema.gov/library/viewRecord.do?id=1383>.]

**Enclosure Below the Lowest Floor:** An unfinished or *flood-resistant* enclosure that is located below an elevated building, is surrounded by walls on all sides, and is usable solely for parking of vehicles, building access or storage, in an area other than a *basement* area, provided that such enclosure is built in accordance with the applicable design requirements specified in these regulations. Also see “Lowest Floor.”

**Federal Emergency Management Agency (FEMA):** The Federal agency with the overall responsibility for administering the National Flood Insurance Program.

**Flood or Flooding:** A general and temporary condition of partial or complete inundation of normally dry land areas from:

- (1) The overflow of inland or tidal waters, and/or
- (2) The unusual and rapid accumulation or runoff of surface waters from any source.

**Flood Damage-Resistant Materials:** Any construction material that is capable of withstanding direct and prolonged contact with floodwaters without sustaining any damage that requires more than cosmetic repair. [Note: See NFIP Technical Bulletin #2, “Flood Damage-Resistant Materials Requirements.”]

**Flood Insurance Rate Map (FIRM):** An official map on which the Federal Emergency Management Agency has delineated *special flood hazard areas* to indicate the magnitude and nature of *flood hazards*, to designate applicable flood zones, and to delineate floodways, if

applicable. FIRMs that have been prepared in digital format or converted to digital format are referred to as Digital FIRMs (DFIRM).

**Flood Insurance Study (FIS):** The official report in which the Federal Emergency Management Agency has provided *flood* profiles, *floodway* information, and the water surface elevations.

**Flood Opening:** A flood opening (non-engineered) is an opening that is used to meet the prescriptive requirement of 1 square inch of net open area for every square foot of enclosed area. An engineered flood opening is an opening that is designed and certified by a *licensed* professional engineer or *licensed* architect as meeting certain performance characteristics, including providing automatic entry and exit of floodwaters; this certification requirement may be satisfied by an individual certification for a specific structure or issuance of an Evaluation Report by the ICC Evaluation Service, Inc. [Note: See NFIP Technical Bulletin #1, "Openings in Foundation Walls and Walls of Enclosures."]

**Flood Protection Elevation:** The *base flood elevation* plus two (2) feet of freeboard. Freeboard is a factor of safety that compensates for uncertainty in factors that could contribute to *flood* heights greater than the height calculated for a selected size *flood* and *floodway* conditions, such as wave action, obstructed bridge openings, debris and ice jams, climate change, and the hydrologic effect of urbanization in a watershed.

**Flood Protection Setback:** A distance measured perpendicular to the top of bank of a *watercourse* that delineates an area to be left undisturbed to minimize future *flood* damage and to recognize the potential for bank erosion. Along *nontidal waters of the State*, the flood protection setback is:

- (1) 100 feet, if the *watercourse* has *special flood hazard areas* shown on the *FIRM*, except where the setback extends beyond the boundary of the flood hazard area; or
- (2) 50 feet, if the *watercourse* does not have *special flood hazard areas* shown on the *FIRM*.

**Flood Zone:** A designation for areas that are shown on *Flood Insurance Rate Maps*:

- (1) **Zone A:** *Special flood hazard areas* subject to inundation by the 1-percent annual chance (100-year) *flood*; *base flood elevations* are not determined.
- (2) **Zone AE and Zone A1-30:** *Special flood hazard areas* subject to inundation by the 1-percent annual chance (100-year) *flood*; *base flood elevations* are determined; *floodways* may or may not be determined. In areas subject to tidal *flooding*, the *Limit of Moderate Wave Action* may or may not be delineated.
- (3) **Zone AH and Zone AO:** *Areas of shallow flooding*, with *flood* depths of 1 to 3 feet (usually areas of ponding or sheet flow on sloping terrain), with or without BFEs or designated *flood* depths.

- (4) **Zone B and Zone X (shaded):** Areas subject to inundation by the 0.2-percent annual chance (500-year) *flood*; areas subject to the 1-percent annual chance (100-year) *flood* with average depths of less than 1 foot or with contributing drainage area less than 1 square mile; and areas protected from the *base flood* by levees.
- (5) **Zone C and Zone X (unshaded):** Areas outside of Zones designated A, AE, A1-30, AO, VE, V1-30, B, and X (shaded).
- (6) **Zone VE and Zone V1-30:** *Special flood hazard areas* subject to inundation by the 1-percent annual chance (100-year) *flood* and subject to high velocity wave action.

**Floodplain:** Any land area susceptible to being inundated by water from any source (see definition of “Flood” or “Flooding”).

**Floodproofing or Floodproofed:** Any combination of structural and nonstructural additions, changes, or adjustments to buildings or *structures* which reduce or eliminate *flood* damage to real estate or improved real property, water and sanitary facilities, *structures* and their contents, such that the buildings or *structures* are watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. [Note: State regulations at COMAR 26.17.04.11(B)(7) do not allow new nonresidential buildings in *nontidal waters of the State* to be floodproofed.]

**Floodproofing Certificate:** FEMA form that is to be completed, signed and sealed by a *licensed* professional engineer or *licensed* architect to certify that the design of *floodproofing* and proposed methods of construction are in accordance with the applicable requirements of Section 15.16.330(B) of these regulations. [Note: FEMA Form 086-0-34 is available online at <http://www.fema.gov/library/viewRecord.do?id=1600>.]

**Floodway:** The channel of a river or other *watercourse* and the adjacent land areas that must be reserved in order to pass the *base flood* discharge such that the cumulative increase in the water surface elevation of the *base flood* discharge is no more than a designated height. When shown on a *FIRM*, the floodway is referred to as the “designated floodway.”

**Functionally Dependent Use:** A use which cannot perform its intended purpose unless it is located or carried out in close proximity to water; the term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities.

**Highest Adjacent Grade:** The highest natural elevation of the ground surface, prior to construction, next to the proposed foundation of a *structure*.

**Historic Structure:** Any *structure* that is:

- (1) Individually listed in the National Register of Historic Places (a listing maintained by the U.S. Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listings on the National Register;
- (2) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
- (3) Individually listed on the Maryland Register of Historic Places; or
- (4) Individually listed on the inventory of historic places maintained by the City of Salisbury whose historic preservation program has been certified by the Maryland Historical Trust or the Secretary of the Interior.

**Hydrologic and Hydraulic Engineering Analyses:** Analyses performed by a *licensed* professional engineer, in accordance with standard engineering practices that are accepted by the Maryland Department of the Environment (Nontidal Wetlands & Waterways) and FEMA, used to determine the *base flood*, other frequency floods, *flood* elevations, *floodway* information and boundaries, and *flood* profiles.

**Letter of Map Change (LOMC):** A Letter of Map Change is an official FEMA determination, by letter, that amends or revises an effective *Flood Insurance Rate Map* or *Flood Insurance Study*. Letters of Map Change include:

Letter of Map Amendment (LOMA): An amendment based on technical data showing that a property was incorrectly included in a designated *special flood hazard area*. A LOMA amends the current effective *Flood Insurance Rate Map* and establishes that a specific property or *structure* is not located in a *special flood hazard area*.

Letter of Map Revision (LOMR): A revision based on technical data that may show changes to *flood zones*, *flood elevations*, *floodplain* and *floodway* delineations, and planimetric features. A Letter of Map Revision Based on Fill (LOMR-F), is a determination that a *structure* or parcel of land has been elevated by fill above the *base flood elevation* and is, therefore, no longer exposed to *flooding* associated with the *base flood*. In order to qualify for this determination, the fill must have been permitted and placed in accordance with the *community's* floodplain management regulations.

Conditional Letter of Map Revision (CLOMR): A formal review and comment as to whether a proposed *flood* protection project or other project complies with the minimum NFIP requirements for such projects with respect to delineation of *special flood hazard areas*. A Conditional Letter of Map Revision Based on Fill (CLOMR-F) is a determination that a parcel of land or proposed structure that will be elevated by fill would not be inundated by the base flood if fill is placed on the parcel as proposed or the structure is built as proposed. A CLOMR does not revise the effective *Flood Insurance Rate Map* or *Flood Insurance Study*; upon submission and approval of certified as-built

documentation, a Letter of Map Revision may be issued by FEMA, to revise the effective *FIRM*.

**Licensed:** As used in these regulations, licensed refers to professionals who are authorized to practice in the State of Maryland by issuance of licenses by the Maryland Board of Architects, Maryland Board of Professional Engineers, Maryland Board of Professional Land Surveyors, and the Maryland Real Estate Appraisers and Home Inspectors Commission.

**Limit of Moderate Wave Action (LiMWA):** Inland limit of the area affected by waves greater than 1.5 feet during the base flood. Base flood conditions between the VE Zone and the LiMWA will be similar to, but less severe than those in the VE Zone.

**Lowest Floor:** The lowest floor of the lowest enclosed area (including *basement*) of a building or *structure*; the floor of an *enclosure below the lowest floor* is not the lowest floor provided the enclosure is constructed in accordance with these regulations. The lowest floor of a *manufactured home* is the bottom of the lowest horizontal supporting member (longitudinal chassis frame beam).

**Manufactured Home:** A *structure*, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. The term manufactured home does not include a *recreational vehicle*.

**Market Value:** The price at which a property will change hands between a willing buyer and a willing seller, neither party being under compulsion to buy or sell and both having reasonable knowledge of relevant facts. For the purposes of these regulations, the market value of a building is determined by a *licensed* real estate appraiser or the most recent, full phased-in assessment value of the building (improvement) determined by the Maryland Department of Assessments and Taxation.

**Maryland Department of the Environment (MDE):** A principal department of the State of Maryland that is charged with, among other responsibilities, the coordination of the National Flood Insurance Program in Maryland (NFIP State Coordinator) and the administration of regulatory programs for *development* and construction that occur within the *waters of the State*, including nontidal wetlands, nontidal waters and floodplains, and State and private tidal wetlands (Tidal Wetlands). Unless otherwise specified, "MDE" refers to the Department's Wetlands and Waterways Program.

**Mixed-use Structure:** Any *structure* that is used or intended for use for a mixture of nonresidential and residential uses in the same structure.

**National Flood Insurance Program (NFIP):** The program authorized by the U.S. Congress in 42 U.S.C. §§4001 - 4129. The NFIP makes flood insurance coverage available in communities

that agree to adopt and enforce minimum regulatory requirements for *development* in areas prone to *flooding* (see definition of “Special Flood Hazard Area”).

**New Construction:** *Structures*, including additions and improvements, and the placement of *manufactured homes*, for which the *start of construction* commenced on or after September 28, 1984, the initial effective date of the City of Salisbury, Maryland *Flood Insurance Rate Map*, including any subsequent improvements, alterations, modifications, and additions to such *structures*.

**NFIP State Coordinator:** See *Maryland Department of the Environment (MDE)*.

**Nontidal Waters of the State:** See “Waters of the State.” As used in these regulations, “nontidal waters of the State” refers to any stream or body of water within the State that is subject to State regulation, including the “100-year frequency *floodplain* of free-flowing waters.” COMAR 26.17.04.01 states that “the landward boundaries of any tidal waters shall be deemed coterminous with the wetlands boundary maps adopted pursuant to Environment Article, §16-301, Annotated Code of Maryland.” Therefore, the boundary between the tidal and nontidal waters of the State is the tidal wetlands boundary.

**Person:** An individual or group of individuals, corporation, partnership, association, or any other entity, including State and local governments and agencies.

**Recreational Vehicle:** A vehicle that is built on a single chassis, 400 square feet or less when measured at the largest horizontal projection, designed to be self-propelled or permanently towable by a light duty truck, and designed primarily not for use as a permanent dwelling, but as temporary living quarters for recreational, camping, travel, or seasonal use.

**Special Flood Hazard Area (SFHA):** The land in the *floodplain* subject to a one-percent or greater chance of *flooding* in any given year. Special flood hazard areas are designated by the Federal Emergency Management Agency in *Flood Insurance Studies* and on *Flood Insurance Rate Maps* as Zones A, AE, AH, AO, A1-30, and A99, and Zones VE and V1-30. The term includes areas shown on other flood maps that are identified in Section 15.16.050.

**Start of Construction:** The date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a *structure* on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a *manufactured home* on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a *basement*, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of *accessory structures*, such as garages or sheds not occupied as dwelling units or not part of the main *structure*. For *substantial improvements*, the actual start of construction means the first

alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

**Structure:** That which is built or constructed; specifically, a walled and roofed building, including a gas or liquid storage tank that is principally above ground, as well as a *manufactured home*.

**Substantial Damage:** Damage of any origin sustained by a building or *structure* whereby the cost of restoring the building or *structure* to its before damaged condition would equal or exceed 50 percent of the *market value* of the building or *structure* before the damage occurred. Also used as “substantially damaged” structures. [Note: See “Substantial Improvement/Substantial Damage Desk Reference” (FEMA P-758).]

**Substantial Improvement:** Any reconstruction, rehabilitation, addition, or other improvement of a building or *structure*, the cost of which equals or exceeds 50 percent of the *market value* of the building or *structure* before the *start of construction* of the improvement. The term includes *structures* which have incurred *substantial damage*, regardless of the actual repair work performed. The term does not, however, include any project for improvement of a building or *structure* to correct existing violations of State or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official prior to the submission of an application for a permit and which are the minimum necessary to assure safe living conditions. [Note: See “Substantial Improvement/Substantial Damage Desk Reference” (FEMA P-758).]

**Temporary Structure:** A *structure* installed, used, or erected for a period of less than 180 days.

**Variance:** A grant of relief from the strict application of one or more requirements of these regulations.

**Violation:** Any construction or *development* in a *special flood hazard area* that is being performed without an issued permit. The failure of a building, *structure*, or other *development* for which a permit is issued to be fully compliant with these regulations and the conditions of the issued permit. A building, *structure*, or other *development* without the required design certifications, the *Elevation Certificate*, or other evidence of compliance required is presumed to be a *violation* until such time as the required documentation is provided.

**Watercourse:** The channel, including channel banks and bed, of *nontidal waters of the State*.

**Waters of the State:** [See Environment Article, Title 5, Subtitle 1, Annotated Code of Maryland.] Waters of the State include:

- (1) Both surface and underground waters within the boundaries of the State subject to its jurisdiction;
- (2) That portion of the Atlantic Ocean within the boundaries of the State;

- (3) The Chesapeake Bay and its tributaries;
- (4) All ponds, lakes, rivers, streams, public ditches, tax ditches, and public drainage systems within the State, other than those designed and used to collect, convey, or dispose of sanitary sewage; and
- (5) The *floodplain* of free-flowing waters determined by MDE on the basis of the 100-year *flood* frequency.

### **SECTION III            ADMINISTRATION**

#### **15.15.110      Designation of the Floodplain Administrator**

The Director of Building, Permitting & Inspections is hereby appointed to administer and implement these regulations and is referred to herein as the Floodplain Administrator. The Floodplain Administrator may:

- (A) Delegate duties and responsibilities set forth in these regulations to qualified technical personnel, plan examiners, inspectors, and other employees.
- (B) Enter into a written agreement or written contract with another Maryland *community* or private sector entity to administer specific provisions of these regulations. Administration of any part of these regulations by another entity shall not relieve the *community* of its responsibilities pursuant to the participation requirements of the National Flood Insurance Program as set forth in the Code of Federal Regulations (CFR) at 44 CFR Section 59.22.

#### **15.16.120      Duties and Responsibilities of the Floodplain Administrator**

The duties and responsibilities of the Floodplain Administrator shall include but are not limited to:

- (A) Review applications for permits to determine whether proposed activities will be located in flood hazard areas.
- (B) Interpret *floodplain* boundaries and provide available *base flood elevation and flood* hazard information.
- (C) Review applications to determine whether proposed activities will be reasonably safe from *flooding* and require *new construction* and *substantial improvements* to meet the requirements of these regulations.
- (D) Review applications to determine whether all necessary permits have been obtained from the Federal, State or local agencies from which prior or concurrent approval is required; in particular, permits from MDE for any construction, reconstruction, repair, or alteration of a dam, reservoir, or waterway obstruction (including bridges, culverts, *structures*), any *alteration of a watercourse*, or any change of the course, current, or

cross section of a stream or body of water, including any change to the 100-year frequency *floodplain* of free-flowing *nontidal waters of the State*.

- (E) Verify that applicants proposing an *alteration of a watercourse* have notified adjacent communities and MDE (NFIP State Coordinator), and have submitted copies of such notifications to FEMA.
- (F) Approve applications and issue permits to develop in *flood* hazard areas if the provisions of these regulations have been met, or disapprove applications if the provisions of these regulations have not been met.
- (G) Inspect or cause to be inspected, buildings, *structures*, and other *development* for which permits have been issued to determine compliance with these regulations or to determine if non-compliance has occurred or *violations* have been committed.
- (H) Review *Elevation Certificates* and require incomplete or deficient certificates to be corrected.
- (I) Submit to FEMA, or require applicants to submit to FEMA, data and information necessary to maintain *FIRMs*, including *hydrologic and hydraulic engineering analyses* prepared by or for the City of Salisbury, Maryland, within six months after such data and information becomes available if the analyses indicate changes in *base flood elevations* or boundaries.
- (J) Maintain and permanently keep records that are necessary for the administration of these regulations, including:
  - (1) *Flood Insurance Studies, Flood Insurance Rate Maps* (including historic studies and maps and current effective studies and maps) and Letters of Map Change; and
  - (2) Documentation supporting issuance and denial of permits, *Elevation Certificates*, documentation of the elevation (in relation to the datum on the *FIRM*) to which *structures* have been *floodproofed*, other required design certifications, *variances*, and records of enforcement actions taken to correct *violations* of these regulations.
- (K) Enforce the provisions of these regulations, investigate *violations*, issue notices of *violations* or stop work orders, and require permit holders to take corrective action.
- (L) Advise the Building Board of Adjustments & Appeals regarding the intent of these regulations and, for each application for a *variance*, prepare a staff report and recommendation.
- (M) Administer the requirements related to proposed work on existing buildings:

- (1) Make determinations as to whether buildings and *structures* that are located in *flood hazard areas* and that are damaged by any cause have been *substantially damaged*.
  - (2) Make reasonable efforts to notify owners of *substantially damaged structures* of the need to obtain a permit to repair, rehabilitate, or reconstruct, and prohibit the non-compliant repair of *substantially damaged* buildings except for temporary emergency protective measures necessary to secure a property or stabilize a building or *structure* to prevent additional damage.
- (N) Undertake, as determined appropriate by the Floodplain Administrator due to the circumstances, other actions which may include but are not limited to: issuing press releases, public service announcements, and other public information materials related to permit requests and repair of damaged *structures*; coordinating with other Federal, State, and local agencies to assist with substantial damage determinations; providing owners of damaged *structures* information related to the proper repair of damaged *structures* in *special flood hazard areas*; and assisting property owners with documentation necessary to file claims for Increased Cost of Compliance (ICC) coverage under NFIP flood insurance policies.
- (O) Notify the Federal Emergency Management Agency when the corporate boundaries of the City of Salisbury, Maryland have been modified and:
- (1) Provide a map that clearly delineates the new corporate boundaries or the new area for which the authority to regulate pursuant to these regulations has either been assumed or relinquished through annexation; and
  - (2) If the *FIRM* for any annexed area includes *special flood hazard areas* that have *flood zones* that have regulatory requirements that are not set forth in these regulations, prepare amendments to these regulations to adopt the *FIRM* and appropriate requirements, and submit the amendments to the governing body for adoption; such adoption shall take place within six months of the date of annexation and a copy of the amended regulations shall be provided to MDE (NFIP State Coordinator) and FEMA.
- (P) Upon the request of FEMA, complete and submit a report concerning participation in the NFIP which may request information regarding the number of buildings in the SFHA, number of permits issued for *development* in the SFHA, and number of *variances* issued for *development* in the SFHA.

#### **15.16.130 Use and Interpretation of FIRMs**

The Floodplain Administrator shall make interpretations, where needed, as to the exact location of *special flood hazard areas*, *floodplain* boundaries, and *floodway* boundaries. The following shall apply to the use and interpretation of *FIRMs* and data:

- (A) Where field surveyed topography indicates that ground elevations:
- (1) Are below the *base flood elevation*, even in areas not delineated as a *special flood hazard area* on a *FIRM*, the area shall be considered as *special flood hazard area* and subject to the requirements of these regulations;
  - (2) Are above the *base flood elevation*, the area shall be regulated as *special flood hazard area* unless the applicant obtains a *Letter of Map Change* that removes the area from the *special flood hazard area*.
- (B) In FEMA-identified *special flood hazard areas* where *base flood elevation* and *floodway* data have not been identified and in areas where FEMA has not identified *special flood hazard areas*, any other flood hazard data available from a Federal, State, or other source shall be reviewed and reasonably used.
- (C) *Base flood elevations* and designated *floodway* boundaries on *FIRMs* and in *FISs* shall take precedence over *base flood elevations* and *floodway* boundaries by any other sources if such sources show reduced *floodway* widths and/or lower *base flood elevations*.
- (D) Other sources of data shall be reasonably used if such sources show increased *base flood elevations* and/or larger *floodway* areas than are shown on *FIRMs* and in *FISs*.
- (E) If a Preliminary *Flood Insurance Rate Map* and/or a Preliminary *Flood Insurance Study* has been provided by FEMA:
- (1) Upon the issuance of a Letter of Final Determination by FEMA, if the preliminary flood hazard data is more restrictive than the effective data, it shall be used and shall replace the flood hazard data previously provided from FEMA for the purposes of administering these regulations.
  - (2) Prior to the issuance of a Letter of Final Determination by FEMA, the use of preliminary flood hazard data shall be deemed the best available data pursuant to Section 1.5(C) and used where no *base flood elevations* and/or *floodway* areas are provided on the effective *FIRM*.
  - (3) Prior to issuance of a Letter of Final Determination by FEMA, the use of preliminary flood hazard data is permitted where the preliminary *base flood elevations*, *floodplain* or *floodway* boundaries exceed the *base flood elevations* and/or designated *floodway* widths in existing flood hazard data provided by FEMA. Such preliminary data may be subject to change and/or appeal to FEMA.

### **15.16.140 Permits Required and Expiration**

- (A) It shall be unlawful for any *person* to begin any *development* or construction which is wholly within, partially within, or in contact with any flood hazard area established in Section 15.16.050, including but not limited to: filling; grading; construction of new *structures*; the *substantial improvement* of buildings or *structures*, including repair of *substantial damage*; placement or replacement of *manufactured homes*, including *substantial improvement* or repair of *substantial damage* of *manufactured homes*; erecting or installing a *temporary structure*, or *alteration of a watercourse*, until a permit is obtained from the City of Salisbury, Maryland. No such permit shall be issued until the requirements of these regulations have been met.
- (B) In addition to the permits required in paragraph (A), applicants for permits in *nontidal waters of the State* are advised to contact MDE. Unless waived by MDE, pursuant to Code of Maryland Regulations 26.17.04, Construction on Nontidal Waters and Floodplains, MDE regulates the “100-year frequency floodplain of free-flowing waters,” also referred to as *nontidal waters of the State*. To determine the 100-year frequency floodplain, hydrologic calculations are based on the ultimate *development* of the watershed, assuming existing zoning. The resulting flood hazard areas delineated using the results of such calculations may be different than the *special flood hazard areas* established in Section 15.16.050 of these regulations. A permit from the City of Salisbury, Maryland is still required in addition to any State requirements.
- (C) A permit is valid provided the actual start of work is within 180 days of the date of permit issuance. Requests for extensions shall be submitted in writing and justifiable cause demonstrated. The Floodplain Administrator may grant, in writing, one or more extensions of time, for additional periods not exceeding 90 days each and provided there has been no amendment or revision to the basis for establishing *special flood hazard areas* and BFEs set forth in Section 15.16.050.

### **15.16.150 Application Required**

Application for a permit shall be made by the owner of the property or the owner’s authorized agent (herein referred to as the applicant) prior to the start of any work. The application shall be on a form furnished for that purpose.

#### **(A) Application Contents**

At a minimum, applications shall include:

- (1) Site plans drawn to scale showing the nature, location, dimensions, and existing and proposed topography of the area in question, and the location of existing and proposed *structures*, excavation, filling, storage of materials, drainage facilities, and other proposed activities.

- (2) Elevation of the existing natural ground where buildings or *structures* are proposed, referenced to the datum on the *FIRM*.
- (3) Delineation of flood hazard areas, designated *floodway* boundaries, *flood zones*, *base flood elevations*, and *flood protection setbacks*. *Base flood elevations* shall be used to delineate the boundary of flood hazard areas and such delineations shall prevail over the boundary of SFHAs shown on *FIRMs*.
- (4) Where floodways are not delineated or *base flood elevations* are not shown on the *FIRMs*, the Floodplain Administrator has the authority to require the applicant to use information provided by the Floodplain Administrator, information that is available from Federal, State, or other sources, or to determine such information using accepted engineering practices or methods approved by the Floodplain Administrator. [Note: See “Managing Floodplain Development in Approximate Zone A Areas: A Guide for Obtaining and Developing Base (100-Year) Flood Elevations” (FEMA 265).]
- (5) Determination of the *base flood elevations*, for *development* proposals and subdivision proposals, each with at least 5 lots or at least 5 acres, whichever is the lesser, in *special flood hazard areas* where *base flood elevations* are not shown on the *FIRM*; if *hydrologic and hydraulic engineering analyses* are submitted, such analyses shall be performed in accordance with the requirements and specifications of MDE and FEMA.
- (6) *Hydrologic and hydraulic engineering analyses* for proposals in *special flood hazard areas* where FEMA has provided *base flood elevations* but has not delineated a *floodway*; such analyses shall demonstrate that the cumulative effect of proposed *development*, when combined with all other existing and anticipated development will not increase the water surface elevation of the *base flood* by more than one foot, or a lower increase if required by MDE.
- (7) For encroachments in *floodways*, an evaluation of alternatives to such encroachments, including different uses of the site or portion of the site within the *floodway*, and minimization of such encroachment.
- (8) If fill is proposed to be placed for a purpose other than to elevate *structures*, the applicant shall indicate the intended purpose for the fill.
- (9) For proposed buildings and *structures*, including *substantial improvement* and repair of *substantial damage*, and placement and replacement of manufactured homes, including *substantial improvement* and repair of *substantial damage*:

- (a) The proposed elevation of the *lowest floor*, including *basement*, referenced to the datum on the *FIRM* and a signed *Agreement to Submit an Elevation Certificate*.
  - (b) The signed *Declaration of Land Restriction (Nonconversion Agreement)* that shall be recorded on the property deed prior to issuance of the Certificate of Occupancy, if the application includes an *enclosure below the lowest floor* or a crawl/underfloor space that is more than four (4) feet in height.
  - (c) A written evaluation of alternative methods considered to elevate *structures* and *manufactured homes*, if the location is in *nontidal waters of the State* and fill is proposed to achieve the elevation required in Section 15.16.320(A) or Section 15.16.330(A).
- (10) For *accessory structures* that are 300 square feet or larger in area (footprint) and that are below the *base flood elevation*, a variance is required as set forth in Section VII. If a variance is granted, a signed *Declaration of Land Restriction (Nonconversion Agreement)* shall be recorded on the property deed prior to issuance of the Certificate of Occupancy.
- (11) For *temporary structures* and temporary storage, specification of the duration of the temporary use.
- (12) For proposed work on existing buildings, *structure*, and *manufactured homes*, including any improvement, addition, repairs, alterations, rehabilitation, or reconstruction, sufficient information to determine if the work constitutes *substantial improvement* or repair of *substantial damage*, including but not limited to:
- (a) If the existing building or *structure* was constructed after September 28, 1984, evidence that the work will not alter any aspect of the building or *structure* that was required for compliance with the floodplain management requirements in effect at the time the building or *structure* was permitted.
  - (b) If the proposed work is a horizontal addition, a description of the addition and whether it will be independently supported or structurally connected to the *base building* and the nature of all other modifications to the *base building*, if any.
  - (c) Documentation of the *market value* of the building or *structure* before the improvement or, if the work is repair of damage, before the damage occurred.

- (d) Documentation of the actual cash value of all proposed work, including the actual cash value of all work necessary to repair and restore damage to the before-damaged condition, regardless of the amount of work that will be performed. The value of work performed by the owner or volunteers shall be valued at market labor rates; the value of donated or discounted materials shall be valued at market rates.
- (13) Certifications and/or technical analyses prepared or conducted by a *licensed* professional engineer or *licensed* architect as appropriate, including:
- (a) The determination of the *base flood elevations* or *hydrologic and hydraulic engineering analyses* prepared by a *licensed* professional engineer that are required by the Floodplain Administrator or are required by these regulations in: Section 15.16.180 for certain subdivisions and *development*; Section 15.16.310(A) for *development* in designated *floodways*; Section 15.16.310(C) for *development* in flood hazard areas with *base flood elevations* but no designated *floodways*; and Section 15.16.310(E) for deliberate alteration or relocation of *watercourses*.
  - (b) The *Floodproofing Certificate* for nonresidential *structures* that are *floodproofed* as required in Section 15.16.330(B).
  - (c) Certification that engineered *flood openings* are designed to meet the minimum requirements of Section 15.16.320(C)(3) to automatically equalize hydrostatic flood forces.
- (14) For nonresidential *structures* that are proposed with *floodproofing*, an operations and maintenance plan as specified in Section 15.16.330(B)(3).
- (15) Such other material and information as may be requested by the Floodplain Administrator and necessary to determine conformance with these regulations.

**(B) New Technical Data**

- (1) The applicant may seek a *Letter of Map Change* by submitting new technical data to FEMA, such as base maps, topography, and engineering analyses to support revision of *floodplain* and *floodway* boundaries and/or *base flood elevations*. Such submissions shall be prepared in a format acceptable to FEMA and any fees shall be the sole responsibility of the applicant. A copy of the submittal shall be attached to the application for a permit.
- (2) If the applicant submits new technical data to support any change in *floodplain* and designated *floodway* boundaries and/or *base flood elevations* but has not sought a *Letter of Map Change* from FEMA, the applicant shall submit such data to FEMA as soon as practicable, but not later than six months after the date

such information becomes available. Such submissions shall be prepared in a format acceptable to FEMA and any fees shall be the sole responsibility of the applicant.

**(C) Review of Application**

The Floodplain Administrator shall:

- (1) Review applications for *development in special flood hazard areas* to determine the completeness of information submitted. The applicant shall be notified of incompleteness or additional information that is required to support the application.
- (2) Notify applicants that permits from MDE and the U.S. Army Corps of Engineers, and other State and Federal authorities may be required.
- (3) Review all permit applications to assure that all necessary permits have been received from the Federal, State or local governmental agencies from which prior approval is required. The applicant shall be responsible for obtaining such permits, including permits issued by:
  - (a) The U.S. Army Corps of Engineers under Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act;
  - (b) MDE pursuant to COMAR 26.23 (Nontidal Wetlands) and Section 401 of the Clean Water Act;
  - (c) MDE for construction on *nontidal waters of the State* pursuant to COMAR 26.17.04; and
  - (d) MDE pursuant to COMAR 26.24 (Tidal Wetlands).
- (4) Review applications for compliance with these regulations after all information required in Section 15.16.150 of these regulations or identified and required by the Floodplain Administrator has been received.

**(D) Inspections**

The Floodplain Administrator shall make periodic inspections of *development* permitted in *special flood hazard areas*, at appropriate times throughout the period of construction in order to monitor compliance. Such inspections may include:

- (1) Stake-out inspection, to determine location on the site relative to the flood hazard area and designated *floodway*.
- (2) Foundation inspection, upon placement of the *lowest floor* and prior to further vertical construction, to collect information or certification of the elevation of the *lowest floor*.

- (3) Inspection of *enclosures below the lowest floor*, including crawl/underfloor spaces, to determine compliance with applicable provisions.
- (4) Utility inspection, upon installation of specified equipment and appliances, to determine appropriate location with respect to the *base flood elevation*.
- (5) Final inspection prior to issuance of the Certificate of Occupancy.

#### **15.16.160 Submissions Required Prior to Final Inspection**

Pursuant to the *Agreement to Submit an Elevation Certificate* submitted with the application as required in Section 15.16.150(A)(9), the permittee shall have an *Elevation Certificate* prepared and submitted prior to final inspection and issuance of a Certificate of Occupancy for elevated *structures* and *manufactured homes*, including new *structures* and *manufactured homes*, substantially-improved *structures* and *manufactured homes*, and additions to *structures* and *manufactured homes*.

### **SECTION IV REQUIREMENTS IN ALL FLOOD HAZARD AREAS**

#### **15.16.170 Application of Requirements**

The general requirements of this section apply to all *development* proposed within all *special flood hazard areas* identified in Section 15.16.050.

#### **15.16.180 Subdivision Proposals and Development Proposals**

(A) In all *flood zones*:

- (1) Subdivision proposals and *development* proposals shall be consistent with the need to minimize flood damage and are subject to all applicable standards in these regulations.
- (2) Subdivision proposals and *development* proposals shall have utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage.
- (3) Subdivision proposals and *development* proposals shall have adequate drainage paths provided to reduce exposure to flood hazards and to guide floodwaters around and away from proposed *structures*.
- (4) Subdivision proposals and *development* proposals containing at least 5 lots or at least 5 acres, whichever is the lesser, that are wholly or partially in flood hazard areas where *base flood elevation* data are not provided by the Floodplain Administrator or available from other sources, shall be supported by determinations of *base flood elevations* as required in Section 15.16.150 of these regulations.
- (5) Subdivision access roads shall have the driving surface at or above the *base flood elevation*.

(B) In *special flood hazard areas of nontidal waters of the State*:

- (1) Subdivision proposals shall be laid out such that proposed building pads are located outside of the *special flood hazard area* and any portion of platted lots that include land areas that are below the *base flood elevation* shall be used for other purposes, deed restricted, or otherwise protected to preserve it as open space.
- (2) Subdivision access roads shall have the driving surface at or above the *base flood elevation*.

#### **15.16.190 Protection of Water Supply and Sanitary Sewage Systems**

- (A) New and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems.
- (B) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into systems and discharges from systems into floodwaters.
- (C) On-site waste disposal systems shall be located to avoid impairment to or contamination from them during conditions of *flooding*.

#### **15.16.200 Buildings and Structures**

New buildings and *structures* (including the placement and replacement of *manufactured homes*) and *substantial improvement* of existing *structures* (including *manufactured homes*) that are located, in whole or in part, in any *special flood hazard area* shall:

- (A) Be designed (or modified) and constructed to safely support flood loads. The construction shall provide a complete load path capable of transferring all loads from their point of origin through the load-resisting elements to the foundation. *Structures* shall be designed, connected and anchored to resist flotation, collapse or permanent lateral movement due to structural loads and stresses, including hydrodynamic and hydrostatic loads and the effects of buoyancy, from *flooding* equal to the *flood protection elevation* or the elevation required by these regulations or the *building code*, whichever is higher.
- (B) Be constructed by methods and practices that minimize flood damage.
- (C) Use *flood damage-resistant materials* below the elevation of the *lowest floor* required in Section 15.16.320(A) or Section 15.16.330(A).
- (D) Have electrical systems, equipment and components, and mechanical, heating, ventilating, air conditioning, and plumbing appliances, plumbing fixtures, duct systems, and other service equipment located at or above the elevation of the *lowest floor* required in Section 15.16.320(A) or Section 15.16.330(A). Electrical wiring systems are permitted to be located below elevation of the *lowest floor* provided they conform to the provisions of the electrical part of the *building code* for wet locations.

If replaced as part of a *substantial improvement*, electrical systems, equipment and components, and heating, ventilation, air conditioning, and plumbing appliances, plumbing fixtures, duct systems, and other service equipment shall meet the requirements of this section.

- (E) As an alternative to paragraph (D), electrical systems, equipment and components, and heating, ventilating, air conditioning, and plumbing appliances, plumbing fixtures, duct systems, and other service equipment are permitted to be located below the elevation of the *lowest floor* provided they are designed and installed to prevent water from entering or accumulating within the components and to resist hydrostatic and hydrodynamic loads and stresses, including the effects of buoyancy, during the occurrence of flooding to that elevation.
- (F) Have the electric panelboard elevated at least three (3) feet above the BFE.
- (G) Comply with the specific requirements of Section V.
- (H) Comply with the requirements of the most restrictive designation if located on a site that has more than one *flood zone* designation (A Zone, designated *floodway*).

#### **15.16.210 Placement of Fill**

- (A) Disposal of fill, including but not limited to earthen soils, rock, rubble, construction debris, woody debris, and trash, shall not be permitted in *special flood hazard areas*.
- (B) Fill proposed to be placed to elevate *structures* in flood hazard areas shall comply with the *floodways* requirements in Section 15.16.310(A), Section 15.16.310(B), and Section 15.16.310(C) and the limitations of Section 15.16.320(B).

#### **15.16.220 Historic Structures**

Repair, alteration, addition, rehabilitation, or other improvement of *historic structures* that does not conform with the requirements of this ordinance shall be permitted only by *variance*. Evidence submitted for consideration of the *variance* shall include a determination that the proposed work will not preclude the *structure's* continued eligibility or designation as a *historic structure*.

#### **15.16.230 Manufactured Homes**

- (A) New *manufactured homes* shall not be placed or installed in *floodways*.
- (B) For the purpose of these regulations, the *lowest floor* of a *manufactured home* is the bottom of the lowest horizontal supporting member (longitudinal chassis frame beam).
- (C) New *manufactured homes* located outside of *floodways*, replacement *manufactured homes* in any flood hazard areas, and *substantial improvement* (including repair of *substantial damage*) of existing *manufactured homes* in all flood hazard area, shall:

- (1) Be elevated on a permanent, reinforced foundation in accordance with Section V;
- (2) Be installed in accordance with the anchor and tie-down requirements of the *building code* or the manufacturer's written installation instructions and specifications; and
- (3) Have *enclosures below the lowest floor* of the elevated *manufactured home*, if any, including enclosures that are surrounded by rigid skirting or other material that is attached to the frame or foundation, that comply with the requirements of Section V.

[Note: See "Protecting Manufactured Homes from Floods and Other Hazards: A Multi-Hazard Foundation and Installation Guide" (FEMA P-85).]

#### **15.16.240 Recreational Vehicles**

*Recreational vehicles* shall:

- (A) Meet the requirements for *manufactured homes* in Section 15.16.230; or
- (B) Be fully licensed and ready for highway use; or
- (C) Be on a site for less than 180 consecutive days.

#### **15.16.250 Critical and Essential Facilities**

*Critical and essential facilities* shall:

- (A) Not be located in *floodways*; or
- (B) If located in flood hazard areas other than *floodways*, be elevated to the higher of elevation required by these regulations plus one (1) foot, the elevation required by the *building code*, or the elevation of the 0.2 percent chance (500-year) flood.

#### **15.16.260 Temporary Structures and Temporary Storage**

In addition to the application requirements of Section 15.16.150, applications for the placement or erection of *temporary structures* and the temporary storage of any goods, materials, and equipment, shall specify the duration of the temporary use. *Temporary structures* and temporary storage in *floodways* shall meet the limitations of Section 15.16.310(A) of these regulations. In addition:

- (A) *Temporary structures* shall:

- (1) Be designed and constructed to prevent flotation, collapse or lateral movement resulting from hydrodynamic loads and hydrostatic loads during conditions of the *base flood*;
- (2) Have electric service installed in compliance with the electric code; and
- (3) Comply with all other requirements of the applicable State and local permit authorities.

(B) Temporary storage shall not include hazardous materials.

#### **15.16.270 Gas or Liquid Storage Tanks**

(A) Underground tanks in flood hazard areas shall be anchored to prevent flotation, collapse or lateral movement resulting from hydrostatic loads, including the effects of buoyancy, during conditions of the *base flood*.

(B) Above-ground tanks in flood hazard areas shall be anchored to a supporting structure and elevated to or above the *base flood elevation*, or shall be anchored or otherwise designed and constructed to prevent flotation, collapse, or lateral movement resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy, during conditions of the *base flood*.

(C) In flood hazard areas, tank inlets, fill openings, outlets and vents shall be:

- (1) At or above the *base flood elevation* or fitted with covers designed to prevent the inflow of floodwater or outflow of the contents of the tanks during conditions of the *base flood*; and
- (2) Anchored to prevent lateral movement resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy, during conditions of the *base flood*.

#### **15.16.280 Functionally Dependent Uses**

Applications for *functionally dependent uses* that do not conform to the requirements of these regulations shall be approved only by *variances* issued pursuant to Section VII. If approved, *functionally dependent uses* shall be protected by methods that minimize flood damage during the *base flood*, including measures to allow floodwaters to enter and exit, use of *flood damage-resistant materials*, and elevation of electric service and equipment to the extent practical given the use of the building.

### **SECTION V REQUIREMENTS IN FLOOD HAZARD AREAS**

#### **15.16.290 General Requirements**

In addition to the general requirements of Section IV, the requirements of this section shall:

- (A) Apply in flood hazard areas, including *special flood hazard areas* along *nontidal waters of the State*.
- (B) Apply to all *development, new construction, substantial improvements* (including repair of *substantial damage*), and placement, replacement, and *substantial improvement* (including repair of *substantial damage*) of *manufactured homes*.

**15.16.300 Flood Protection Setbacks**

Within areas defined by *flood protection setbacks* along *nontidal waters of the State*:

- (A) No new buildings, *structures*, or other *development* shall be permitted unless the applicant demonstrates that the site cannot be developed without such encroachment into the *flood protection setback* and the encroachment is the minimum necessary after consideration of varying other siting standards such as side, front, and back lot line setbacks.
- (B) Disturbance of natural vegetation shall be minimized and any disturbance allowed shall be vegetatively stabilized.
- (C) Public works and temporary construction may be permitted.

**15.16.310 Development that Affects Flood-Carrying Capacity of Nontidal Waters of the State**

**(A) Development in Designated Floodways**

For proposed *development* that will encroach into a designated *floodway*, Section 15.16.150(A)(7) requires the applicant to submit an evaluation of alternatives to such encroachment, including different uses of the site or the portion of the site within the *floodway*, and minimization of such encroachment. This requirement does not apply to fences that do not block the flow of floodwaters or trap debris.

Proposed *development* in a designated *floodway* may be permitted only if:

- (1) The applicant has been issued a permit by MDE; and
- (2) The applicant has developed *hydrologic and hydraulic engineering analyses* and technical data prepared by a *licensed* professional engineer reflecting such changes, and the analyses, which shall be submitted to the Floodplain Administrator, demonstrate that the proposed activity will not result in any increase in the *base flood elevation*; or
- (3) If the analyses demonstrate that the proposed activities will result in an increase in the *base flood elevation*, the applicant has obtained a Conditional Letter of Map Revision and a Letter of Map Revision from FEMA upon completion of

the project. Submittal requirements and fees shall be the responsibility of the applicant.

**(B) Development that Includes the Placement of Fill in Nontidal Waters of the State**

For proposed *development* that includes the placement of fill in *nontidal waters of the State*, other than *development* that is subject to paragraph (D), a hydraulically-equivalent volume of excavation is required. Such excavations shall be designed to drain freely.

**(C) Development in Areas with Base Flood Elevations but No Designated Floodways**

For *development in special flood hazard areas of nontidal waters of the State with base flood elevations* but no designated *floodways*:

- (1) The applicant shall develop *hydrologic and hydraulic engineering analyses* and technical data reflecting the proposed activity and shall submit such technical data to the Floodplain Administrator as required in Section 15.16.150(A)(6). The analyses shall be prepared by a *licensed* professional engineer in a format required by FEMA for a Conditional Letter of Map Revision and a Letter of Map Revision upon completion of the project. Submittal requirements and fees shall be the responsibility of the applicant.
- (2) The proposed *development* may be permitted if the applicant has received a permit by MDE and if the analyses demonstrate that the cumulative effect of the proposed *development*, when combined with all other existing and potential flood hazard area encroachments will not increase the *base flood elevation* more than 1.0 foot at any point.

**(D) Construction of Roads, Bridges, Culverts, Dams and In-Stream Ponds**

Construction of roads, bridges, culverts, dams, and in-stream ponds in *nontidal waters of the State* shall not be approved unless they comply with this section and the applicant has received a permit from MDE.

**(E) Alteration of a Watercourse**

For any proposed *development* that involves *alteration of a watercourse* not subject to paragraph (C), unless waived by MDE, the applicant shall develop *hydrologic and hydraulic engineering analyses* and technical data reflecting such changes, including the *floodway* analysis required in Section 15.16.150(A), and submit such technical data to the Floodplain Administrator and to FEMA. The analyses shall be prepared by a *licensed* professional engineer in a format required by MDE and by FEMA for a Conditional Letter of Map Revision or Letter of Map Revision. Submittal requirements and fees shall be the responsibility of the applicant.

*Alteration of a watercourse* may be permitted only upon submission, by the applicant, of the following:

- (1) A description of the extent to which the *watercourse* will be altered or relocated;
- (2) A certification by a *licensed* professional engineer that the flood-carrying capacity of the *watercourse* will not be diminished;
- (3) Evidence that adjacent communities, the U.S. Army Corps of Engineers, and MDE have been notified of the proposal, and evidence that such notifications have been submitted to FEMA; and
- (4) Evidence that the applicant shall be responsible for providing the necessary maintenance for the altered or relocated portion of the *watercourse* so that the flood carrying capacity will not be diminished. The Floodplain Administrator may require the applicant to enter into an agreement with the City of Salisbury, Maryland specifying the maintenance responsibilities; if an agreement is required, the permit shall be conditioned to require that the agreement be recorded on the deed of the property which shall be binding on future owners.

#### **15.16.320 Residential Structures and Residential Portions of Mixed Use Structures**

New residential *structures* and residential portions of mixed use *structures*, and *substantial improvement* (including repair of *substantial damage*) of existing residential *structures* and residential portions of mixed use *structures* shall comply with the applicable requirements of Section IV and this section. See Section 15.16.340 for requirements for horizontal additions.

##### **(A) Elevation Requirements**

- (1) *Lowest floors* shall be elevated to or above the *flood protection elevation*.
- (2) In *areas of shallow flooding* (Zone AO), the *lowest floor* (including *basement*) shall be elevated at least as high above the *highest adjacent grade* as the depth number specified in feet on the *FIRM* plus two (2) feet, or at least four (4) feet if a depth number is not specified.
- (3) *Enclosures below the lowest floor* shall meet the requirements of paragraph (C).

##### **(B) Limitations on Use of Fill to Elevate Structures**

Unless otherwise restricted by these regulations, especially by the limitations in Section 15.16.310(A), Section 15.16.310(B), and Section 15.16.310(C), fill placed for the purpose of raising the ground level to support a building or *structure* shall:

- (1) Consist of earthen soil or rock materials only.

- (2) Extend laterally from the building footprint to provide for adequate access as a function of use; the Floodplain Administrator may seek advice from the State Fire Marshal's Office and/or the local fire services agency;
- (3) Comply with the requirements of the *building code* and be placed and compacted to provide for stability under conditions of rising and falling floodwaters and resistance to erosion, scour, and settling;
- (4) Be sloped no steeper than one (1) vertical to two (2) horizontal, unless approved by the Floodplain Administrator;
- (5) Be protected from erosion associated with expected velocities during the occurrence of the *base flood*; unless approved by the Floodplain Administrator, fill slopes shall be protected by vegetation if the expected velocity is less than five feet per second, and by other means if the expected velocity is five feet per second or more; and
- (6) Be designed with provisions for adequate drainage and no adverse effect on adjacent properties.

**(C) Enclosures Below the Lowest Floor**

- (1) *Enclosures below the lowest floor* shall be used solely for parking of vehicles, building access, crawl/underfloor spaces, or limited storage.
- (2) *Enclosures below the lowest floor* shall be constructed using *flood damage-resistant materials*.
- (3) *Enclosures below the lowest floor* shall be provided with *flood openings* which shall meet the following criteria: [Note: See NFIP Technical Bulletin #1, "Openings in Foundation Walls and Walls of Enclosures."]
  - (a) There shall be a minimum of two *flood openings* on different sides of each enclosed area; if a building has more than one *enclosure below the lowest floor*, each such enclosure shall have *flood openings* on exterior walls.
  - (b) The total net area of all *flood openings* shall be at least 1 square inch for each square foot of enclosed area (non-engineered *flood openings*), or the *flood openings* shall be engineered *flood openings* that are designed and certified by a *licensed* professional engineer to automatically allow entry and exit of floodwaters; the certification requirement may be satisfied by an individual certification or an Evaluation Report issued by the ICC Evaluation Service, Inc.

- (c) The bottom of each *flood opening* shall be 1 foot or less above the higher of the interior floor or grade, or the exterior grade, immediately below the opening.
- (d) Any louvers, screens or other covers for the *flood openings* shall allow the automatic flow of floodwaters into and out of the enclosed area.
- (e) If installed in doors, *flood openings* that meet requirements of paragraphs (a) through (d), are acceptable; however, doors without installed *flood openings* do not meet the requirements of this section.

**15.16.330 Nonresidential Structures and Nonresidential Portions of Mixed Use Structures**

New nonresidential *structures* and nonresidential portions of mixed use *structures*, and *substantial improvement* (including repair of *substantial damage*) of existing nonresidential *structures* and nonresidential portions of mixed use *structures* shall comply with the applicable requirements of Section IV and the requirements of this section. See Section 15.16.340 for requirements for horizontal additions.

**(A) Elevation Requirements**

Elevated *structures* shall:

- (1) Have the *lowest floor* (including *basement*) elevated to or above the *flood protection elevation*; or
- (2) In *areas of shallow flooding* (Zone AO), have the *lowest floor* (including *basement*) elevated at least as high above the *highest adjacent grade* as the depth number specified in feet on the *FIRM* plus two (2) feet, or at least four (4) feet if a depth number is not specified; and
- (3) Have *enclosures below the lowest floor*, if any, that comply with the requirements of Section 15.16.320(C); or
- (4) If proposed to be elevated on fill, meet the limitations on fill in Section 15.16.320(B).

**(B) Floodproofing Requirements**

- (1) *Floodproofing* of new nonresidential buildings is not allowed in *nontidal waters of the State* (COMAR 26.17.04.11(B)(7)).
- (2) *Floodproofing* for *substantial improvement* of nonresidential buildings is allowed in *nontidal waters of the State*.

- (3) If *floodproofing* is proposed, *structures* shall:
- (a) Be designed to be dry *floodproofed* such that the building or *structure* is watertight with walls and floors substantially impermeable to the passage of water to the level of the *flood protection elevation* plus 1.0 foot, or
  - (b) If located in an *area of shallow flooding* (Zone AO), be dry *floodproofed* at least as high above the *highest adjacent grade* as the depth number specified on the *FIRM* plus three (3) feet, or at least five (5) feet if a depth number is not specified; and
  - (c) Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy;
  - (d) Have *floodproofing* measures that are designed taking into consideration the nature of flood-related hazards; frequency, depth and duration of *flooding*; rate of rise and fall of floodwater; soil characteristics; flood-borne debris; at least 12 hours of flood warning time from a credible source; and time necessary to implement any measures that require human intervention;
  - (e) Have at least one door above the applicable flood elevation that allows human ingress and egress during conditions of *flooding*;
  - (f) Have an operations and maintenance plan that is filed with local emergency management officials and that specifies the owner/occupant's responsibilities to monitor flood potential; the location of any shields, doors, closures, tools, or other goods that are required for implementation; maintenance of such goods; methods of installation; and periodic inspection; and
  - (g) Be certified by a *licensed* professional engineer or *licensed* architect, through execution of a *Floodproofing Certificate* that states that the design and methods of construction meet the requirements of this section. The *Floodproofing Certificate* shall be submitted with the construction drawings as required in Section 15.16.150(A)(13).

#### **15.16.340 Horizontal Additions**

- (A) A horizontal addition proposed for a building or *structure* that was constructed after the date specified in Section 15.16.010 shall comply with the applicable requirements of Section IV and this section.

- (B) In *nontidal waters of the State* that are subject to the regulatory authority of MDE, all horizontal additions shall comply with the applicable requirements of Section IV and this section and:
- (1) If the addition is structurally connected to the *base building*, the requirements of paragraph (C) apply.
  - (2) If the addition has an independent foundation and is not structurally connected to the *base building* and the common wall with the *base building* is modified by no more than a doorway, the *base building* is not required to be brought into compliance.
- (C) For horizontal additions that are structurally connected to the *base building*:
- (1) If the addition combined with other proposed repairs, alterations, or modifications of the *base building* constitutes *substantial improvement*, the *base building* and the addition shall comply with the applicable requirements of Section 4.0 and this section.
  - (2) If the addition constitutes *substantial improvement*, the *base building* and the addition shall comply with all of the applicable requirements of Section 4.0 and this section.
- (D) For horizontal additions with independent foundations that are not structurally connected to the *base building* and the common wall with the *base building* is modified by no more than a doorway, the *base building* is not required to be brought into compliance.
- (E) A horizontal addition to a building or *structure* that is not *substantial improvement*, and is not located in *nontidal waters of the State*, is not required to comply with this section.

[Note: See “Substantial Improvement/Substantial Damage Desk Reference” (FEMA P-758).]

#### **15.16.350 Accessory Structures**

- (A) *Accessory structures* shall be limited to not more than 300 square feet in total floor area.
- (B) *Accessory structures* shall comply with the elevation requirements and other requirements of Section 15.16.320, the *floodproofing* requirements of Section 15.16.330(B), or shall:
  - (1) Be useable only for parking of vehicles or limited storage;

- (2) Be constructed with *flood damage-resistant materials* below the *base flood elevation*;
- (3) Be constructed and placed to offer the minimum resistance to the flow of floodwaters;
- (4) Be anchored to prevent flotation;
- (5) Have electrical service and mechanical equipment elevated to or above the *base flood elevation*; and
- (6) Have *flood openings* that meet the requirements of Section 15.16.320(C).

## SECTION VI        RESERVED

## SECTION VII        VARIANCES

### 15.16.360        General

The Building Board of Adjustments & Appeals shall have the power to consider and authorize or deny *variances* from the strict application of the requirements of these regulations. A *variance* shall be approved only if it is determined to not be contrary to the public interest and where, owing to special conditions of the lot or parcel, a literal enforcement of the provisions of these regulations, an unnecessary hardship would result.

Upon consideration of the purposes of these regulations, the individual circumstances, and the considerations and limitations of this section, the Building Board of Adjustments & Appeals may attach such conditions to *variances* as it deems necessary to further the purposes of these regulations.

The Building Board of Adjustments & Appeals shall notify, in writing, any applicant to whom a *variance* is granted to construct or substantially improve a building or *structure* with its *lowest floor* below the elevation required by these regulations that the *variance* is to the floodplain management requirements of these regulations only, and that the cost of Federal flood insurance will be commensurate with the increased risk, with rates up to \$25 per \$100 of insurance coverage.

A record of all *variance* actions, including justification for issuance shall be maintained pursuant to Section 15.16.120(J) of these regulations.

### 15.16.370        Application for a Variance

- (A) The owner of property, or the owner's authorized agent, for which a *variance* is sought shall submit an application for a *variance* to the Floodplain Administrator.
- (B) At a minimum, the application shall contain the following information: name, address, and telephone number of the applicant and property owner; legal description of the

property; parcel map; description of the existing use; description of the proposed use; site map showing the location of flood hazard areas, designated *floodway* boundaries, *flood zones*, *base flood elevations*, and *flood protection setbacks*; description of the *variance* sought; and reason for the *variance* request. *Variance* applications shall specifically address each of the considerations in Section 15.16.380.

- (C) If the application is for a *variance* to allow the *lowest floor* of a building or *structure* below the applicable minimum elevation required by these regulations, the application shall include a statement signed by the owner that, if granted, the conditions of the *variance* shall be recorded on the deed of the property.
- (D) If the application is for a *variance* for a *historic structure* pursuant to Section 15.16.220 of these regulations, the application shall contain documentation that the proposed work does not preclude the *structure*'s continued eligibility and designation as a *historic structure*. The documentation shall be obtained from a source that is authorized to make such determinations (see definition of "Historic Structure").

#### **15.16.380 Considerations for Variances**

The Floodplain Administrator shall request comments on *variance* applications from MDE (NFIP State Coordinator) and shall provide such comments to the Building Board of Adjustments & Appeals.

In considering *variance* applications, the Building Board of Adjustments & Appeals shall consider and make findings of fact on all evaluations, all relevant factors, requirements specified in other sections of these regulations, and the following factors:

- (A) The danger that materials may be swept onto other lands to the injury of others.
- (B) The danger to life and property due to *flooding* or erosion damage.
- (C) The susceptibility of the proposed *development* and its contents (if applicable) to flood damage and the effect of such damage on the individual owner.
- (D) The importance of the services to the *community* provided by the proposed *development*.
- (E) The availability of alternative locations for the proposed use which are not subject to, or are subject to less, *flooding* or erosion damage.
- (F) The necessity to the facility of a waterfront location, where applicable, or if the facility is a *functionally dependent use*.
- (G) The compatibility of the proposed use with existing and anticipated *development*.

- (H) The relationship of the proposed use to the comprehensive plan and hazard mitigation plan for that area.
- (I) The safety of access to the property in times of flood for passenger vehicles and emergency vehicles.
- (J) The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site.
- (K) The costs of providing government services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.
- (L) The comments provided by MDE (NFIP State Coordinator).

#### **15.16.390 Limitations for Granting Variances**

The Building Board of Adjustments & Appeals shall make an affirmative decision on a *variance* request only upon:

- (A) A showing of good and sufficient cause. Good and sufficient cause deals solely with the physical characteristics of the property and cannot be based on the character of the improvement, the personal characteristics of the owner/inhabitants, or local provision that regulate standards other than health and public safety.
- (B) A determination that failure to grant the *variance* would result in exceptional hardship due to the physical characteristics of the property. Increased cost or inconvenience of meeting the requirements of these regulations does not constitute an exceptional hardship to the applicant.
- (C) A determination that the granting of a *variance* for *development* within any designated *floodway*, or flood hazard area with *base flood elevations* but no designated *floodway*, will not result in increased flood heights beyond that which is allowed in these regulations.
- (D) A determination that the granting of a *variance* will not result in additional threats to public safety; extraordinary public expense, nuisances, fraud or victimization of the public, or conflict with existing local laws.
- (E) A determination that the building, *structure* or other *development* is protected by methods to minimize flood damages.
- (F) A determination that the *variance* is the minimum necessary to afford relief, considering the flood hazard.

## SECTION VII ENFORCEMENT

### 15.16.400 Compliance Required

- (A) No building, *structure* or *development* shall hereafter be located, erected, constructed, reconstructed, improved, repaired, extended, converted, enlarged or altered without full compliance with these regulations and all other applicable regulations.
- (B) Failure to obtain a permit shall be a *violation* of these regulations and shall be subject to penalties in accordance with Section 15.16.420.
- (C) Permits issued on the basis of plans and applications approved by the Floodplain Administrator authorize only the specific activities set forth in such approved plans and applications or amendments thereto. Use, arrangement, or construction of such specific activities that are contrary to that authorization shall be deemed a *violation* of these regulations.

### 15.16.410 Notice of Violation and Stop Work Order

If the Floodplain Administrator determines that there has been a *violation* of any provision of these regulations, the Floodplain Administrator shall give notice of such *violation* to the owner, the owner's authorized agent, and the *person* responsible for such *violation*, and may issue a stop work order. The notice of *violation* or stop work order shall be in writing and shall:

- (A) Include a list of *violations*, referring to the section or sections of these regulations that have been violated;
- (B) Order remedial action which, if taken, will effect compliance with the provisions of these regulations;
- (C) Specify a reasonable period of time to correct the *violation*;
- (D) Advise the recipients of the right to appeal; and
- (E) Be served in person; or
- (F) Be posted in a conspicuous place in or on the property and sent by registered or certified mail to the last known mailing address, residence, or place of business of the recipients.

### 15.16.420 Violations and Penalties

*Violations* of these regulations or failure to comply with the requirements of these regulations or any conditions attached to a permit or *variance* shall constitute a misdemeanor. Any *person* responsible for a *violation* shall comply with the notice of *violation* or stop work order. Failure to comply shall be guilty of a municipal infraction not to exceed five hundred dollars (\$500.00). Each day a *violation* continues shall be considered a separate offense. Nothing herein contained

shall prevent the City of Salisbury, Maryland from taking such other lawful action as is necessary to prevent or remedy any *violation*.

**SECTION VIII SUBSEQUENT AMENDMENTS AND EFFECTIVE DATE**

**15.16.430 Subsequent Amendments**

All ordinances or parts of ordinances that are inconsistent with the provisions of this ordinance are hereby repealed to the extent of such inconsistency. This ordinance shall be amended as required by the Federal Emergency Management Agency, Title 44, Code of Federal Regulations. All subsequent amendments to this ordinance are subject to the approval of the Federal Emergency Management Agency and the Maryland Department of the Environment.

**15.16.440 Effective Date**

ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2015 and to be effective on the 17<sup>th</sup> day of August, 2015 [KGW1].

Signed:

Date:

\_\_\_\_\_  
James Ireton, Jr., Mayor

\_\_\_\_\_  
Jacob Day, Council President

\_\_\_\_\_  
Laura Mitchell, Councilwoman

\_\_\_\_\_  
John R. Heath, Councilman

\_\_\_\_\_  
Eugenie P. Shields, Councilwoman

\_\_\_\_\_  
Tim Spies, Councilman

# City of Salisbury



MARYLAND



125 NORTH DIVISION STREET  
SALISBURY, MARYLAND 21801  
Tel: 410-548-3170  
Fax: 410-548-3107

JAMES IRETON, JR.  
MAYOR

M. THOMAS STEVENSON, JR.  
CITY ADMINISTRATOR

JULIA GLANZ  
ASSISTANT CITY ADMINISTRATOR

MICHAEL S MOULDS, P.E.  
DIRECTOR OF PUBLIC WORKS

To: Thomas Stevenson, Jr., City Administrator  
From: Michael Moulds, Director of Public Works   
Date: April 20, 2015  
Re: Salisbury WWTP BNR/ENR Upgrade Resolution for Loan Acceptance

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Ordinance No. 2322 authorized the City to issue and sell general obligation bonds in an amount not to exceed thirty-eight million dollars (\$38,000,000.00). The bonds will be used for the purpose of financing, reimbursing or refinancing costs incurred in connection with Enhanced Nutrient Removal (ENR) and Biological Nutrient Removal (BNR) Upgrades at the Wastewater Treatment Plant. The project is funded through the Maryland Water Quality Financing Administration (MWQFA) at a zero interest rate over a 20 year term.

This Resolutions is to set the bond amount for the loan of \$36,045,000 which will be \$34,545,000 Base Loan and \$1,500,000 Principal Forgiveness Loan.

Public Works recommends approval of the loan amount. Unless you or the Mayor has further questions, please forward this Resolution to the City Council.

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A RESOLUTION OF THE CITY OF SALISBURY, MARYLAND AUTHORIZING AND EMPOWERING CITY OF SALISBURY (THE “CITY”), PURSUANT TO THE AUTHORITY OF SECTIONS 19-301 TO 19-309, INCLUSIVE, OF THE LOCAL GOVERNMENT ARTICLE OF THE ANNOTATED CODE OF MARYLAND, SECTIONS 9-1601 TO 9-1622, INCLUSIVE, OF THE ENVIRONMENT ARTICLE OF THE ANNOTATED CODE OF MARYLAND, SECTIONS SC7-45 AND SC7-46 OF THE CHARTER OF THE CITY OF SALISBURY, AND ORDINANCE NO. 2322, PASSED BY THE COUNCIL OF THE CITY (THE “COUNCIL”) ON \_\_\_\_\_, 2015, APPROVED BY THE MAYOR OF THE CITY (THE “MAYOR”) ON \_\_\_\_\_, 2015 AND EFFECTIVE ON \_\_\_\_\_, 2015 (THE “ORDINANCE”), TO AUTHORIZE AND EMPOWER THE CITY TO ISSUE AND SELL, UPON ITS FULL FAITH AND CREDIT, TWO SEPARATE SERIES OF GENERAL OBLIGATION BONDS IN THE RESPECTIVE AGGREGATE PRINCIPAL AMOUNTS OF THIRTY-FOUR MILLION FIVE HUNDRED FORTY-FIVE THOUSAND DOLLARS (\$34,545,000.00) AND ONE MILLION FIVE HUNDRED THOUSAND DOLLARS (\$1,500,000.00), TO BE DESIGNATED, RESPECTIVELY, “CITY OF SALISBURY WATER QUALITY BOND, SERIES 2015A” AND “CITY OF SALISBURY WATER QUALITY BOND, SERIES 2015B” OR AS OTHERWISE REQUIRED AS PROVIDED HEREIN, THE BONDS TO BE ISSUED AND SOLD AND THE PROCEEDS THEREOF TO BE USED FOR AND APPLIED TO THE PUBLIC PURPOSE OF FINANCING OR REIMBURSING COSTS INCURRED IN CONNECTION WITH ENHANCED NUTRIENT REMOVAL (ENR) AND BIOLOGICAL NUTRIENT REMOVAL (BNR) UPGRADES AND IMPROVEMENTS TO OR BENEFITING THE EXISTING WASTEWATER TREATMENT PLANT AND SYSTEM, TOGETHER WITH RELATED COSTS AND COSTS OF ISSUANCE AS PROVIDED HEREIN; PRESCRIBING, APPROVING AND ADOPTING THE FORMS AND TENOR OF THE BONDS, THE TERMS AND CONDITIONS FOR THE ISSUANCE AND SALE OF THE BONDS BY PRIVATE SALE, WITHOUT PUBLIC BIDDING, TO THE MARYLAND WATER QUALITY FINANCING ADMINISTRATION (THE “ADMINISTRATION”), AND ALL OTHER DETAILS INCIDENT THERETO, AND AUTHORIZING THE MAYOR, ON BEHALF OF THE CITY, TO ADJUST AND TO FIX CERTAIN DETAILS OF THE BONDS; PROVIDING FOR THE POTENTIAL FORGIVENESS OF ONE OF THE BONDS; APPROVING, AND AUTHORIZING AND DIRECTING THE EXECUTION AND DELIVERY OF, TWO LOAN AGREEMENTS WITH THE ADMINISTRATION PURSUANT TO WHICH ADVANCES WILL BE MADE UNDER THE BONDS; AUTHORIZING CERTAIN OFFICIALS TO TAKE CERTAIN ACTIONS WITH RESPECT TO THE LOAN AGREEMENTS AND DESIGNATING CERTAIN OFFICIALS AS “AUTHORIZED OFFICERS” FOR PURPOSES OF THE LOAN AGREEMENTS; PROVIDING FOR THE DISBURSEMENT OF ADVANCES OF THE BONDS; PROVIDING FOR THE LEVY AND COLLECTION OF AD VALOREM TAXES SUFFICIENT FOR THE PROMPT PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THE BONDS; PLEDGING THE FULL FAITH AND CREDIT AND UNLIMITED TAXING POWER OF THE CITY TO THE PROMPT PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THE BONDS; PROVIDING THAT THE PRINCIPAL OF AND INTEREST ON THE BONDS WILL BE

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43 PAYABLE IN THE FIRST INSTANCE FROM REVENUES RECEIVED BY THE CITY IN  
44 CONNECTION WITH THE OPERATION OF THE WASTEWATER SYSTEM AND THE  
45 WATER SUPPLY SYSTEM SERVING THE CITY, TO THE EXTENT AVAILABLE  
46 THEREFOR; PROVIDING THAT THE PRINCIPAL OF AND INTEREST ON THE BONDS  
47 ALSO MAY BE PAID FROM ANY OTHER SOURCES OF REVENUE LAWFULLY  
48 AVAILABLE TO THE CITY FOR SUCH PURPOSE; AUTHORIZING AND DIRECTING  
49 OFFICIALS AND EMPLOYEES OF THE CITY TO TAKE ANY AND ALL ACTION  
50 NECESSARY TO COMPLETE AND CLOSE THE SALE AND DELIVERY OF THE BONDS;  
51 PROVIDING THAT NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED  
52 IN THE ORDINANCE OR THIS RESOLUTION, THE CITY SHALL USE AND APPLY  
53 PROCEEDS OF THE BONDS ONLY AS PERMITTED BY THE LOAN AGREEMENTS, THE  
54 CLEAN WATER ACT (AS DEFINED IN THE LOAN AGREEMENTS) AND THE ACT (AS  
55 DEFINED IN THE LOAN AGREEMENTS); AND OTHERWISE GENERALLY RELATING  
56 TO THE ISSUANCE, SALE, DELIVERY AND PAYMENT OF AND FOR THE BONDS.

57 RECITALS

58 WHEREAS, City of Salisbury, a municipality of the State of Maryland within the  
59 meaning of the Enabling Act identified below and a municipal corporation of the State of  
60 Maryland within the meaning of the MWQFA Act identified below (the “City”), is authorized  
61 and empowered by Sections 19-301 to 19-309, inclusive, of the Local Government Article of the  
62 Annotated Code of Maryland, as replaced, supplemented or amended (the “Enabling Act”), Sections  
63 9-1601 to 9-1622, inclusive, of the Environment Article of the Annotated Code of Maryland, as  
64 replaced, supplemented or amended (the “MWQFA Act”), and Sections SC7-45 and SC7-46 of the  
65 Charter of the City of Salisbury, as replaced, supplemented or amended (the “Charter”), to borrow  
66 money for any proper public purpose and to evidence such borrowing by the issuance and sale of  
67 its general obligation bonds; and

68 WHEREAS, pursuant to Ordinance No. 2322, passed pursuant to the authority of the  
69 Enabling Act, the MWQFA Act and Sections SC7-45 and SC7-46 of the Charter by the Council of  
70 the City (the “Council”) on \_\_\_\_\_, 2015, approved by the Mayor of the City (the  
71 “Mayor”) on \_\_\_\_\_, 2015 and effective on \_\_\_\_\_, 2015 (the  
72 “Ordinance”), the City authorized the issuance and sale from time to time, upon its full faith and  
73 credit, of one or more series of its general obligation bonds in an aggregate principal amount not to  
74 exceed Thirty-eight Million Dollars (\$38,000,000.00) (the “Authorized Bonds”), and the Ordinance  
75 provides that any such series may consist of one or more bonds and that any bond may be issued in  
76 installment form and/or draw-down form; and

77 WHEREAS, the Ordinance provides that the proceeds of the Authorized Bonds are to be  
78 used and applied for the public purpose of financing, reimbursing or refinancing costs incurred in  
79 connection with undertaking Biological Nutrient Removal (BNR) and Enhanced Nutrient  
80 Removal (ENR) upgrades and improvements to or benefiting the City’s existing wastewater  
81 treatment plant and system, including, without limitation, with respect to treatment processes  
82 including for solids and, in connection with such undertaking, to acquire or pay for the

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83 acquisition of necessary property rights and equipment, related site improvements and utilities,  
84 related architectural, planning, design, engineering, surveying, bidding, document development,  
85 permitting, acquisition, construction, improvement, installation, modification, demolition,  
86 removal, renovation, reconstruction, rehabilitation, equipping, inspection, construction  
87 administration, construction management and related costs, related financial, administrative and  
88 legal expenses, and costs of related activities, and has determined to borrow money for the public  
89 purpose of financing, reimbursing or refinancing all or a portion of the costs of any components  
90 of such activities, including costs of issuance relating to any such borrowing (collectively, the  
91 “Project”), all to the extent permitted by the Maryland Water Quality Financing Administration  
92 (the “Administration”); and

93 WHEREAS, the City has determined that it is in the best interest of the City and its  
94 citizens to issue and sell to the Administration at this time two series of general obligation bonds,  
95 each consisting of a single bond, in order to finance, reimburse or refinance costs of the Project in  
96 accordance with, and pursuant to, the authority contained in the Enabling Act, the MWQFA Act,  
97 Sections SC7-45 and SC7-46 of the Charter and the Ordinance, and upon the terms and conditions  
98 set forth in this Resolution, the proceeds of which general obligation bonds are to be used and  
99 applied as herein set forth.

100 WHEREAS, the \$ \_\_\_\_\_ aggregate principal amount of the bonds provided  
101 for herein shall not cause the City to exceed the debt limit provided for in Charter Section SC7-48,  
102 which was amended pursuant to Charter Amendment Resolution No. \_\_\_\_\_, adopted by the  
103 Council on \_\_\_\_\_, 2015 and effective on \_\_\_\_\_, 2015.

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

106 (a) The Recitals to this Resolution are incorporated by reference herein and are  
107 deemed a substantive part of this Resolution, and capitalized terms defined in the Recitals to this  
108 Resolution and used in the Sections of this Resolution will have the meanings given to such  
109 terms in the Recitals hereto.

110 (b) References in this Resolution to any official by title shall be deemed to refer (i) to  
111 any official authorized under the Charter or other applicable law to act in such titled official’s stead  
112 during the absence or disability of such titled official, (ii) to any person who has been elected,  
113 appointed or designated to fill such position in an acting capacity under the Charter, the code of City  
114 ordinances (the “City Code”) or other applicable law, (iii) to any person who serves in a “Deputy”  
115 or “Assistant” capacity as such an official, provided that the applicable responsibilities, rights or  
116 duties referred to herein have been delegated to such deputy or assistant in accordance with  
117 applicable law or authority, and/or (iv) to the extent an identified official commonly uses another  
118 title not provided for in the Charter or the City Code, the official, however known, who is charged  
119 under the Charter, the City Code or other applicable law or authority with the applicable  
120 responsibilities, rights or duties referred to herein.

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121            SECTION 2. BE IT FURTHER RESOLVED that:

122            (a) Pursuant to the authority of the Enabling Act, the MWQFA Act, Sections SC7-45  
123 and SC7-46 of the Charter and the Ordinance, the City hereby determines to issue and sell, upon its  
124 full faith and credit, two separate series of general obligation bonds for the public purpose of  
125 financing or reimbursing costs of the Project. One such bond shall be issued in the principal amount  
126 of Thirty-four Million Five Hundred Forty-five Thousand Dollars (\$34,545,000.00) and shall be  
127 designated as the “City of Salisbury Water Quality Bond, Series 2015A” or by such additional or  
128 different designation as may be required by the Administration (the “Series 2015A Bond”). The  
129 other such bond shall be issued in the principal amount of One Million Five Hundred Thousand  
130 Dollars (\$1,500,000.00) and shall be designated as the “City of Salisbury Water Quality Bond,  
131 Series 2015B” or by such additional or different designation as may be required by the  
132 Administration (the “Series 2015B Bond” and, together with the Series 2015A Bond, the “Bonds”,  
133 or, individually, a “Bond”). Payment of the Series 2015B Bond shall be subject to forgiveness by  
134 the Administration in accordance with the provisions of Section 3(j) hereof and the terms of the  
135 Series 2015B Bond.

136            (b) Proceeds of the Bonds shall be applied to costs of the Project only as permitted by  
137 the Administration. The Administration refers to the Project internally as: “Salisbury WWTP  
138 BNR/ENR Upgrade (CAP)”.

139            SECTION 3. BE IT FURTHER RESOLVED that:

140            (a) The Bonds shall be issued and sold upon the full faith and credit of the City, shall be  
141 dated the date of their delivery, shall be numbered RA-1 and RB-1, respectively, and shall be issued  
142 in the form of single, fully-registered bonds, without coupons attached. The Series 2015A Bond  
143 shall be issued in installment form as authorized pursuant to the Ordinance.

144            (b) Subject to the provisions of subsections (d) and (e) below and the further provisions  
145 of this subsection (b), the principal amount of the Series 2015A Bond advanced under the Series  
146 2015A Loan Agreement (as defined in Section 8(b) hereof) shall be paid in installments on the dates  
147 and in the amounts as set forth in the following schedule, as such schedule may be revised in  
148 accordance with the provisions of the Series 2015A Bond and the Series 2015A Loan Agreement:

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<u>Due</u> <u>February 1</u>	<u>Principal</u> <u>Amount</u>	<u>Due</u> <u>February 1</u>	<u>Principal</u> <u>Amount</u>
2018	\$ 150,000	2028	\$2,778,750
2019	150,000	2029	2,778,750
2020	150,000	2030	2,778,750
2021	150,000	2031	2,778,750
2022	150,000	2032	2,778,750
2023	150,000	2033	2,778,750
2024	150,000	2034	2,778,750
2025	150,000	2035	2,778,750
2026	2,778,750	2036	2,778,750
2027	2,778,750	2037	2,778,750

150 Notwithstanding the foregoing amortization schedule, the Mayor, on behalf of the City, with the  
151 advice of the Director of Internal Services of the City (the “Director of Internal Services”), is hereby  
152 authorized and empowered to approve a revised amortization schedule for the Series 2015A Bond  
153 prior to the delivery thereof that is approved by the Administration and either (i) takes into account  
154 financial considerations of the City, including, without limitation, the repayment requirements with  
155 regard to other outstanding obligations of the City and/or (ii) is structured to meet the  
156 Administration’s program requirements and the requirements of the MWQFA Act, such approval of  
157 any revised amortization schedule to be evidenced conclusively by the Mayor’s execution and  
158 delivery of the Series 2015A Bond containing such revised amortization schedule in accordance  
159 with the provisions of Sections 5 and 7 of this Resolution.

160 (c) The Series 2015A Bond, or so much of the principal amount thereof as shall have  
161 been advanced from time to time under the terms of the Series 2015A Loan Agreement, shall bear  
162 interest from its dated date at an annual rate of interest equal to zero percent (0.00%) per annum.  
163 Accordingly, no actual interest shall be due on the Series 2015A Bond except to the extent interest  
164 is due on overdue installments of principal or is otherwise due in accordance with the provisions of  
165 the Series 2015A Loan Agreement referred to in subsection (f) below.

166 (d) The payment dates and principal installments provided for in the foregoing  
167 subsection (b) are based on an anticipated date of delivery of the Series 2015A Bond in June 2015  
168 and an estimated completion date for the Project in November 2017. Notwithstanding the  
169 provisions of subsection (b) above, in the event the Series 2015A Bond, for whatever reason, is  
170 delivered later than June 2015, the estimated completion date for the Project is determined prior to  
171 the delivery of the Series 2015A Bond to be earlier or later than November 2017 or the  
172 Administration determines in accordance with its program requirements that a different amortization  
173 schedule is required, the Mayor, on behalf of the City, is hereby authorized and directed to adjust  
174 and change the principal payment dates and principal installment amounts (including, without  
175 limitation, by providing for a first minimum principal payment on a date specified by the  
176 Administration and/or by otherwise adjusting the dates on which principal will commence and will

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177 otherwise be due and/or by adjusting the principal amounts set forth in subsection (b) above to  
178 reflect any change in the payment dates) all as required by the Administration in order to meet the  
179 requirements of Section 9-1605(d)(1)(ii) of the MWQFA Act or to meet other requirements of the  
180 Administration, such approval and adjustment to be evidenced conclusively by the Mayor's  
181 execution and delivery of the Series 2015A Bond containing such revised amortization schedule in  
182 accordance with the provisions of Sections 5 and 7 of this Resolution.

183 (e) If the Administration determines at any time following delivery of the Series 2015A  
184 Bond to reduce the maximum amount of the Loan Commitment (as defined in the Series 2015A  
185 Loan Agreement) relating to the Series 2015A Bond in accordance with Section 3.08 of the Series  
186 2015A Loan Agreement, the Maximum Principal Amount (as defined in the Series 2015A Bond) of  
187 the Series 2015A Bond shall be reduced accordingly and such Maximum Principal Amount as so  
188 reduced shall be amortized as provided in the Series 2015A Loan Agreement. In such event, as  
189 determined by the Administration, the City may execute and deliver (in the manner provided for in  
190 Sections 5 and 7 hereof) a new Series 2015A Bond evidencing such reduction in the Loan  
191 Commitment and/or such other certificates, documents or evidence as the Administration may  
192 require pursuant to Section 3.08 of the Series 2015A Loan Agreement.

193 (f) The City shall pay (i) a late charge for any payment of principal of or interest on the  
194 Series 2015A Bond that is received later than the tenth (10th) day following its due date, in an  
195 amount equal to 5% of such payment, and (ii) interest on overdue installments of principal and (to  
196 the extent permitted by law) interest at the Default Rate provided for in the Series 2015A Loan  
197 Agreement, which Default Rate shall be equal to 100% of the average of the weekly Bond Buyer  
198 11-Bond Index for the calendar month prior to the month in which the Series 2015A Bond is  
199 delivered, provided that the rate determined by such calculation may be rounded down by the  
200 Administration in its sole discretion. Amounts payable pursuant to this subsection (f) shall be  
201 immediately due and payable to the Administration and interest at the Default Rate shall continue to  
202 accrue on overdue installments of principal and (to the extent permitted by law) interest until such  
203 amounts are paid in full.

204 (g) The principal of the Series 2015B Bond advanced under the Series 2015B Loan  
205 Agreement (as defined in Section 8(b) hereof) shall be payable upon demand by the Administration  
206 in accordance with the Series 2015B Loan Agreement, together with interest at an annual rate equal  
207 to one hundred percent (100%) of the average of the weekly Bond Buyer 11-Bond Index for the  
208 calendar month prior to the month in which the Series 2015B Bond is delivered (provided that the  
209 rate determined by such calculation may be rounded down by the Administration in its sole  
210 discretion), accruing from the date on which such demand is made by the Administration, which  
211 demand may be made at any time prior to that date which is the ten (10) year anniversary of the date  
212 of delivery of the Series 2015B Bond.

213 (h) The City shall pay a late charge for any payment of principal of or interest on the  
214 Series 2015B Bond that is received later than the thirtieth (30th) day following the date of demand  
215 for payment of the Series 2015B Bond, in an amount equal to 5% of such payment.

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216 (i) If the Administration determines at any time following delivery of the Series 2015B  
217 Bond to reduce the maximum amount of the Loan Commitment (as defined in the Series 2015B  
218 Loan Agreement) relating to the Series 2015B Bond in accordance with Section 3.08 of the Series  
219 2015B Loan Agreement, the Maximum Principal Amount (as defined in the Series 2015B Bond) of  
220 the Series 2015B Bond shall be reduced accordingly. In such event, as determined by the  
221 Administration, the City may execute and deliver (in the manner provided for in Sections 5 and 7  
222 hereof) a new Series 2015B Bond evidencing such reduction in the Loan Commitment and/or such  
223 other certificates, documents or evidence as the Administration may require pursuant to Section  
224 3.08 of the Series 2015B Loan Agreement.

225 (j) PURSUANT TO THE CLEAN WATER ACT, AS AMENDED BY FEDERAL  
226 APPROPRIATION OR AUTHORIZATION ACTS AND SECTION 9-1605(d)(9) OF THE  
227 MWQFA ACT, THE ADMINISTRATION SHALL FORGIVE REPAYMENT OF THE  
228 PRINCIPAL AMOUNT OF THE LOAN (AS DEFINED IN THE SERIES 2015B LOAN  
229 AGREEMENT) AND THE INTEREST PAYABLE THEREON UNDER ARTICLE III OF THE  
230 SERIES 2015B LOAN AGREEMENT AND THE SERIES 2015B BOND SO LONG AS  
231 THE CITY PERFORMS ALL OF ITS OTHER OBLIGATIONS UNDER THE SERIES 2015B  
232 LOAN AGREEMENT. UPON DETERMINATION BY THE ADMINISTRATION THAT ANY  
233 SUCH OTHER OBLIGATIONS UNDER THE SERIES 2015B LOAN AGREEMENT HAVE  
234 NOT BEEN PERFORMED BY THE CITY, PAYMENT OF THE PRINCIPAL OF THE LOAN  
235 EVIDENCED BY THE SERIES 2015B BOND AND THE INTEREST THEREON FROM THE  
236 DATE OF DEMAND AT THE RATE DETERMINED IN ACCORDANCE WITH  
237 SUBSECTION (g) ABOVE WILL BE DUE AND PAYABLE UPON DEMAND. IF THE  
238 ADMINISTRATION HAS NOT DEMANDED PAYMENT OF THE PRINCIPAL OF AND  
239 INTEREST ON THE SERIES 2015B BOND BY THAT DATE WHICH IS THE TEN (10) YEAR  
240 ANNIVERSARY OF THE DATE OF DELIVERY OF THE SERIES 2015B BOND, THEN THE  
241 ADMINISTRATION SHALL BE DEEMED TO HAVE FORGIVEN REPAYMENT OF THE  
242 LOAN EVIDENCED BY THE SERIES 2015B BOND AND INTEREST THEREON, THE  
243 SERIES 2015B BOND SHALL BE DEEMED CANCELLED AND THE LOAN EVIDENCED  
244 BY THE SERIES 2015B BOND AND THE SERIES 2015B LOAN AGREEMENT SHALL BE  
245 DEEMED TERMINATED AND OF NO FURTHER FORCE AND EFFECT.

246 (k) Both the principal of and any interest on the Bonds will be paid to the registered  
247 owners thereof in lawful money of the United States of America, at the time of payment, and will be  
248 paid by electronic funds transfer, or by check or draft mailed (by depositing such check or draft,  
249 correctly addressed and postage prepaid, in the United States mail before the payment date) to the  
250 registered owners at such addresses as the registered owners may designate from time to time by  
251 notice in writing delivered to the Director of Internal Services.

252 (l) Notwithstanding the foregoing provisions of this Section 3, in the event of a  
253 discrepancy between the provisions of the Series 2015A Loan Agreement, the Series 2015A Bond,  
254 the Series 2015B Loan Agreement or the Series 2015B Bond and this Section 3, as applicable, the

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255 provisions of the Series 2015A Loan Agreement, the Series 2015A Bond, the Series 2015B Loan  
256 Agreement or the Series 2015B Bond, as applicable, shall control.

257 SECTION 4. BE IT FURTHER RESOLVED that the Series 2015A Bond shall be subject  
258 to mandatory prepayment, in whole or in part, as, when and to the extent required by the United  
259 States Environmental Protection Agency’s (and its successors) State Revolving Fund Program  
260 Regulations. Otherwise, the Series 2015A Bond may be prepaid by the City, in whole or in part,  
261 only at such times and in such amounts, and upon payment by the City of such prepayment  
262 premium or penalty, as the Director of the Administration, in his or her discretion, may specify and  
263 approve.

264 SECTION 5. BE IT FURTHER RESOLVED that the Bonds shall be executed in the name  
265 of the City and on its behalf by the Mayor. The corporate seal of the City shall be affixed to the  
266 Bonds and attested by the signature of the City Clerk of the City (the “City Clerk”). In the event  
267 any official whose signature shall appear on a Bond shall cease to be such official prior to the  
268 delivery of such Bond, or, in the event any such official whose signature shall appear on a Bond  
269 shall have become such after the date of delivery thereof, said Bond shall nevertheless be a valid  
270 and binding obligation of the City in accordance with its terms.

271 SECTION 6. BE IT FURTHER RESOLVED that the Series 2015A Bond shall be  
272 transferable only after the first principal payment date as set forth in such Series 2015A Bond or the  
273 date upon which the Maximum Principal Amount of the Series 2015A Bond has been borrowed,  
274 whichever is earlier, and the Series 2015B Bond shall be transferable only after the date upon which  
275 the Maximum Principal Amount of the Series 2015B Bond has been borrowed. Each Bond shall be  
276 transferable upon the books of the City at the office of the Director of Internal Services, by the  
277 registered owner in person or by his attorney duly authorized in writing, upon surrender thereof,  
278 together with a written instrument of transfer satisfactory to the Director of Internal Services, duly  
279 executed by such registered owner or his duly authorized attorney. The City shall, within a  
280 reasonable time, issue in the name of the transferee a new registered bond or bonds of the same  
281 series as the bond surrendered, in such denominations as the City shall by resolution approve, in an  
282 aggregate principal amount equal to the unpaid principal amount of the bond or bonds surrendered,  
283 and with the same maturities and interest rate, as applicable, and, with respect to any bond or bonds  
284 exchanged for the Series 2015B Bond, the same forgiveness provisions. If more than one bond is  
285 issued upon any such transfer of the Series 2015A Bond, the installment of principal and interest to  
286 be paid on each such bond on each payment date shall be equal to the product of the following  
287 formula: the total installment due on each payment date multiplied by a fraction, the numerator of  
288 which shall be the principal amount of such bond and the denominator of which shall be the  
289 aggregate principal amount of the bonds representing the Series 2015A Bond then outstanding and  
290 unpaid. The new bond or bonds shall be delivered to the transferee only after payment of any taxes  
291 on and any shipping or insurance expenses relating to such transfer. The City may deem and treat  
292 the party in whose name a Bond is registered as the absolute owner thereof for the purpose of  
293 receiving payment of or on account of the principal thereof and interest due thereon and for all other  
294 purposes. References in this Resolution to a Bond shall be deemed to refer to any bond or bonds

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295 transferred for such Bond in accordance with the provisions of this Section 6, and references in this  
296 Resolution to the registered owner of a Bond shall be deemed to refer to any or all of the registered  
297 owners of bonds of such series contemplated by this Section 6, as applicable.

298 SECTION 7. BE IT FURTHER RESOLVED that unless the Council provides otherwise  
299 by resolution adopted prior to delivery of the Bonds, (i) the Series 2015A Bond shall be issued in  
300 substantially the form of Exhibit F to the substantially final form of the Series 2015A Loan  
301 Agreement that is attached hereto as Exhibit A, and (ii) the Series 2015B Bond shall be issued in  
302 substantially the form of Exhibit F to the substantially final form of the Series 2015B Loan  
303 Agreement that is attached hereto as Exhibit B. Appropriate variations and insertions to provide  
304 dates, numbers and amounts, including, without limitation, to reflect matters determined in  
305 accordance with Section 3 hereof, and other modifications not altering the substance of the Bonds,  
306 may be made by the Mayor. All of the covenants contained in the forms of Bonds set forth as  
307 Exhibit F to the respective forms of the substantially final forms of the Loan Agreements (as  
308 defined in Section 8(b) hereof) attached hereto as Exhibit A and Exhibit B, respectively, as the  
309 Bonds may be finally completed as provided in this Section 7, are hereby adopted by the City as and  
310 for the forms of obligations to be incurred by the City, and the covenants and conditions are hereby  
311 made binding upon the City, including the promise to pay therein contained.

312 SECTION 8. BE IT FURTHER RESOLVED that:

313 (a) As authorized by the MWQFA Act and Section SC7-46 of the Charter, the City  
314 hereby determines to sell the Bonds to the Administration by private sale, without public bidding,  
315 which sale by private sale is hereby deemed by the City to be in its best interest and in the interest of  
316 its citizens due, in part, to the benefit of the structures of the Bonds as draw-down obligations, the  
317 0.00% interest rate for the Series 2015A Bond and the potential forgiveness of the Series 2015B  
318 Bond. Therefore, and pursuant to the authority of the MWQFA Act and Section SC7-46 of the  
319 Charter, each Bond shall be sold to the Administration by private sale, without public bidding, for a  
320 price of the par amount of such Bond (such purchase price to be advanced in accordance with the  
321 applicable Loan Agreement, as defined in subsection (b) below). Each Bond is referred to in the  
322 corresponding Loan Agreement as the “Note”.

323 (b) The Series 2015A Bond shall be sold to the Administration and the purchase price of  
324 the Series 2015A Bond shall be advanced to the City in accordance with the Loan Agreement  
325 relating to the Series 2015A Bond (the “Series 2015A Loan Agreement”), the substantially final  
326 form of which is attached hereto as Exhibit A. The Series 2015B Bond shall be sold to the  
327 Administration and the purchase price of the Series 2015B Bond shall be advanced to the City in  
328 accordance with the Loan Agreement relating to the Series 2015B Bond (the “Series 2015B Loan  
329 Agreement”), the substantially final form of which is attached hereto as Exhibit B. The Series  
330 2015A Loan Agreement and the Series 2015B Loan Agreement are referred to herein collectively as  
331 the “Loan Agreements” and individually as a “Loan Agreement”, and the terms and conditions of  
332 the Loan Agreements, as completed as provided in this Section 8, are hereby incorporated by  
333 reference herein and approved by and adopted as the obligations of the City.

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334 (c) The Mayor is hereby authorized and directed to complete, execute and deliver the  
335 Loan Agreements for and in the name of the City with such changes, insertions and deletions as  
336 shall be approved by the Mayor, including, without limitation, to reflect matters determined in  
337 accordance with subsections (b) through (f) of Section 3 above, to provide for the forgiveness  
338 provisions relating to the Series 2015B Bond as reflected in Section 3(j) above, to comply with  
339 program requirements of the Administration, to complete the exhibits to the substantially final  
340 forms of the Loan Agreements attached hereto as Exhibits A and B, or to make such other  
341 modifications as are determined by the Mayor not to be materially adverse to the interests of the  
342 City. Approval of any such changes, insertions or deletions shall be evidenced conclusively by the  
343 Mayor’s execution and delivery of the Loan Agreements in final form. Notwithstanding anything to  
344 the contrary contained in this Resolution, advances under the Loan Agreements or the Bonds,  
345 payment or prepayment of the principal of and any interest on the Bonds, and transfers or exchanges  
346 of the Bonds shall be made in accordance with the respective Loan Agreements. The City agrees to  
347 abide by and perform the covenants and agreements set forth in the Loan Agreements as finally  
348 completed, executed and delivered in accordance with this Section 8 as though such covenants and  
349 agreements were set forth in full in this Resolution.

350 (d) The City hereby reconfirms the provisions of Section 9 of the Ordinance, which  
351 authorized and directed the City to pay any fees or costs provided for in the Loan Agreements  
352 which are not payable from Bond proceeds, including, without limitation, any administrative fees  
353 and ongoing fees and expenses, and acknowledges that its obligation to pay such amounts shall be  
354 absolute and unconditional as provided in the Loan Agreements. The Exhibits to the substantially  
355 final forms of the Loan Agreements attached hereto as Exhibits A and B currently contemplate that  
356 no administrative fees shall be charged by the Administration in connection with the Bonds.

357 (e) The City hereby reconfirms the provisions of Section 6(b) of the Ordinance, which  
358 acknowledged that the provisions of Article IV of each Loan Agreement (Events of Default and  
359 Remedies) allow for, among other remedies, all payments on the applicable Bond to be declared  
360 immediately due and payable upon the occurrence of an Event of Default provided for in such Loan  
361 Agreement.

362 SECTION 9. BE IT FURTHER RESOLVED that as soon as may be practicable after the  
363 adoption of this Resolution, the Bonds shall be suitably prepared in definitive form, executed and  
364 delivered to the Administration on a date mutually acceptable to the Administration and the Mayor.  
365 The Mayor, the City Administrator of the City (the “City Administrator”), the Director of Internal  
366 Services, the City Clerk and all other appropriate officials and employees of the City are expressly  
367 authorized, empowered and directed to take any and all action necessary to complete and close the  
368 sale and delivery of the Bonds to the Administration and to negotiate, approve, execute and deliver  
369 all documents, certificates and instruments necessary or appropriate in connection therewith.  
370 Any *two* of the President of the Council, the Vice-President of the Council, the Director of Internal  
371 Services, the Assistant Director of Internal Services-Finance Operations of the City (the “Assistant  
372 Director of Internal Services-Finance Operations”), or the Assistant Director of Internal Services-  
373 Finance Accounting (the “Assistant Director of Internal Services-Finance Accounting”) are hereby

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374 expressly authorized to take any necessary actions under the Loan Agreements or the Bonds in  
375 order to requisition advances of Bond proceeds on behalf of the City; provided that, if Section SC7-  
376 25 of the Charter at any time authorizes different or additional City officials to requisition advances  
377 of Bond proceeds, such different or additional officials are hereby authorized to take such actions.  
378 Any two of the President of the Council, the Vice-President of the Council, the Director of Internal  
379 Services, the Assistant Director of Internal Services-Finance Operations, or the Assistant Director of  
380 Internal Services-Finance Accounting are hereby expressly designated as the “Authorized Officer”  
381 for purposes of the Loan Agreements. In addition, to the extent the actions of an Authorized Officer  
382 contemplated in a Loan Agreement does not fit within the provisions of Section SC7-25 of the  
383 Charter, the Mayor, the City Administrator and the Director of Internal Services are each hereby  
384 expressly designated an “Authorized Officer” for purposes of the Loan Agreements.

385 SECTION 10. BE IT FURTHER RESOLVED that each advance of the proceeds of the  
386 Bonds shall be paid directly to the City and shall be deposited by the Director of Internal Services or  
387 other appropriate City official in the proper municipal accounts, or shall be paid at the direction of  
388 the Authorized Officer, or shall be paid as otherwise required by the Administration. Advances  
389 under the Bonds shall be used and applied by the City exclusively and solely for the public purposes  
390 described in Section 2 hereof, unless this Resolution and, to the extent applicable, the Ordinance,  
391 are amended or supplemented to provide for some other use within the limitations of applicable law  
392 and with the consent of the Administration. Nothing in this Resolution shall be construed to  
393 authorize the expenditure of any moneys except for a proper public purpose. The proceeds of the  
394 Bonds are hereby appropriated for the purposes set forth in this Resolution.

395 SECTION 11. BE IT FURTHER RESOLVED that:

396 (a) The full faith and credit and unlimited taxing power of the City are hereby  
397 irrevocably pledged to the prompt payment of the principal of and interest on the Bonds as and  
398 when the same are payable and to the levy and collection of the taxes hereinbelow described as and  
399 when such taxes may become necessary in order to provide sufficient funds to meet the debt service  
400 requirements of the Bonds. The City shall levy or cause to be levied, for each and every fiscal year  
401 during which each Bond may be outstanding, ad valorem taxes upon all real and tangible personal  
402 property within its corporate limits subject to assessment for unlimited municipal taxation in rate  
403 and amount sufficient to provide for the payment, when due, of the principal of and interest on such  
404 Bond payable in each such fiscal year and, in the event the proceeds from the collection of the taxes  
405 so levied may prove inadequate for such purposes in any fiscal year, additional taxes shall be levied  
406 in the subsequent fiscal year to make up any deficiency. The City hereby covenants with the  
407 registered owner of each Bond to take any action that lawfully may be appropriate from time to time  
408 during the period that such Bond remains outstanding and unpaid to provide the funds necessary to  
409 pay promptly the principal and interest due thereon.

410 (b) Notwithstanding the provisions of subsection (a) above, the principal of and interest  
411 on the Bonds will be payable in the first instance from revenues received by the City in connection  
412 with the operation of the wastewater system and the water supply system serving the City, including  
413 charges for use of or connection to such systems, all to the extent such revenues are lawfully

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414 available for such purpose. To the extent of any such revenues received or receivable in any fiscal  
415 year, the taxes hereby required to be levied may be reduced proportionately.

416 (c) The foregoing provisions shall not be construed so as to prohibit the City from  
417 paying the principal of and interest on the Bonds from the proceeds of the sale of any other  
418 obligations of the City or from any other funds legally available for that purpose. Subject to  
419 applicable law or restrictions, the City may apply to the payment of the principal of or interest on  
420 each Bond any funds received by it from the State of Maryland or the United States of America, or  
421 any governmental agency or instrumentality, or from any other source, if the funds are granted or  
422 paid to the City for the purpose of assisting the City in accomplishing the type of project or projects  
423 the costs of which such Bond is issued to finance or reimburse or are otherwise available for such  
424 purpose, and to the extent of any such funds received or receivable in any fiscal year, the taxes  
425 hereby required to be levied may be reduced proportionately.

426 (d) Wastewater system and water supply system revenues are intended to be the  
427 dedicated sources of revenues with respect to the Bonds required by Section 9-1605(d)(1)(iii) of the  
428 MWQFA Act, to the extent lawfully available for such purpose. Such revenues may be referred to  
429 by similar, but not exact references, on any applicable Exhibits to the Loan Agreements.

430 SECTION 12. BE IT FURTHER RESOLVED that notwithstanding anything to the  
431 contrary contained in the Ordinance or this Resolution, the City shall use and apply proceeds of the  
432 Bonds only as permitted by the Loan Agreements, the Clean Water Act (as defined in the Loan  
433 Agreements) and the Act (as defined in the Loan Agreements).

434 SECTION 17. BE IT FURTHER RESOLVED that this Resolution shall become effective  
435 upon adoption by the Council and approval by the Mayor. Pursuant to Charter Section SC7-46A,  
436 this Resolution may not be petitioned to referendum.

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440 THIS RESOLUTION was introduced and duly adopted at a meeting of the Council of the  
441 City of Salisbury held on the \_\_\_\_\_ day of  
442 \_\_\_\_\_, 2015.

443  
444  
445 ATTEST:

446  
447  
448 \_\_\_\_\_  
449 Kimberly R. Nichols, City Clerk Jacob R. Day, Council President

450  
451  
452 APPROVED BY ME THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2015

453  
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456 \_\_\_\_\_  
457 James Ireton, Jr., Mayor

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461 #173106;58111.034

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EXHIBIT A

FORM OF LOAN AGREEMENT RELATING TO SERIES 2015A BOND

[See Attached]

EXHIBIT B

FORM OF LOAN AGREEMENT RELATING TO SERIES 2015B BOND

[See Attached]

LOAN AGREEMENT

By and Between

MARYLAND WATER QUALITY  
FINANCING ADMINISTRATION

and

CITY OF SALISBURY

Dated as of \_\_\_\_\_, 2015

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## LOAN AGREEMENT

THIS LOAN AGREEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_, 2015 between the Maryland Water Quality Financing Administration (the "Administration"), a unit of the Department of the Environment (the "Department") of the State of Maryland (the "State"), and City of Salisbury, a municipal corporation of the State (the "Borrower").

### RECITALS

Title VI of the Federal Water Pollution Control Act (commonly known as the "Clean Water Act"), as amended by the Water Quality Act of 1987 ("Title VI"), authorizes the Environmental Protection Agency ("EPA") to award grants to qualifying States to establish and capitalize State water pollution control revolving funds ("SRFs") for the purpose of providing loans and certain other forms of financial assistance (but not grants) to finance, among other things, the construction and improvement of publicly-owned wastewater treatment facilities and the implementation of estuary conservation management plans and nonpoint source management programs.

As contemplated by Title VI, the General Assembly of the State at its 1988 session enacted the Maryland Water Quality Financing Administration Act, codified at Sections 9-1601 through 9-1622 of the Environment Article of the Annotated Code of Maryland, as amended (the "Act"), establishing an SRF designated the Maryland Water Quality Revolving Loan Fund (the "Fund") to be maintained and administered by the Administration. The Act authorizes the Administration, among other things, to make a loan from the Fund to a "local government" (as defined in the Act) for the purpose of financing all or a portion of the cost of a "wastewater facility" project (as defined in the Act).

The Borrower, which is a "local government" within the meaning of the Act, has applied to the Administration for a loan from the Fund to assist in the financing of a certain project or projects of the Borrower (the "Project," as defined herein) which constitutes a "wastewater facility" within the meaning of the Act. The Project is one designated for funding in an Intended Use Plan promulgated by the Administration in accordance with regulations issued by the EPA pursuant to Title VI, and the Project conforms to the applicable "county plan" adopted pursuant to the requirements of Subtitle 5 of Title 9 of the Environment Article of the Annotated Code of Maryland, as amended.

The Director of the Administration has determined that the making of a loan to the Borrower for the purpose of assisting the financing of the Project, on the terms and conditions hereinafter set forth, is necessary and desirable in the public interest, will promote the health, safety and welfare of the inhabitants of the State and the United States by assisting in the prevention of pollution of the environment, and will further the purposes of Title VI and the Act.

NOW THEREFORE, in consideration of the mutual promises and covenants hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which

are hereby acknowledged, the Borrower and the Administration, each intending to be legally bound, hereby agree as follows:

## ARTICLE I

### DEFINITIONS

Section 1.01. Definitions. Unless specifically provided otherwise or the context otherwise requires, when used in this Agreement:

“Act” means the Maryland Water Quality Financing Administration Act, Sections 9-1601 through 9-1622 of the Environment Article, Annotated Code of Maryland, and all acts supplemental thereto or amendatory thereof.

“Administration” means the Maryland Water Quality Financing Administration, a unit of the Department of the Environment of the State, and its successors and assigns.

“Administrative Fee” means the fee payable by the Borrower pursuant to this Agreement for the general administrative services and other functions and expenses of the Administration.

“Agreement” means this Loan Agreement, including the Exhibits attached hereto and any amendments hereto.

“Application” means the application for the Loan submitted by the Borrower to the Administration, together with any amendments thereto.

“Authorized Officer” means, in the case of the Borrower, any person authorized by law or by a resolution of the governing body of the Borrower to perform any act or execute any document.

“Board” means the Board of Public Works of the State.

“Bonds” means any series of revenue bonds issued by the Administration under the Act.

“Borrower” means the local government (as defined in the Act) that is identified in the first paragraph of this Agreement, and its successors and assigns.

“Business Day” means a day other than a Saturday, Sunday, or day on which the offices of the Administration or commercial banks in the State are authorized or obligated to remain closed.

“Change Orders” means any amendments or modifications to any Plans and Specifications or any general construction contract for the Project.

“Clean Water Act” means the Water Pollution Control Act of 1972, PL 92-500, as amended, 33 U.S.C. §1251 et seq., and rules and regulations promulgated thereunder.

“Default” means an event or condition the occurrence of which would, with the lapse of time or the giving of notice or both, constitute an Event of Default.

“Department” means the Maryland Department of the Environment, and its successors.

“Director” means the Director of the Administration.

“Eligible Project Costs” means all those costs of the Project permitted by the Act to be funded by a loan from the Fund and which have been approved by the Director.

“EPA” means the United States Environmental Protection Agency, and its successors.

“Event of Default” means any occurrence or event specified in Section 4.01 hereof.

“Fiscal Year” means the period of 12 consecutive months commencing on July 1 in any calendar year and ending on June 30 of the succeeding calendar year.

“Fund” means the Maryland Water Quality Revolving Loan Fund.

“Governmental Authority” means the United States, the State of Maryland, or any of their political subdivisions, agencies, departments, commissions, boards, bureaus or instrumentalities, including any local authority having jurisdiction over the Project, and including EPA, the Department, the Board and the Administration.

“Independent Counsel” means any attorney or attorneys duly admitted to practice law before the highest court of any state who have regularly engaged in the practice of law as their primary occupation for at least five years. Independent Counsel may also serve as Bond Counsel if it qualifies as Bond Counsel.

“Independent Public Accountant” means an individual, partnership or corporation engaged in the accounting profession, either entitled to practice, or having members or officers entitled to practice, as a certified public accountant under the laws of the State of Maryland and in fact independent.

“Loan” means the aggregate amounts which are advanced from time to time by the Administration to the Borrower pursuant to the terms and provisions of this Agreement.

“Loan Closing Date” means the date on which the Note is executed and delivered to the Administration.

“Loan Commitment” means that amount which the Administration is obligated to lend to the Borrower pursuant to the terms and provisions of this Agreement and subject to the satisfaction of the conditions set forth in this Agreement, as such amount may be adjusted as provided in this Agreement.

“Loan Year” means the period beginning on the first February 1 on which principal of the Loan is payable and each February 1 thereafter and ending on the immediately succeeding January 31.

“Note” means the bond, note or other obligation executed and delivered by the Borrower to the Administration to evidence the Loan, such Note to be substantially in the form attached hereto as Exhibit F.

“Plans and Specifications” means the final plans and specifications for the construction of the Project prepared by the architect or engineer and approved by the Department.

“Project” means the project or projects of the Borrower described in Exhibit B to this Agreement.

“Project Budget” means the budget for the Project as set forth in Exhibit C to this Agreement, as revised in accordance with Section 2.02(d).

“Related Financing” means any bond, note, agreement or other instrument or transaction (other than this Agreement or the Note) pursuant to which the Borrower obtains any monies that may be expended to pay costs of the Project.

“Requirement” means any law, ordinance, code, order, rule or regulation of a Governmental Authority, including, without limitation, a condition set forth in a National Pollution Discharge Elimination System (“NPDES”) permit or in a construction permit issued by the Department.

“State” means the State of Maryland.

“Trustee” means the trustee for the Bonds.

Section 1.02. Rules of Construction. Unless the context clearly indicates to the contrary, the following rules shall apply to the construction of this Agreement:

(a) words importing the singular number include the plural number and words importing the plural number include the singular number;

(b) words of the masculine gender include correlative words of the feminine and neuter genders;

(c) words importing persons include any individual, corporation, partnership, joint venture, association, joint stock company, trust, unincorporated organization or government or agency or political subdivision thereof;

(d) the terms “agree” and “agreement” shall include and mean “covenant”, and all agreements contained in this Agreement are intended to constitute covenants and shall be enforceable as such;

(e) the headings and the Table of Contents set forth in this Agreement are solely for convenience of reference and shall not constitute a part of this Agreement or affect its meaning, construction or effect; and

(f) any reference to a particular Article or Section shall be to such Article or Section of this Agreement unless the context shall otherwise require.

## ARTICLE II

### REPRESENTATIONS AND COVENANTS OF BORROWER

Section 2.01. Representations of Borrower. The Borrower represents for the benefit of the Administration as follows:

(a) Corporate Organization and Authority. The Borrower:

(i) is a “local government” as defined in the Act; and

(ii) has all requisite power and authority and all necessary licenses and permits required as of the date hereof to own and operate the Project, to enter into this Agreement, to execute and deliver the Note, and to carry out and consummate all transactions contemplated by this Agreement.

(b) Full Disclosure. There is no fact that the Borrower has not disclosed to the Administration in writing that materially adversely affects or (so far as the Borrower can now foresee) that will materially adversely affect the properties, activities, prospects or condition (financial or other) of the Borrower or the ability of the Borrower to make all payments due hereunder and otherwise perform its obligations under this Agreement and the Note.

(c) Pending Litigation. There are no proceedings pending, or to the knowledge of the Borrower threatened, against or affecting the Borrower in any court or before any Governmental Authority or arbitration board or tribunal that, if adversely determined, would materially adversely affect the properties, activities, prospects or condition (financial or other) of the Borrower, or the

ability of the Borrower to make all payments due hereunder and otherwise perform its obligations under this Agreement and the Note, and that have not been disclosed in writing to the Administration in the Application or otherwise.

(d) Borrowing Legal and Authorized. The consummation of the transactions provided for in this Agreement and the Note and compliance by the Borrower with the provisions of this Agreement and the Note:

(i) are within its powers and have been duly authorized by all necessary action on the part of the governing body of the Borrower; and

(ii) will not result in any breach of any of the terms, conditions or provisions of, or constitute a default under, or result in the creation or imposition of any lien, charge or encumbrances upon any property or assets of the Borrower pursuant to, any indenture, loan agreement or other instrument (other than this Agreement and the Note) to which the Borrower is a party or by which the Borrower may be bound, nor will such action result in any violation of the provisions of laws, ordinances, governmental rules, regulations or court orders to which the Borrower or its properties or operations is subject.

(e) No Defaults. No event has occurred and no condition exists that, upon execution of this Agreement and the Note or receipt of the Loan, would constitute a Default hereunder. The Borrower is not in violation, and has not received notice of any claimed violation, of any term of any agreement or other instrument to which it is a party or by which it or its property may be bound, which violation would materially adversely affect the properties, activities, prospects or condition (financial or other) of the Borrower or the ability of the Borrower to make all payments due hereunder and otherwise perform its obligations under this Agreement and the Note, and that have not been disclosed in writing to the Administration in the Application or otherwise.

(f) Governmental Consent; Project Consistency.

(i) The Borrower has obtained all permits and approvals required to date by any Governmental Authority for the making and performance by the Borrower of its obligations under this Agreement and the Note or for the Project and the financing thereof. No consent, approval or authorization of, or filing, registration or qualification with, any Governmental Authority that has not been obtained is required on the part of the Borrower as a condition to the execution and delivery of this Agreement and the Note or the consummation of any transaction herein contemplated.

(ii) The Project is consistent with (A) the local plan of the Borrower as contemplated under Section 5-7A-02 of the State Finance and Procurement Article of the Annotated Code of Maryland, as amended; (B) the State Economic Growth, Resource Protection, and Planning Policy established in Section 5-7A-01 of the State Finance and Procurement Article of the Annotated Code of Maryland, as amended;

and (C) all applicable provisions of *Subtitle 7B*; “*Priority Funding Areas*” of Title 5 of the State Finance and Procurement Article of the Annotated Code of Maryland, as amended.

(g) No Conflicts. No member, officer, or employee of the Borrower, or its designees, or agents, no consultant, no member of the governing body of the Borrower or of any Governmental Authority, who exercises or has exercised any authority over the Project during such person’s tenure, shall have any interest, direct or indirect, in any contract or subcontract, or its proceeds, in any activity, or benefit therefrom, which is part of the Project.

(h) Use of Proceeds. The Borrower will apply the proceeds of the Loan from the Administration as described in Exhibit B attached hereto and made a part hereof (i) to finance all or a portion of the Eligible Project Costs; and (ii) to reimburse the Borrower for all or a portion of the Eligible Project Costs paid or incurred prior to the date hereof in anticipation of reimbursement by the Administration. Except as provided in Section 3.03(c) of this Agreement, before each and every advance of the proceeds of the Loan to the Borrower, the Borrower shall submit to the Administration a requisition meeting the requirements of Section 3.03 of this Agreement.

(i) Loan Closing Submissions. On or before the Loan Closing Date, the Borrower will cause to be delivered to the Administration each of the following items:

(i) an opinion of Independent Counsel, acceptable to the Administration, dated as of the Loan Closing Date, substantially in the form set forth in Exhibit D to this Agreement;

(ii) fully executed counterparts of this Agreement, the Note;

(iii) copies of the ordinance, resolution or other official action of the governing body of the Borrower authorizing the execution and delivery of this Agreement and the Note, certified by an appropriate officer of the Borrower;

(iv) a certificate, dated as of the Loan Closing Date, signed by an Authorized Officer of the Borrower and in form satisfactory to the Administration, confirming the Borrower’s obligations under and representations in the Loan Agreement as of such date;

(v) such other certificates, documents, opinions and information as the Administration may require.

Section 2.02. Particular Covenants of the Borrower.

(a) Maintenance of Project; Insurance. The Borrower shall (i) keep, operate and maintain, or cause to be kept, operated and maintained, the Project in good working order, condition and repair; (ii) make or cause to be made all needed and proper replacements to the Project so that the Project will at all times be in good operating condition, fit and proper for the purposes for which

it was originally erected or installed; (iii) not permit any waste of the Project; (iv) observe and comply with, or cause to be observed and complied with, all Requirements; and (v) operate, or cause to be operated, the Project in the manner in which similar projects are operated by persons operating a first-class facility of a similar nature. The Borrower shall maintain or cause to be maintained at its sole cost and expense insurance with respect to the Project, both during its construction and thereafter, against such casualties and contingencies and in such amounts as are customarily maintained by governmental entities similarly situated and as are consistent with sound governmental practice.

(b) Sale or Disposition of Project. The Borrower reasonably expects that no portion of the Project will be sold prior to the final maturity date of the Loan. In the event that the Borrower shall sell or otherwise dispose of any portion of the Project prior to the final maturity date of the Loan, the Borrower shall apply the net proceeds thereof to the prepayment of the Loan or as the Administration shall otherwise direct unless the Borrower shall have obtained the prior written consent of the Administration to some other proposed application of such net proceeds.

(c) Inspections; Information. The Borrower shall permit the Administration or its designee to examine, visit and inspect, at any and all reasonable times (including, without limitation, any time during which the Project is under construction or in operation), the property constituting the Project, to attend all construction progress meetings relating to the Project and to inspect and make copies of any accounts, books and records, including (without limitation) its records regarding receipts, disbursements, contracts, investments and any other matters relating to the Project and the financing thereof, and shall supply such reports and information as the Administration may reasonably require in connection therewith. Without limiting the generality of the foregoing, the Borrower shall keep and maintain any books, records, and other documents that may be required under applicable federal and State statutes, regulations, guidelines, rules and procedures now or hereafter applicable to loans made by the Administration from the Fund, and as may be reasonably necessary to reflect and disclose fully the amount and disposition of the Loan, the total cost of the activities paid for, in whole or in part, with the proceeds of the Loan, and the amount and nature of all investments related to such activities which are supplied or to be supplied by other sources. All such books, records and other documents shall be maintained at the offices of the Borrower, as specified on Exhibit B attached hereto, for inspection, copying, audit and examination at all reasonable times by any duly authorized representative of the Administration. All such books, records and other documents shall be maintained until the completion of an audit of the Project by the EPA or notification from the State or the EPA that no audit is required.

(d) Completion of the Project; Payment of Excess Costs of the Project. The Borrower shall proceed diligently to complete the Project in accordance with the Plans and Specifications, and in accordance with any requirements set forth in the construction and NPDES permits. The Borrower shall satisfy all applicable Requirements for operation of the Project by the completion of the Project, and shall commence operation of the Project promptly upon its completion. No substantial changes may be made to the Plans and Specifications, the general construction contract or the Project Budget, or in the construction of the Project without the prior written approval of the Administration in its discretion. The Borrower shall pay any amount required for the acquisition, construction and equipping of the Project in excess of the amount available to be

loaned to the Borrower hereunder. Upon the completion of the Project, the Borrower shall deliver to the Administration a certificate of the Borrower certifying that the Project was completed as of the date set forth in such certificate.

(e) Cancellation of Loan. As provided by Section 9-1606(e) of the Act, the Borrower acknowledges and agrees that its obligation to make the payments due hereunder and under the Note is cancelable only upon repayment in full of the Loan, and that neither the Administration, the Secretary of the Department, nor the Board is authorized to forgive the repayment of all or any portion of the Loan.

(f) Dedicated Source of Revenue. Pursuant to the Clean Water Act, the Borrower has established one or more dedicated sources of revenue for repayment of the Loan, as described in Exhibit E attached hereto as a part hereof.

(g) Indemnification. To the extent permitted by law, the Borrower releases the Administration, the Fund, the Department, the Board and the State from, agrees that the Administration, the Fund, the Department, the Board and the State shall not have any liability for, and agrees to protect, indemnify and save harmless the Administration, the Fund, the Department, the Board and the State from and against, any and all liabilities, suits, actions, claims, demands, losses, expenses and costs of every kind and nature incurred by, or asserted or imposed against, the Administration, the Fund, the Department, the Board or the State, as a result of or in connection with the Project or the financing thereof. To the extent permitted by law, all money expended by the Administration, the Fund, the Department, the Board or the State as a result of such liabilities, suits, actions, claims, demands, losses, expenses or costs, together with interest at the rate provided in the Note from the date of such payment, shall constitute an additional indebtedness of the Borrower and shall be immediately and without notice due and payable by the Borrower to the Administration.

(h) Non-discrimination. The Borrower certifies that it does not discriminate, and covenants that it shall not discriminate, on the basis of (1) political or religious opinion or affiliation, marital status, race, color, creed or national origin, or (2) sex or age, except where sex or age constitutes a bona fide occupational qualification, or (3) the physical or mental handicap of a qualified handicapped individual. At such times as the Administration requests, the Borrower shall submit to the Administration information relating to the Borrower's operations, with regard to political or religious opinion or affiliation, marital status, physical or mental handicap, race, color, creed, sex, age, or national origin, on a form to be prescribed by the Administration.

(i) Compliance with Requirements. The Borrower acknowledges that the Loan and this Agreement are subject to, and the Borrower agrees to comply with, all Requirements applicable to the Project and the financing thereof, including (without limiting the generality of the foregoing) the Clean Water Act, the Act, and all other applicable State and federal statutes and such rules, regulations, orders and procedural guidelines as may be promulgated from time to time by the EPA, the Board, the Department, the Administration, or other Governmental Authority.

(j) Annual Audit. Within nine (9) months of the end of each Fiscal Year (unless such period is changed to comply with terms of the Administration's financings, or a Requirement,

in which case the Administration shall notify the Borrower in writing), the Borrower shall cause financial statements of the Borrower to be prepared with respect to such Fiscal Year in accordance with generally accepted accounting principles, applicable to governmental units, consistently applied, which financial statements shall be audited by, and accompanied by a report of, an Independent Public Accountant. Such financial statements and report shall be delivered upon completion to the Administration within the nine (9) month period or within thirty (30) days from receipt of a report from the auditor, whichever period is shorter.

(k) Additional Disclosure Information. The Borrower agrees to provide the Administration with such information regarding the Borrower and its finances as the Administration may from time to time request. The Borrower further acknowledges that the Administration may issue one or more series of Bonds pursuant to the Indenture, and that any or all of such Bonds may be secured in part by repayments of the Borrower with respect to the Loan. The Borrower accordingly agrees to provide to the Administration such information regarding the Borrower and its finances as the Administration may from time to time request for inclusion in the official statements or other offering documents to be distributed in connection with the sale of any such Bonds or any annual disclosure document or other informational document prepared from time to time by the Administration to be made available to prospective purchasers or holders of any of such Bonds. The Borrower shall also furnish to the Administration at its request a certificate of an Authorized Officer of the Borrower to the effect that any information so provided or included contains no material inaccuracy or omission in light of the purposes for which such information is provided or included. The Borrower agrees to notify the Administration promptly in writing of (a) any changes in the condition or affairs of the Borrower (financial or other) that would cause any information regarding the Borrower so provided or included in an official statement or any subsequent offering document, annual disclosure document or other informational document of the Administration that the Borrower has had an opportunity to review and certify as to its accuracy, to contain a material inaccuracy or omission in light of the purposes for which such information is so included, and (b) any event set forth in Securities and Exchange Commission Rule 15c2-12(b)(5)(i)(C), as such rule may be amended and supplemented.

(l) Related Financing. The Borrower agrees that the proceeds of any Related Financing shall be expended to pay costs of the Project on a monthly basis proportionately with the proceeds of the Loan, taking into account the total amount of the proceeds of such Related Financing available to pay costs of the Project and the maximum amount of the Loan Commitment. The Borrower agrees to provide the Administration upon its request with such information as the Administration deems reasonably necessary to determine whether the Borrower is in compliance with the provisions of this Section 2.02(l).

## ARTICLE III

### LOAN TO BORROWER; AMOUNTS PAYABLE; GENERAL AGREEMENTS

Section 3.01. The Loan. Subject to the provisions of Sections 3.02, 3.03 and 3.08 hereof, the Administration hereby agrees to advance amounts under this Agreement to the Borrower, and the Borrower agrees to borrow and accept from the Administration amounts advanced under this Agreement, in an aggregate principal amount not to exceed the maximum amount of the Loan Commitment set forth on Exhibit B attached hereto.

Section 3.02. Availability of Funds. The Administration expects to have, and shall use its best efforts to obtain and maintain, funds in an amount sufficient to make advances to the Borrower in accordance with the "Construction Cash Draw Schedule" included in Exhibit C attached hereto. The Borrower recognizes, however, that the Administration is a governmental entity with limited financial resources and that the Administration's ability to make such advances may be adversely affected by events or circumstances beyond the Administration's control. The Borrower accordingly assumes the risk that monies may not be available to make advances of the Loan to the Borrower, and, in such event, the Borrower specifically agrees that the Administration shall have no obligation to lend any amounts to the Borrower in excess of the amount theretofore advanced to the Borrower.

Section 3.03. (a) Requisitions and Disbursements. Amounts shall be loaned from time to time to pay, or reimburse the Borrower for the payment of, Eligible Project Costs, upon receipt of requisitions of the Borrower. Each such requisition shall (i) state the names of the payees, (ii) describe in reasonable detail the purpose of each payment, (iii) state the amount of each payment (supported by appropriate paid invoices or other evidence satisfactory to the Administration that the amount requisitioned has been paid or has been incurred by the Borrower and is then due), (iv) state that the amount so requisitioned constitutes a part of the Eligible Project Costs and (v) state that no Default or Event of Default under this Agreement has occurred and is continuing; provided, that this section shall not apply to advances made or deemed to have been made as provided in Section 3.03(c) hereof. In no event shall the Administration be obligated to advance to the Borrower any amount so long as any Default or Event of Default under this Agreement shall have occurred and be continuing. The Administration shall not be required to advance monies on more than one day in each month, and the Administration shall not be required to advance monies for the Project sooner than, or in an amount greater than, the schedule of disbursements for the Project shown on the "Construction Cash Draw Schedule" included in Exhibit C attached hereto. The Administration may require the Borrower to submit requisitions in advance of each such disbursement date in such manner as shall be reasonably acceptable to the Administration.

(b) Conditions Precedent. Before making the first advance of Loan proceeds, the Administration shall receive the following in form and content satisfactory to the Administration:

(i) copies of the Plans and Specifications and of any Change Orders issued through the date of such advance, the general construction contract, and the Project Budget;

(ii) a survey showing the location of existing and proposed easements, rights-of-way and improvements, and the perimeter boundaries of the land upon which the Project will be located, if any Loan proceeds are to be used for acquisition of the land;

(iii) copies of all building permits, if any, pertaining to the Project;

(iv) cost breakdown in trade form showing all subcontracts which represent at least 10 percent of the costs of the Project, and indicating use of the proceeds of the Loan therefor;

(v) a fully executed copy of any contract for the purchase of real property constituting a portion of the Eligible Project Costs described in Exhibit C; and

(vi) evidence satisfactory to the Administration that the conditions (if any) set forth in Exhibit A to this Agreement have been satisfied.

In addition, it shall be a condition precedent to the Administration's obligation to make any advance of Loan proceeds under this Agreement that no Default or Event of Default shall have occurred and be continuing at the time of any such advance.

(c) Interest During Construction. In the event that the Administration has consented to permit the Borrower to pay interest on the Loan from proceeds of the Loan during all or a portion of the period of time related to construction of the Project (as itemized in Exhibit C) ("Construction Period Interest"), the Administration shall on each February 1 and August 1 during such period advance to the Borrower an amount equal to the interest on the Loan due on such February 1 or August 1 and not theretofore paid by the Borrower. Any such amount of Construction Period Interest advanced by the Administration shall constitute part of the principal amount of the Loan hereunder immediately upon its advance to the Borrower in accordance with this paragraph. Notwithstanding the advance of any Construction Period Interest to the Borrower in accordance with this Section, the Borrower shall pay directly to the Administration the Administrative Fee on the dates and in the amounts set forth in Section 3.04(c), and no amounts shall be advanced under the Loan for the payment of the Administrative Fee.

Section 3.04. (a) Amounts Payable. The Borrower shall punctually repay the Loan in installments on the dates, in the amounts, and in the manner specified in the Note. The outstanding amount of the Loan shall bear interest at a rate per annum equal to the rate or rates of interest set forth in Exhibit B, and shall be payable in accordance with the amortization schedule as specified in Exhibit B attached hereto and more particularly set out in the Note (which amortization schedule is subject to adjustment in accordance with this Agreement and the Note). On or prior to the Loan Closing Date, the Borrower shall execute the Note to evidence such obligation. In addition,

the Borrower shall pay to the Administration an Administrative Fee in accordance with paragraph (c) of this Section.

(b) Late Charges. In addition to the payments of principal and interest on the Loan required by paragraph (a) of this Section, the Borrower shall pay (i) a late charge for any payment of principal or interest on the Loan that is received later than the tenth day following its due date, in an amount equal to 5% of such payment, and (ii) interest on overdue installments of principal and (to the extent permitted by law) interest at a rate equal to the Default Rate set forth in Exhibit B. Amounts payable pursuant to this paragraph (b) shall be immediately due and payable to the Administration, and interest at the Default Rate shall continue to accrue on overdue installments of principal and (to the extent permitted by law) interest until such amounts are paid in full.

(c) Administrative Fee. (i) On the date specified in Exhibit B for the first payment of the Administrative Fee and on each August 1 thereafter that the Note remains outstanding and unpaid to and including the date of final maturity of the Note (each such date, an "Administrative Fee Payment Date"), the Borrower shall pay to the Administration an Administrative Fee. Subject to paragraph (iv) below, the Administrative Fee for any Administrative Fee Payment Date shall be the (A) Administrative Fee set forth in Exhibit B or (B) after any date on which the outstanding principal amount of the Loan Commitment is reduced by the Administration by a notice in writing to the Borrower in accordance with this Agreement (other than by reason of the repayment of the principal of the Loan) the Administrative Fee set forth in a notice from the Administration to the Borrower in connection with such reduction. Any adjustment of the Administrative Fee in accordance with the foregoing shall be prospective only, and the Administration shall in no event be obligated to refund any portion of any Administrative Fee payment theretofore received from the Borrower.

(ii) In prescribing the Administrative Fee for a loan with a term of twenty years or more for purposes of paragraph (i) above, the Administration shall employ the following formula, it being understood that any determinations as to the application of such formula shall be within the discretion of the Administration and any Administrative Fee Payment prescribed by the Administration in accordance with the foregoing shall be conclusive and binding upon the Administration and the Borrower: the Administrative Fee equals (A) the aggregate amount of all scheduled payments of principal of and interest on the Note, multiplied by the Percentage Rate (defined in paragraph (iv) below) then in effect, (B) divided by the total number of scheduled Administrative Fee Payment Dates. For example, if the aggregate amount of all scheduled payments of principal of and interest on the Note were \$5,000,000 and the Percentage Rate were 5%, and the total number of scheduled Administrative Fee Payment Dates were 21, the Administrative Fee to be paid each year would equal:

$$\frac{\$5,000,000 \times .05}{21} = \$11,904.76$$

(iii) In prescribing the Administrative Fee for a loan with a term of less than twenty years for purposes of paragraph (i) above, the Administration shall employ the following formula, it being understood that any determinations as to the application of such formula shall be

within the discretion of the Administration and any Administrative Fee Payment prescribed by the Administration in accordance with the foregoing shall be conclusive and binding upon the Administration and the Borrower: The Administrative Fee equals (A) the aggregate amount of all scheduled payments of principal of and interest on the Note, multiplied by the Percentage Rate (defined in paragraph (iv) below) then in effect, (B) divided by 20. For example, if the aggregate amount of all scheduled payments of principal of and interest on the Note were \$4,000,000 and the Percentage Rate were 5%, the Administrative Fee to be paid each year would equal:

$$\frac{\$4,000,000 \times .05}{20} = \$10,000.00$$

(iv) The Percentage Rate for each Fiscal Year shall be fixed as a uniform rate for all borrowers receiving loans from the Fund in order to provide sufficient revenues to pay the expenses of the Administration, as approved in the operating budget of the State by the General Assembly of the State; provided, however, that in no event shall the Percentage Rate exceed five percent (5%). In each Fiscal Year the Administration shall review the Percentage Rate then in effect and adjust it for the immediately succeeding Fiscal Year to reflect its approved budget for the immediately succeeding Fiscal Year, a retainage of not more than ten percent (10%) for an operating reserve within the Administration's general account, and other factors as reasonably determined by the Secretary. No later than June 1 following the end of the Session of the General Assembly in each Fiscal Year, the Administration shall notify the Borrower of the newly established Percentage Rate, which shall be the Percentage Rate applicable to the immediately succeeding Fiscal Year, and of any change in the amount of the Administrative Fee payable by the Borrower in such Fiscal Year as a result of the application of such Percentage Rate.

Section 3.05. Sources of Payment. (a) Dedicated Revenues. In accordance with Section 2.02(f) hereof, the principal of and interest on the Note, and any other amounts due from time to time under this Agreement, shall be payable in the first instance from the dedicated source of revenues described in Exhibit E attached hereto.

(b) General Obligation. In addition, the Note constitutes a general obligation of the Borrower, to the payment of which the full faith and credit and taxing power of the Borrower are pledged.

(c) State Withholding. As further security for the payment of the Note and any other amounts due hereunder, the Borrower hereby pledges the following to the Administration and grants a security interest therein to the Administration: (i) as authorized by Section 9-1606(d) of the Act, the Borrower's share of any and all income tax revenues collected by the State from time to time that would otherwise be payable to the Borrower, and (ii) to the maximum extent permitted by law, any and all other tax revenues, grants, and other monies that the Borrower is or may from time to time be entitled to receive from the State or that may at any time be due from the State, or any department, agency, or instrumentality of the State, to the Borrower. The Borrower further agrees that, upon the occurrence of an Event of Default, among other things, the State Comptroller and the State Treasurer may (i) withhold any such amounts that the Borrower is then or may thereafter be

entitled to receive and (ii) at the direction of the Administration, apply the amounts so withheld to the payment of any amounts then due or thereafter becoming due hereunder (including, without limitation, payments under the Note) until the Borrower's obligations hereunder have been fully paid and discharged.

Section 3.06. Unconditional Obligations. The obligations of the Borrower to make payments under the Note as and when due and all other payments required hereunder and to perform and observe the other agreements on its part contained herein shall be absolute and unconditional, and shall not be abated, rebated, set-off, reduced, abrogated, terminated, waived, diminished, postponed or otherwise modified in any manner or to any extent whatsoever, regardless of any contingency, act of God, event or cause whatsoever, including (without limitation) any acts or circumstances that may constitute failure of consideration, eviction or constructive eviction, the taking by eminent domain or destruction of or damage to the Project, commercial frustration of purpose, any change in the laws of the United States of America or of the State or any political subdivision of either or in the rules or regulations of any Governmental Authority, any failure of the Administration, the Department or the State to perform or observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or connected with the Project, this Agreement, or otherwise or any rights of set-off, recoupment, abatement or counterclaim that the Borrower might otherwise have against the Administration, the Department or the State or any other party or parties; provided, however, that payments hereunder shall not constitute a waiver of any such rights.

Section 3.07. Loan Commitment. The Borrower acknowledges and agrees that the monies attributable to the Borrower's Loan Commitment are the property of the Administration and are held by the Administration to provide for advances to be made to the Borrower in accordance with this Agreement, or to be otherwise disposed of by the Administration in accordance with this Agreement.

Section 3.08. Reduction of Loan Commitment. The Loan Commitment is subject to reduction in accordance with the provisions of this Section 3.08.

(a) Any portion of the Loan Commitment not advanced to the Borrower under Section 3.03 of this Agreement at the later of (1) two years from the date of this Agreement and (2) the earlier of one year following (i) actual completion of construction of the Project or (ii) the estimated completion date specified on Exhibit B attached hereto, shall no longer be available to be advanced to the Borrower and the amount of the Loan Commitment shall be reduced by an amount equal to the portion of the Loan Commitment not advanced, unless otherwise agreed to by the Administration in writing.

(b) The Administration may, by a notice in writing delivered to the Borrower, reduce the amount of the Loan Commitment if the Administration should for any reason determine that it will be unable to fund the full amount of the Loan Commitment (including, without limitation, a determination that the Eligible Project Costs to be paid with proceeds of the Loan are expected to be less than the maximum amount of the Loan Commitment), or if it determines that the Borrower is not proceeding satisfactorily and expeditiously with the Project in accordance with schedules and

plans provided to the Administration, or if it determines that the Borrower is no longer able to make the certifications required under Section 3.03 in connection with the submission of requisitions. Such notice shall specify the reason for and the amount of the reduction.

(c) Any reduction in the amount of the Loan Commitment shall not affect the obligation of the Borrower to repay the Loan in accordance with the provisions of this Agreement and the Note.

(d) The Administration shall advise the Borrower in writing of any reduction in the amount of the Loan Commitment. In the event of any such reduction, the Borrower shall repay the Loan in accordance with such revised principal amortization schedule (prepared by applying such amount to reduce the installments of principal due under the Note in inverse order of payment, such that any such reduction is applied first to the last installment of principal due under the Note) as may be prescribed by the Administration in accordance with the provisions of the Note executed in connection therewith. The Administration may require, and the Borrower shall deliver, such certificates, documents, opinions and other evidence as the Administration may deem necessary or advisable in connection with any such reduction in the Loan Commitment. If a new Note is delivered in connection with any such reduction, the Administration shall cancel the Note initially delivered to the Administration by the Borrower pursuant to this Agreement.

Section 3.09. Disclaimer of Warranties. The Administration makes no warranty or representation, either express or implied, as to the value, design, condition, merchantability or fitness for particular purpose or fitness for use of the Project or any portion thereof or any other warranty with respect thereto. In no event shall the Administration be liable for any incidental, indirect, special or consequential damages in connection with or arising out of this Agreement or the Project or the existence, furnishing, functioning or use of the Project or any item or products or services provided for in this Agreement.

Section 3.10. Prepayments. The Loan shall be subject to mandatory prepayment, in whole or in part, as, when and to the extent required by the EPA's State Revolving Fund Program Regulations. Otherwise, the Loan may be prepaid by the Borrower, in whole or in part, only at such times and in such amounts, and upon the payment by the Borrower of such prepayment premium or penalty, as the Director, in his or her discretion, may specify and approve.

Section 3.11. Assignment. Neither this Agreement nor the Note may be assigned by the Borrower for any reason without the prior written consent of the Administration. The Administration may transfer, pledge or assign the Note and any or all rights or interests of the Administration under this Agreement without the prior consent of the Borrower.

## ARTICLE IV

### EVENTS OF DEFAULT AND REMEDIES

Section 4.01. Events of Default. If any of the following events occur, it is hereby defined as and declared to be and to constitute an "Event of Default":

(a) failure by the Borrower to pay any amount required to be paid hereunder or under the Note when due, which failure shall continue for a period of 20 days;

(b) failure by the Borrower to observe and perform any covenant, condition or agreement on its part to be observed or performed under this Agreement, other than as referred to in paragraph (a) of this Section, which failure shall continue for a period of 30 days after written notice, specifying such failure and requesting that it be remedied, is given to the Borrower by the Administration, unless the Administration shall agree in writing to an extension of such time prior to its expiration; provided, however, that if the failure stated in such notice is correctable but cannot be corrected within the applicable period, the Administration will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by the Borrower within the applicable period and diligently pursued until the Default is corrected;

(c) if (i) at any time any representation made by the Borrower in Section 2.01(f)(ii) is incorrect, or (ii) any other representation made by or on behalf of the Borrower contained in this Agreement, or in any instrument furnished in compliance with or with reference to this Agreement, the Loan Commitment or the Loan, is false or misleading in any material respect on the date on which such representation is made;

(d) if an order, judgment or decree is entered by a court of competent jurisdiction (i) appointing a receiver, trustee, or liquidator for the Borrower; (ii) granting relief in involuntary proceedings with respect to the Borrower under the federal bankruptcy act, or (iii) assuming custody or control of the Borrower under the provision of any law for the relief of debtors, and the order, judgment or decree is not set aside or stayed within 60 days from the date of entry of the order, judgment or decree; or

(e) if the Borrower (i) admits in writing its inability to pay its debts generally as they become due, (ii) commences voluntary proceedings in bankruptcy or seeking a composition of indebtedness, (iii) makes an assignment for the benefit of its creditors, (iv) consents to the appointment of a receiver, or (v) consents to the assumption of custody or control of the Borrower by any court of competent jurisdiction under any law for the relief of debtors .

Section 4.02. Notice of Default. The Borrower shall give the Administration prompt telephonic notice by contacting the Director of the Administration, followed by prompt written confirmation, of the occurrence of any event referred to in Section 4.01(d) or (e) hereof and of the occurrence of any other event or condition that constitutes a Default or an Event of Default at such

time as any senior administrative or financial officer of the Borrower becomes aware of the existence thereof.

Section 4.03. Remedies on Default. Whenever any Event of Default referred to in Section 4.01 hereof shall have happened and be continuing, the Administration shall have the right to take one or more of the following remedial steps:

(a) declare all amounts due hereunder (including, without limitation, payments under the Note) to be immediately due and payable, and upon notice to the Borrower the same shall become immediately due and payable by the Borrower without further notice or demand; and

(b) take whatever other action at law or in equity that may appear necessary or desirable to collect the amounts then due and thereafter to become due hereunder or to enforce the performance and observance of any obligation, agreement or covenant of the Borrower hereunder.

Section 4.04. Attorneys' Fees and Other Expenses. The Borrower shall on demand pay to the Administration the reasonable fees and expenses of attorneys and the Trustee and other reasonable expenses incurred in the collection of any sum due hereunder or in the enforcement of performance of any other obligations of the Borrower upon an Event of Default.

Section 4.05. Application of Monies. Any monies collected by the Administration pursuant to Section 4.03 hereof shall be applied (a) first, to pay any attorneys' fees or other fees and expenses owed by the Borrower pursuant to Section 4.04 hereof, (b) second, to pay interest due on the Loan, (c) third, to pay principal due on the Loan, (d) fourth, to pay any other amounts due hereunder, and (e) fifth, to pay interest and principal on the Loan and other amounts payable hereunder as such amounts become due and payable.

Section 4.06. No Remedy Exclusive; Waiver; Notice. No remedy herein conferred upon or reserved to the Administration is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right, remedy or power accruing upon any Default or Event of Default shall impair any such right, remedy or power or shall be construed to be a waiver thereof, but any such right, remedy or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Administration to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than such notice as may be required in this Article.

## ARTICLE V

### MISCELLANEOUS

Section 5.01. Notices. All amendments, notices, requests, objections, waivers, rejections, agreements, approvals, disclosures and consents of any kind made pursuant to this Agreement shall be in writing. Any such communication shall be sufficiently given and shall be deemed given when hand delivered or mailed by registered or certified mail, postage prepaid, to the Borrower at the address specified on Exhibit B attached hereto and to the Administration at Maryland Water Quality Financing Administration, 1800 Washington Blvd., Baltimore, Maryland 21230-1718, Attention: Director.

Section 5.02. Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon the Administration and the Borrower and their respective successors and assigns.

Section 5.03. Severability. In the event any provision of this Agreement shall be held illegal, invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate, render unenforceable or otherwise affect any other provision hereof.

Section 5.04. Execution in Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 5.05. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Maryland.

Section 5.06. Captions. The captions or headings in this Agreement are for convenience only and shall not in any way define, limit or describe the scope or intent of any provisions or sections of this Agreement.

Section 5.07. Further Assurances. The Borrower shall, at the request of the Administration, execute, acknowledge and deliver such further resolutions, conveyances, transfers, assurances, financing statements, certificates and other instruments as may be necessary or desirable for better assuring, conveying, granting, assigning and confirming the rights, security interests and agreements granted or intended to be granted by this Agreement and the Note.

Section 5.08. Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes all prior oral and written agreements between the parties hereto with respect to the Loan. In the event of any inconsistency between the provisions of this Agreement and anything contained in the Application, the provisions of this Agreement shall prevail.

Section 5.09. Amendment of this Agreement. This Agreement, or any part hereof, may be amended from time to time hereafter only if and to the extent permitted by the Indenture and by an instrument in writing jointly executed by the Administration and the Borrower.

Section 5.10. Disclaimer of Relationships. The Borrower acknowledges that the obligation of the Administration is limited to making the Loan in the manner and on the terms set forth in this Agreement. Nothing in this Agreement nor any act of either the Administration or of the Borrower shall be deemed or construed by either of them, or by third persons, to create any relationship of third-party beneficiary, principal and agent, limited or general partnership, or joint venture, or of any association or relationship whatsoever involving the Borrower and the Administration.

Section 5.11. Effective Date. The effective date of this Agreement shall be the date of the Administration's execution.

Section 5.12. Term of this Agreement. Unless sooner terminated pursuant to Article IV of this Agreement, or by the mutual consent of the Borrower and the Administration, this Agreement shall continue and remain in full force and effect until the Loan, together with interest and all other sums due and owing in connection with this Agreement or the Loan, have been paid in full to the satisfaction of the Administration. Upon payment in full of the Loan together with interest and all other sums due and owing in connection with this Agreement or the Loan from any source whatsoever, this Agreement shall be terminated.

Section 5.13. Delegation Not to Relieve Obligations. The delegation by the Borrower of the planning, construction or carrying out of the Project shall not relieve the Borrower of any obligations under this Agreement and any other documents executed in connection with the Loan.

Section 5.14. Additional Terms. This Agreement shall also be subject to the additional terms, if any, set forth in Exhibit A hereto.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered as of the day and year first above written.

(SEAL)

WITNESS:

MARYLAND WATER QUALITY FINANCING  
ADMINISTRATION

\_\_\_\_\_

\_\_\_\_\_

Jag Khuman  
Director

(SEAL)

ATTEST:

BORROWER: \_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_

Name:  
Title:

Name:  
Title:

Approved for form and legal sufficiency

Approved for form and legal sufficiency

this \_\_\_ day of \_\_\_\_\_, 2015

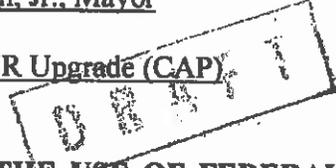
this \_\_\_ day of \_\_\_\_\_, 2015

\_\_\_\_\_  
Local Attorney for  
Borrower

\_\_\_\_\_  
Helen E. Akparanta  
Senior Counsel/Assistant Attorney General

EXHIBIT A  
to Loan Agreement

Borrower Name: City of Salisbury  
Address: 125 N. Division Street  
Salisbury, MD 21801-4940  
Attention: The Honorable James Ireton, Jr., Mayor  
Project Name: Salisbury WWTP BNR/ENR Upgrade (CAP)



**IF THIS PROJECT IS FINANCED WITH THE USE OF FEDERAL FUNDS UNDER CFDA #: 66.458, THE BORROWER MAY BE SUBJECT TO A SINGLE AUDIT TO BE UNDERTAKEN BY AN INDEPENDENT AUDITOR IN ACCORDANCE WITH UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS, 2 C.F.R. § 200.501. THE BORROWER HEREBY AGREES TO OBTAIN SUCH SINGLE AUDIT, IF REQUIRED BY THE SINGLE AUDIT ACT.**

**CONDITIONS TO INITIAL ADVANCE UNDER SECTION 3.03(b)(vi) OF LOAN AGREEMENT:**

NONE

**ADDITIONAL TERMS APPLICABLE TO LOAN AGREEMENT:**

The provisions of this Exhibit A shall be deemed to be a part of the foregoing Agreement as if set forth in full therein. In the case of any conflict between this Exhibit A and any provision thereof, the provisions of this Exhibit A shall be controlling, notwithstanding any other provisions contained in the Agreement.

1. The first regularly scheduled payment of interest on the Loan shall be due on N/A.
2. The Borrower agrees to comply with the Davis-Bacon Act requirements of Section 513 of the Federal Water Pollution Control Act for the entirety of construction contract costs of the Project, and shall include specific language regarding compliance in its contracts and subcontracts.
3. The Borrower agrees to comply with the Use of American Iron and Steel requirement of federal law, which provides that all of the iron and steel products used in the Project are produced in the United States, unless a waiver is granted.

DL-04/07/15

A-1

EXHIBIT B  
to Loan Agreement

Borrower Name: City of Salisbury  
Address: 125 N. Division Street  
Salisbury, MD 21801-4940  
Attention: The Honorable James Ireton, Jr., Mayor  
Project Name: Salisbury WWTP BNR/ENR Upgrade (CAP)

DESCRIPTION OF THE LOAN

- (1) Project Name: Salisbury WWTP BNR/ENR Upgrade (CAP)
- (2) Maximum Principal Amount of Loan Commitment: \$34,545,000
- (3) Rate of Interest: 0.0 %
- (4) Repayment Schedule:
- (a) 20 years  
\$1,000 Mini Principal Payment Date: N/A  
Date of First of 20 Principal Payments: February 1, 2018
- (b) Level Principal \_\_\_\_\_; or  
Level Debt Service \_\_\_\_\_; or  
Other X
- (5) Annual Administrative Fee: \$ -0-, beginning August 1, N/A
- (6) Estimated Completion Date of Project: November 2017
- (7) Default Rate: \_\_\_\_\_ % (Based upon the \_\_\_\_\_ average of the Bond Buyer 11-Bond Index)
- (8) Description of Project: The project entails the planning, design and construction of Biological Nutrient Removal (BNR) and Enhanced Nutrient Removal (ENR) upgrades at the existing 8.5 million gallons per day (mgd) Salisbury Wastewater Treatment Plant (WWTP). Upon completion the BNR and ENR improvements, along with the solids processing and plant drain pump station upgrades, the Salisbury WWTP will be capable of achieving an annual effluent concentration goal of 3.0 mg/L for Total Nitrogen (TN) and 0.3 mg/L for Total Phosphorus (TP), significantly reducing nutrients discharge to Wicomico River and ultimately the Chesapeake Bay.

DRAFT  
DRAFT

DL-04/08/15

EXHIBIT C  
to Loan Agreement

Borrower Name: City of Salisbury  
Address: 125 N. Division Street  
Salisbury, MD 21801-4940  
Attention: The Honorable James Ireton, Jr., Mayor  
Project Name: Salisbury WWTP BNR/ENR Upgrade (CAP)

**PROJECT BUDGET**

Breakdown of Eligible Project Costs:

A. Portion of Eligible Project Costs to be directly financed:

Description

Eligible Project Costs include administrative and legal expenses, planning/design engineering fees, construction costs, construction phase engineering/inspection fees and contingencies

**Subtotal Loan:** \$ \_\_\_\_\_

**Allocated  
Amount of Loan\***

B. Portion of Eligible Project Costs for which Borrower will be reimbursed at closing, which the Borrower hereby certifies were paid or incurred prior to the date of the Agreement, in anticipation of being reimbursed through a loan from the Administration (and subject to compliance with Section 3.03(a) of the Agreement):

Description

Eligible Project Costs include administrative and legal expenses, planning/design engineering fees, construction costs, construction phase engineering/inspection fees and contingencies

**Total Reimbursement at Closing:** \$ -0-

**Total Loan:** \$34,545,000

**Allocated  
Amount of Loan**

DL-04/07/15

EXHIBIT C  
to Loan Agreement

Borrower Name: City of Salisbury  
Address: 125 N. Division Street  
Salisbury, MD 21801-4940  
Attention: The Honorable James Ireton, Jr., Mayor  
Project Name: Salisbury WWTP BNR/ENR Upgrade (CAP)



C. Construction Cash Draw Schedule\*

<u>Federal Quarter</u>	<u>Cash Disbursements*</u>
FFY 15 Q4 (Jul 15 – Sep 15)	\$ 3,454,500
FFY 16 Q1 (Oct 15 – Dec 15)	\$ 3,454,500
FFY 16 Q2 (Jan 16 – Mar 16)	\$ 3,454,500
FFY 16 Q3 (Apr 16 – Jun 16)	\$ 3,454,500
FFY 16 Q4 (Jul 16 – Sep 16)	\$ 3,454,500
FFY 17 Q1 (Oct 16 – Dec 16)	\$ 3,454,500
FFY 17 Q2 (Jan 17 – Mar 17)	\$ 3,454,500
FFY 17 Q3 (Apr 17 – Jun 17)	\$ 3,454,500
FFY 17 Q4 (Jul 17 – Sep 17)	\$ 3,454,500
FFY 18 Q1 (Oct 17 – Dec 17)	\$ 3,454,500
<b>Total Disbursements:</b>	<b>\$34,545,000</b>

\* SUBJECT TO CHANGE WITH CONSENT OF THE ADMINISTRATION IN ITS DISCRETION UNDER SECTION 2.02(d) OF THIS AGREEMENT

DL-04/07/15

OPINION OF BORROWER'S COUNSEL

[LETTERHEAD OF COUNSEL TO BORROWER]

[CLOSING DATE]

Maryland Water Quality  
Financing Administration  
1800 Washington Blvd.  
Baltimore, Maryland 21230-1718

Ladies and Gentlemen:

We are counsel to [NAME OF BORROWER], a [body politic and corporate and a political subdivision] [municipal corporation] [other appropriate description] of the State of Maryland (the "Borrower") in connection with the loan (the "Loan") by Maryland Water Quality Financing Administration (the "Administration") to the Borrower of funds to finance all or a portion of the costs of a project (the "Project") described in Exhibit B to the Loan Agreement dated as of \_\_\_\_\_, 2015 (the "Agreement") by and between the Administration and the Borrower.

In this connection, we have reviewed such records, certificates, and other documents as we have considered necessary or appropriate for the purposes of this opinion, including, without limitation, the Agreement and the Borrower's \$ \_\_\_\_\_ Water Quality Bond, Series 2015, dated \_\_\_\_\_, 2015 (the "Note"). The Agreement and the Note are referred to herein collectively as the "Loan Documents". Based on such review, and such other considerations of law and fact as we believe to be relevant, we are of the opinion that:

(a) The Borrower is a validly created and existing [body politic and corporate and a political subdivision] [municipal corporation] [other appropriate description] of the State of Maryland, possessing authority to acquire, construct and operate the Project and to enter into the Loan Documents and perform its obligations thereunder.

(b) The Borrower has duly authorized, executed and delivered the Loan Documents and, assuming due authorization, execution and delivery of the Agreement by the Administration, the Loan Documents constitute legal, valid and binding obligations of the Borrower enforceable in accordance with their respective terms.

(c) The Note is a general obligation of the Borrower to which its full faith and credit is pledged, payable if and to the extent not paid from other sources as described in the Agreement from ad valorem taxes, unlimited as to rate and amount, which the Borrower is empowered to levy on all real and tangible personal property within its corporate limits subject to assessment for unlimited taxation by the Borrower.

(d) The Loan Documents and the enforceability thereof are subject to bankruptcy, insolvency, moratorium, reorganization and other state and federal laws affecting the enforcement of creditors' rights and to general principles of equity.

(e) To the best of our knowledge after reasonable investigation, the Borrower has all necessary licenses, approvals and permits required to date under federal, state and local law to own, construct and acquire the Project.

(f) Neither the execution and delivery of the Loan Documents, the consummation of the transactions contemplated thereby, the acquisition and construction of the Project nor the fulfillment of or compliance with the terms and conditions of the Loan Documents conflicts with or results in a breach of or default under any of the terms, conditions or provisions of the charter or laws governing the Borrower (including any limit on indebtedness) or, to the best of our knowledge after reasonable investigation, any agreement, contract or other instrument, or law, ordinance, regulation, or judicial or other governmental order, to which the Borrower is now a party or by which the Borrower or its properties are otherwise subject or bound, and the Borrower is not otherwise in violation of any of the foregoing in a manner material to the transactions contemplated by the Loan Documents.

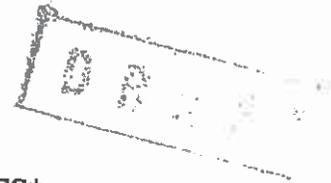
(g) To the best of our knowledge after reasonable investigation, there is no action, suit, proceeding or investigation, at law or in equity, before or by any court, governmental agency or public board or body pending or threatened against or affecting the Borrower that, if adversely determined, would materially affect the ability of the Borrower to perform its obligations under the Loan Documents, which has not been disclosed in writing to the Administration.

We hereby authorize Bond Counsel to the Administration to rely on this opinion as if we had addressed this opinion to them in addition to you.

Very truly yours,

**EXHIBIT E**  
**to Loan Agreement**

**Borrower Name:** City of Salisbury  
**Address:** 125 N. Division Street  
Salisbury, MD 21801-4940  
**Attention:** The Honorable James Ireton, Jr., Mayor  
**Project Name:** Salisbury WWTP BNR/ENR Upgrade (CAP)



**DESCRIPTION OF DEDICATED REVENUES\***

**Sewer and Water user charges, including any and all fees for use of the public sewer and water system or connection to it.**

**\* The identification of the dedicated source or sources of revenues above is intended to specify a source or sources of revenues available in sufficient amount to provide for the payment of the costs of operating and maintaining the Project as well as the payment of the costs of debt service of any borrowing incurred to finance the Project. The specification of a dedicated source or sources of revenues above is not intended to constitute an undertaking by the Borrower to pledge, segregate or otherwise set aside any specific funds of the Borrower with the expectation that such funds would be used to pay the debt service on the Loan.**

\$(MAX. AMT.)

R-1

REGISTERED

UNITED STATES OF AMERICA  
STATE OF MARYLAND

[NAME OF BORROWER]  
WATER QUALITY BOND, SERIES 2015  
Dated \_\_\_\_\_, 2015

PAYMENTS OF PRINCIPAL AND INTEREST ON THIS BOND ARE MADE BY CHECK, DRAFT OR ELECTRONIC FUNDS TRANSFER TO THE REGISTERED OWNER AND IT CANNOT BE DETERMINED FROM THE FACE OF THIS BOND WHETHER ALL OR ANY PART OF THE PRINCIPAL OF OR INTEREST ON THIS BOND HAS BEEN PAID.

REGISTERED OWNER: Maryland Water Quality Financing  
Administration

\_\_\_\_\_, a [body politic and corporate] [municipal corporation] [other appropriate description] of the State of Maryland (the "Borrower"), hereby acknowledges itself obligated to pay to the Registered Owner shown above, the principal amount of \$\_\_\_\_\_ (the "Maximum Principal Amount") or so much thereof as shall have been advanced from time to time under the terms of the Loan Agreement dated as of \_\_\_\_\_, 2015 (the "Loan Agreement") by and between the Borrower and the Maryland Water Quality Financing Administration (the "Administration"), plus interest on the unpaid principal advanced under the terms of the Loan Agreement at the rate of \_\_\_\_\_ per centum (\_\_\_%) per annum.

The principal advanced under the Loan Agreement shall be paid in installments on the dates and in the amounts as set forth in the following schedule, as such schedule may be amended in accordance with the terms hereof:

<u>Due</u> <u>[February 1]</u>	<u>Principal</u> <u>Amount</u>	<u>Due</u> <u>[February 1]</u>	<u>Principal</u> <u>Amount</u>
2016		2025	
2017		2026	
2018		2027	
2019		2028	
2020		2029	
2021		2030	
2022		2031	
2023		2032	
2024		2033	

If the Administration determines at any time to reduce the maximum amount of the Loan Commitment (as defined in the Loan Agreement) in accordance with Section 3.08 of the Loan Agreement, the Maximum Principal Amount shall be reduced accordingly and the Maximum Principal Amount as so reduced shall be amortized in accordance with Section 3.08 of the Loan Agreement. The Administration shall deliver, and the Borrower shall acknowledge in writing, a certificate setting forth such reamortized payment schedule, which shall be attached hereto and shall replace and supersede for all purposes the foregoing payment schedule. Any such reduction shall not affect the obligation of the Borrower to pay the principal of and interest on this bond as and when the same shall become due.

Notwithstanding the foregoing, all outstanding unpaid principal amounts advanced under the Loan Agreement, if not previously due hereunder, shall be due on that date which is 20 years after the date of completion of the Project (as defined in the Loan Agreement), as certified by the Borrower to the Administration pursuant to Section 2.02(d) of the Loan Agreement.

This bond is subject to prepayment only in accordance with Section 3.10 of the Loan Agreement.

Both the principal of and interest on this bond will be paid to the registered owner in lawful money of the United States of America, at the time of payment, and will be paid by electronic funds transfer, or by check or draft mailed (by depositing such check or draft, correctly addressed and postage prepaid, in the United States mails before the payment date) to the registered owner at such address as the registered owner may designate from time to time by a notice in writing delivered to the [INSERT BORROWER'S AUTHORIZED OFFICER].

This bond is issued pursuant to and in full conformity with the provisions of [INSERT BORROWER'S LOCAL ACT(S)] and the Maryland Water Quality Financing Administration Act (codified as Sections 9-1601 to 9-1622, inclusive, of the Environment Article of the Annotated Code of Maryland, as amended), and by virtue of due proceedings had and taken by the Borrower, particularly [AN ORDINANCE AND OR A RESOLUTION] (numbered \_\_\_) [INSERT BORROWER'S AUTHORIZING ORDINANCE OR RESOLUTION] (collectively, the "Resolution") adopted by Borrower.

This bond, together with the Loan Agreement, evidences the Loan (as defined in the Loan Agreement) to the Borrower from the Maryland Water Quality Financing Administration. In accordance with the Loan Agreement, the principal amount of the Loan, being the amount denominated as principal under this bond, is subject to reduction or adjustment by the Administration in accordance with the Loan Agreement.

The full faith and credit and unlimited taxing power of the Borrower are hereby irrevocably pledged to the prompt payment of the principal of and interest on this bond according to its terms, and the Borrower does hereby covenant and agree to pay the principal of and interest on this bond at the dates and in the manner prescribed herein.

This bond is transferable only after the first principal payment date as set forth above or the date upon which the Maximum Principal Amount has been borrowed, whichever is earlier, upon the books of the Borrower at the office of the [INSERT BORROWER'S AUTHORIZED OFFICERS] by the registered owner hereof in person or by his attorney duly authorized in writing, upon surrender hereof, together with a written instrument of transfer satisfactory to the [INSERT BORROWER'S AUTHORIZED OFFICER], duly executed by the registered owner or his duly authorized attorney. The Borrower shall, within a reasonable time, issue in the name of the transferee a new registered bond or bonds, in such denominations as the Borrower shall by resolution approve, in an aggregate principal amount equal to the unpaid principal amount of the bond or bonds surrendered and with the same maturities and interest rate. If more than one bond is issued upon any such transfer, the installment of principal and interest to be paid on each such bond on each payment date shall be equal to the product of the following formula: the total installment due on each payment date multiplied by a fraction, the numerator of which shall be the principal amount of such bond and the denominator of which shall be the aggregate principal amount of bonds then outstanding and unpaid. The new bond or bonds shall be delivered to the transferee only after payment of any taxes on and any shipping or insurance expenses relating to such transfer. The Borrower may deem and treat the party in whose name this bond is registered as the absolute owner hereof for the purpose of receiving payment of or on account of the principal hereof and interest due hereon and for all other purposes.

It is hereby certified and recited that all conditions, acts and things required by the Constitution or statutes of the State of Maryland and the Resolution to exist, to have happened or to have been performed precedent to or in the issuance of this bond, exist, have happened and have been performed, and that the issuance of this bond, together with all other indebtedness of the Borrower, is within every debt and other limit prescribed by said Constitution or statutes.

IN WITNESS WHEREOF, this bond has been executed by the manual signature of the [INSERT AUTHORIZED OFFICERS] and the seal of the Borrower has been affixed hereto, attested by the manual signature of the [INSERT AUTHORIZED OFFICER], all as of the \_\_ day of \_\_\_\_\_, 2015.

(SEAL)

ATTEST:

\_\_\_\_\_  
[OFFICER]

By: \_\_\_\_\_  
[OFFICER]

**LOAN AGREEMENT**

**By and Between**

**MARYLAND WATER QUALITY  
FINANCING ADMINISTRATION**

**and**

**CITY OF SALISBURY**

**Dated as of           , 2015**

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## LOAN AGREEMENT

THIS LOAN AGREEMENT, made this            day of            , 2015 between the Maryland Water Quality Financing Administration (the "Administration"), a unit of the Department of the Environment (the "Department") of the State of Maryland (the "State"), and City of Salisbury, a municipal of the State (the "Borrower").

### RECITALS

Title VI of the Federal Water Pollution Control Act (commonly known as the "Clean Water Act"), as amended by the Water Quality Act of 1987 ("Title VI"), authorizes the Environmental Protection Agency ("EPA") to award grants to qualifying States to establish and capitalize State water pollution control revolving funds ("SRFs") for the purpose of providing loans and certain other forms of financial assistance (but not grants) to finance, among other things, the construction and improvement of publicly-owned wastewater treatment facilities and the implementation of estuary conservation management plans and nonpoint source management programs.

As contemplated by Title VI, the General Assembly of the State at its 1988 session enacted the Maryland Water Quality Financing Administration Act, codified at Sections 9-1601 through 9-1622 of the Environment Article of the Annotated Code of Maryland, as amended (the "Act"), establishing an SRF designated the Maryland Water Quality Revolving Loan Fund (the "Fund") to be maintained and administered by the Administration. The Act authorizes the Administration, among other things, to make a loan from the Fund to a "local government" (as defined in the Act) for the purpose of financing all or a portion of the cost of a "wastewater facility" project (as defined in the Act).

The Borrower, which is a "local government" within the meaning of the Act, has applied to the Administration for a loan from the Fund to assist in the financing of a certain project or projects of the Borrower (the "Project," as defined herein) which constitutes a "wastewater facility" within the meaning of the Act. The Project is one designated for funding in an Intended Use Plan promulgated by the Administration in accordance with regulations issued by the EPA pursuant to Title VI, and the Project conforms to the applicable "county plan" adopted pursuant to the requirements of Subtitle 5 of Title 9 of the Environment Article of the Annotated Code of Maryland, as amended.

The Director of the Administration has determined that the making of a loan to the Borrower for the purpose of assisting the financing of the Project, on the terms and conditions hereinafter set forth, is necessary and desirable in the public interest, will promote the health, safety and welfare of the inhabitants of the State and the United States by assisting in the prevention of pollution of the environment, and will further the purposes of Title VI and the Act.

NOW THEREFORE, in consideration of the mutual promises and covenants hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which

are hereby acknowledged, the Borrower and the Administration, each intending to be legally bound, hereby agree as follows:

## ARTICLE I

### DEFINITIONS

Section 1.01. Definitions. Unless specifically provided otherwise or the context otherwise requires, when used in this Agreement:

“Act” means the Maryland Water Quality Financing Administration Act, Sections 9-1601 through 9-1622 of the Environment Article, Annotated Code of Maryland, and all acts supplemental thereto or amendatory thereof.

“Administration” means the Maryland Water Quality Financing Administration, a unit of the Department of the Environment of the State, and its successors and assigns.

“Administrative Fee” means the fee payable by the Borrower pursuant to this Agreement for the general administrative services and other functions and expenses of the Administration.

“Agreement” means this Loan Agreement, including the Exhibits attached hereto and any amendments hereto.

“Application” means the application for the Loan submitted by the Borrower to the Administration, together with any amendments thereto.

“Authorized Officer” means, in the case of the Borrower, any person authorized by law or by a resolution of the governing body of the Borrower to perform any act or execute any document.

“Board” means the Board of Public Works of the State.

“Bonds” means any series of revenue bonds issued by the Administration under the Act.

“Borrower” means the local government (as defined in the Act) that is identified in the first paragraph of this Agreement, and its successors and assigns.

“Business Day” means a day other than a Saturday, Sunday, or day on which the offices of the Administration or commercial banks in the State are authorized or obligated to remain closed.

“Change Orders” means any amendments or modifications to any Plans and Specifications or any general construction contract for the Project.

“Clean Water Act” means the Water Pollution Control Act of 1972, PL 92-500, as amended, 33 U.S.C. §1251 et seq., and rules and regulations promulgated thereunder.

“Default” means an event or condition the occurrence of which would, with the lapse of time or the giving of notice or both, constitute an Event of Default.

“Department” means the Maryland Department of the Environment, and its successors.

“Director” means the Director of the Administration.

“Eligible Project Costs” means all those costs of the Project permitted by the Act to be funded by a loan from the Fund and which have been approved by the Director.

“EPA” means the United States Environmental Protection Agency, and its successors.

“Event of Default” means any occurrence or event specified in Section 4.01 hereof.

“Fiscal Year” means the period of 12 consecutive months commencing on July 1 in any calendar year and ending on June 30 of the succeeding calendar year.

“Fund” means the Maryland Water Quality Revolving Loan Fund.

“Governmental Authority” means the United States, the State of Maryland, or any of their political subdivisions, agencies, departments, commissions, boards, bureaus or instrumentalities, including any local authority having jurisdiction over the Project, and including EPA, the Department, the Board and the Administration.

“Independent Counsel” means any attorney or attorneys duly admitted to practice law before the highest court of any state who have regularly engaged in the practice of law as their primary occupation for at least five years. Independent Counsel may also serve as Bond Counsel if it qualifies as Bond Counsel.

“Independent Public Accountant” means an individual, partnership or corporation engaged in the accounting profession, either entitled to practice, or having members or officers entitled to practice, as a certified public accountant under the laws of the State of Maryland and in fact independent.

“Loan” means the aggregate amounts which are advanced from time to time by the Administration to the Borrower pursuant to the terms and provisions of this Agreement.

“Loan Closing Date” means the date on which the Note is executed and delivered to the Administration.

“Loan Commitment” means that amount which the Administration is obligated to lend to the Borrower pursuant to the terms and provisions of this Agreement and subject to the satisfaction of the conditions set forth in this Agreement, as such amount may be adjusted as provided in this Agreement.

“Loan Year” means the period beginning on the first February 1 on which principal of the Loan is payable and each February 1 thereafter and ending on the immediately succeeding January 31.

“Note” means the bond, note or other obligation executed and delivered by the Borrower to the Administration to evidence the Loan, such Note to be substantially in the form attached hereto as Exhibit F.

“Plans and Specifications” means the final plans and specifications for the construction of the Project prepared by the architect or engineer and approved by the Department.

“Project” means the project or projects of the Borrower described in Exhibit B to this Agreement.

“Project Budget” means the budget for the Project as set forth in Exhibit C to this Agreement, as revised in accordance with Section 2.02(d).

“Related Financing” means any bond, note, agreement or other instrument or transaction (other than this Agreement or the Note) pursuant to which the Borrower obtains any monies that may be expended to pay costs of the Project.

“Requirement” means any law, ordinance, code, order, rule or regulation of a Governmental Authority, including, without limitation, a condition set forth in a National Pollution Discharge Elimination System (“NPDES”) permit or in a construction permit issued by the Department.

“State” means the State of Maryland.

“Trustee” means the trustee for the Bonds.

Section 1.02. Rules of Construction. Unless the context clearly indicates to the contrary, the following rules shall apply to the construction of this Agreement:

(a) words importing the singular number include the plural number and words importing the plural number include the singular number;

(b) words of the masculine gender include correlative words of the feminine and neuter genders;

(c) words importing persons include any individual, corporation, partnership, joint venture, association, joint stock company, trust, unincorporated organization or government or agency or political subdivision thereof;

(d) the terms “agree” and “agreement” shall include and mean “covenant”, and all agreements contained in this Agreement are intended to constitute covenants and shall be enforceable as such;

(e) the headings and the Table of Contents set forth in this Agreement are solely for convenience of reference and shall not constitute a part of this Agreement or affect its meaning, construction or effect; and

(f) any reference to a particular Article or Section shall be to such Article or Section of this Agreement unless the context shall otherwise require.

## ARTICLE II

### REPRESENTATIONS AND COVENANTS OF BORROWER

Section 2.01. Representations of Borrower. The Borrower represents for the benefit of the Administration as follows:

(a) Corporate Organization and Authority. The Borrower:

(i) is a “local government” as defined in the Act; and

(ii) has all requisite power and authority and all necessary licenses and permits required as of the date hereof to own and operate the Project, to enter into this Agreement, to execute and deliver the Note, and to carry out and consummate all transactions contemplated by this Agreement.

(b) Full Disclosure. There is no fact that the Borrower has not disclosed to the Administration in writing that materially adversely affects or (so far as the Borrower can now foresee) that will materially adversely affect the properties, activities, prospects or condition (financial or other) of the Borrower or the ability of the Borrower to make all payments due hereunder and otherwise perform its obligations under this Agreement and the Note.

(c) Pending Litigation. There are no proceedings pending, or to the knowledge of the Borrower threatened, against or affecting the Borrower in any court or before any Governmental Authority or arbitration board or tribunal that, if adversely determined, would materially adversely affect the properties, activities, prospects or condition (financial or other) of the Borrower, or the ability of the Borrower to make all payments due hereunder and otherwise perform its obligations under this Agreement and the Note, and that have not been disclosed in writing to the Administration in the Application or otherwise.

(d) Borrowing Legal and Authorized. The consummation of the transactions provided for in this Agreement and the Note and compliance by the Borrower with the provisions of this Agreement and the Note:

(i) are within its powers and have been duly authorized by all necessary action on the part of the governing body of the Borrower; and

(ii) will not result in any breach of any of the terms, conditions or provisions of, or constitute a default under, or result in the creation or imposition of any lien, charge or encumbrances upon any property or assets of the Borrower pursuant to, any indenture, loan agreement or other instrument (other than this Agreement and the Note) to which the Borrower is a party or by which the Borrower may be bound, nor will such action result in any violation of the provisions of laws, ordinances, governmental rules, regulations or court orders to which the Borrower or its properties or operations is subject.

(e) No Defaults. No event has occurred and no condition exists that, upon execution of this Agreement and the Note or receipt of the Loan, would constitute a Default hereunder. The Borrower is not in violation, and has not received notice of any claimed violation, of any term of any agreement or other instrument to which it is a party or by which it or its property may be bound, which violation would materially adversely affect the properties, activities, prospects or condition (financial or other) of the Borrower or the ability of the Borrower to make all payments due hereunder and otherwise perform its obligations under this Agreement and the Note, and that have not been disclosed in writing to the Administration in the Application or otherwise.

(f) Governmental Consent; Project Consistency.

(i) The Borrower has obtained all permits and approvals required to date by any Governmental Authority for the making and performance by the Borrower of its obligations under this Agreement and the Note or for the Project and the financing thereof. No consent, approval or authorization of, or filing, registration or qualification with, any Governmental Authority that has not been obtained is required on the part of the Borrower as a condition to the execution and delivery of this Agreement and the Note or the consummation of any transaction herein contemplated.

(ii) The Project is consistent with (A) the local plan of the Borrower as contemplated under Section 5-7A-02 of the State Finance and Procurement Article of the Annotated Code of Maryland, as amended; (B) the State Economic Growth, Resource Protection, and Planning Policy established in Section 5-7A-01 of the State Finance and Procurement Article of the Annotated Code of Maryland, as amended; and (C) all applicable provisions of *Subtitle 7B*; “*Priority Funding Areas*” of Title 5 of the State Finance and Procurement Article of the Annotated Code of Maryland, as amended.

(g) No Conflicts. No member, officer, or employee of the Borrower, or its designees, or agents, no consultant, no member of the governing body of the Borrower or of any Governmental Authority, who exercises or has exercised any authority over the Project during such person's tenure, shall have any interest, direct or indirect, in any contract or subcontract, or its proceeds, in any activity, or benefit therefrom, which is part of the Project.

(h) Use of Proceeds. The Borrower will apply the proceeds of the Loan from the Administration as described in Exhibit B attached hereto and made a part hereof (i) to finance all or a portion of the Eligible Project Costs; and (ii) to reimburse the Borrower for all or a portion of the Eligible Project Costs paid or incurred prior to the date hereof in anticipation of reimbursement by the Administration. Except as provided in Section 3.03(c) of this Agreement, before each and every advance of the proceeds of the Loan to the Borrower, the Borrower shall submit to the Administration a requisition meeting the requirements of Section 3.03 of this Agreement.

(i) Loan Closing Submissions. On or before the Loan Closing Date, the Borrower will cause to be delivered to the Administration each of the following items:

(i) an opinion of Independent Counsel, acceptable to the Administration, dated as of the Loan Closing Date, substantially in the form set forth in Exhibit D to this Agreement;

(ii) fully executed counterparts of this Agreement, the Note;

(iii) copies of the ordinance, resolution or other official action of the governing body of the Borrower authorizing the execution and delivery of this Agreement and the Note, certified by an appropriate officer of the Borrower;

(iv) a certificate, dated as of the Loan Closing Date, signed by an Authorized Officer of the Borrower and in form satisfactory to the Administration, confirming the Borrower's obligations under and representations in the Loan Agreement as of such date;

(v) such other certificates, documents, opinions and information as the Administration may require.

#### Section 2.02. Particular Covenants of the Borrower.

(a) Maintenance of Project; Insurance. The Borrower shall (i) keep, operate and maintain, or cause to be kept, operated and maintained, the Project in good working order, condition and repair; (ii) make or cause to be made all needed and proper replacements to the Project so that the Project will at all times be in good operating condition, fit and proper for the purposes for which it was originally erected or installed; (iii) not permit any waste of the Project; (iv) observe and comply with, or cause to be observed and complied with, all Requirements; and (v) operate, or cause to be operated, the Project in the manner in which similar projects are operated by persons operating a first-class facility of a similar nature. The Borrower shall maintain or cause to be maintained at its sole cost and expense insurance with respect to the Project, both during its construction and

thereafter, against such casualties and contingencies and in such amounts as are customarily maintained by governmental entities similarly situated and as are consistent with sound governmental practice.

(b) Sale or Disposition of Project. The Borrower reasonably expects that no portion of the Project will be sold prior to the final maturity date of the Loan. In the event that the Borrower shall sell or otherwise dispose of any portion of the Project prior to the final maturity date of the Loan, the Borrower shall apply the net proceeds thereof to the prepayment of the Loan or as the Administration shall otherwise direct unless the Borrower shall have obtained the prior written consent of the Administration to some other proposed application of such net proceeds.

(c) Inspections; Information. The Borrower shall permit the Administration or its designee to examine, visit and inspect, at any and all reasonable times (including, without limitation, any time during which the Project is under construction or in operation), the property constituting the Project, to attend all construction progress meetings relating to the Project and to inspect and make copies of any accounts, books and records, including (without limitation) its records regarding receipts, disbursements, contracts, investments and any other matters relating to the Project and the financing thereof, and shall supply such reports and information as the Administration may reasonably require in connection therewith. Without limiting the generality of the foregoing, the Borrower shall keep and maintain any books, records, and other documents that may be required under applicable federal and State statutes, regulations, guidelines, rules and procedures now or hereafter applicable to loans made by the Administration from the Fund, and as may be reasonably necessary to reflect and disclose fully the amount and disposition of the Loan, the total cost of the activities paid for, in whole or in part, with the proceeds of the Loan, and the amount and nature of all investments related to such activities which are supplied or to be supplied by other sources. All such books, records and other documents shall be maintained at the offices of the Borrower, as specified on Exhibit B attached hereto, for inspection, copying, audit and examination at all reasonable times by any duly authorized representative of the Administration. All such books, records and other documents shall be maintained until the completion of an audit of the Project by the EPA or notification from the State or the EPA that no audit is required.

(d) Completion of the Project; Payment of Excess Costs of the Project. The Borrower shall proceed diligently to complete the Project in accordance with the Plans and Specifications, and in accordance with any requirements set forth in the construction and NPDES permits. The Borrower shall satisfy all applicable Requirements for operation of the Project by the completion of the Project, and shall commence operation of the Project promptly upon its completion. No substantial changes may be made to the Plans and Specifications, the general construction contract or the Project Budget, or in the construction of the Project without the prior written approval of the Administration in its discretion. The Borrower shall pay any amount required for the acquisition, construction and equipping of the Project in excess of the amount available to be loaned to the Borrower hereunder. Upon the completion of the Project, the Borrower shall deliver to the Administration a certificate of the Borrower certifying that the Project was completed as of the date set forth in such certificate.

(e) Cancellation of Loan. As provided by Section 9-1606(e) of the Act, the Borrower acknowledges and agrees that its obligation to make the payments due hereunder and under

the Note is cancelable only upon repayment in full of the Loan, and that neither the Administration, the Secretary of the Department, nor the Board is authorized to forgive the repayment of all or any portion of the Loan.

(f) Dedicated Source of Revenue. Pursuant to the Clean Water Act, the Borrower has established one or more dedicated sources of revenue for repayment of the Loan, as described in Exhibit E attached hereto as a part hereof.

(g) Indemnification. To the extent permitted by law, the Borrower releases the Administration, the Fund, the Department, the Board and the State from, agrees that the Administration, the Fund, the Department, the Board and the State shall not have any liability for, and agrees to protect, indemnify and save harmless the Administration, the Fund, the Department, the Board and the State from and against, any and all liabilities, suits, actions, claims, demands, losses, expenses and costs of every kind and nature incurred by, or asserted or imposed against, the Administration, the Fund, the Department, the Board or the State, as a result of or in connection with the Project or the financing thereof. To the extent permitted by law, all money expended by the Administration, the Fund, the Department, the Board or the State as a result of such liabilities, suits, actions, claims, demands, losses, expenses or costs, together with interest at the rate provided in the Note from the date of such payment, shall constitute an additional indebtedness of the Borrower and shall be immediately and without notice due and payable by the Borrower to the Administration.

(h) Non-discrimination. The Borrower certifies that it does not discriminate, and covenants that it shall not discriminate, on the basis of (1) political or religious opinion or affiliation, marital status, race, color, creed or national origin, or (2) sex or age, except where sex or age constitutes a bona fide occupational qualification, or (3) the physical or mental handicap of a qualified handicapped individual. At such times as the Administration requests, the Borrower shall submit to the Administration information relating to the Borrower's operations, with regard to political or religious opinion or affiliation, marital status, physical or mental handicap, race, color, creed, sex, age, or national origin, on a form to be prescribed by the Administration.

(i) Compliance with Requirements. The Borrower acknowledges that the Loan and this Agreement are subject to, and the Borrower agrees to comply with, all Requirements applicable to the Project and the financing thereof, including (without limiting the generality of the foregoing) the Clean Water Act, the Act, and all other applicable State and federal statutes and such rules, regulations, orders and procedural guidelines as may be promulgated from time to time by the EPA, the Board, the Department, the Administration, or other Governmental Authority.

(j) Annual Audit. Within nine (9) months of the end of each Fiscal Year (unless such period is changed to comply with terms of the Administration's financings, or a Requirement, in which case the Administration shall notify the Borrower in writing), the Borrower shall cause financial statements of the Borrower to be prepared with respect to such Fiscal Year in accordance with generally accepted accounting principles, applicable to governmental units, consistently applied, which financial statements shall be audited by, and accompanied by a report of, an Independent Public Accountant. Such financial statements and report shall be delivered upon completion to the Administration within the nine (9) month period or within thirty (30) days from receipt of a report from the auditor, whichever period is shorter.

(k) Additional Disclosure Information. The Borrower agrees to provide the Administration with such information regarding the Borrower and its finances as the Administration may from time to time request. The Borrower further acknowledges that the Administration may issue one or more series of Bonds pursuant to the Indenture, and that any or all of such Bonds may be secured in part by repayments of the Borrower with respect to the Loan. The Borrower accordingly agrees to provide to the Administration such information regarding the Borrower and its finances as the Administration may from time to time request for inclusion in the official statements or other offering documents to be distributed in connection with the sale of any such Bonds or any annual disclosure document or other informational document prepared from time to time by the Administration to be made available to prospective purchasers or holders of any of such Bonds. The Borrower shall also furnish to the Administration at its request a certificate of an Authorized Officer of the Borrower to the effect that any information so provided or included contains no material inaccuracy or omission in light of the purposes for which such information is provided or included. The Borrower agrees to notify the Administration promptly in writing of (a) any changes in the condition or affairs of the Borrower (financial or other) that would cause any information regarding the Borrower so provided or included in an official statement or any subsequent offering document, annual disclosure document or other informational document of the Administration that the Borrower has had an opportunity to review and certify as to its accuracy, to contain a material inaccuracy or omission in light of the purposes for which such information is so included, and (b) any event set forth in Securities and Exchange Commission Rule 15c2-12(b)(5)(i)(C), as such rule may be amended and supplemented.

(l) Related Financing. The Borrower agrees that the proceeds of any Related Financing shall be expended to pay costs of the Project on a monthly basis proportionately with the proceeds of the Loan, taking into account the total amount of the proceeds of such Related Financing available to pay costs of the Project and the maximum amount of the Loan Commitment. The Borrower agrees to provide the Administration upon its request with such information as the Administration deems reasonably necessary to determine whether the Borrower is in compliance with the provisions of this Section 2.02(l).

### ARTICLE III

#### LOAN TO BORROWER; AMOUNTS PAYABLE; GENERAL AGREEMENTS

Section 3.01. The Loan. Subject to the provisions of Sections 3.02, 3.03 and 3.08 hereof, the Administration hereby agrees to advance amounts under this Agreement to the Borrower, and the Borrower agrees to borrow and accept from the Administration amounts advanced under this Agreement, in an aggregate principal amount not to exceed the maximum amount of the Loan Commitment set forth on Exhibit B attached hereto.

Section 3.02. Availability of Funds. The Administration expects to have, and shall use its best efforts to obtain and maintain, funds in an amount sufficient to make advances to the Borrower in accordance with the "Construction Cash Draw Schedule" included in Exhibit C attached

hereto. The Borrower recognizes, however, that the Administration is a governmental entity with limited financial resources and that the Administration's ability to make such advances may be adversely affected by events or circumstances beyond the Administration's control. The Borrower accordingly assumes the risk that monies may not be available to make advances of the Loan to the Borrower, and, in such event, the Borrower specifically agrees that the Administration shall have no obligation to lend any amounts to the Borrower in excess of the amount theretofore advanced to the Borrower.

Section 3.03. (a) Requisitions and Disbursements. Amounts shall be loaned from time to time to pay, or reimburse the Borrower for the payment of, Eligible Project Costs, upon receipt of requisitions of the Borrower. Each such requisition shall (i) state the names of the payees, (ii) describe in reasonable detail the purpose of each payment, (iii) state the amount of each payment (supported by appropriate paid invoices or other evidence satisfactory to the Administration that the amount requisitioned has been paid or has been incurred by the Borrower and is then due), (iv) state that the amount so requisitioned constitutes a part of the Eligible Project Costs and (v) state that no Default or Event of Default under this Agreement has occurred and is continuing; provided, that this section shall not apply to advances made or deemed to have been made as provided in Section 3.03(c) hereof. In no event shall the Administration be obligated to advance to the Borrower any amount so long as any Default or Event of Default under this Agreement shall have occurred and be continuing. The Administration shall not be required to advance monies on more than one day in each month, and the Administration shall not be required to advance monies for the Project sooner than, or in an amount greater than, the schedule of disbursements for the Project shown on the "Construction Cash Draw Schedule" included in Exhibit C attached hereto. The Administration may require the Borrower to submit requisitions in advance of each such disbursement date in such manner as shall be reasonably acceptable to the Administration.

(b) Conditions Precedent. Before making the first advance of Loan proceeds, the Administration shall receive the following in form and content satisfactory to the Administration:

(i) copies of the Plans and Specifications and of any Change Orders issued through the date of such advance, the general construction contract, and the Project Budget;

(ii) a survey showing the location of existing and proposed easements, rights-of-way and improvements, and the perimeter boundaries of the land upon which the Project will be located, if any Loan proceeds are to be used for acquisition of the land;

(iii) copies of all building permits, if any, pertaining to the Project;

(iv) cost breakdown in trade form showing all subcontracts which represent at least 10 percent of the costs of the Project, and indicating use of the proceeds of the Loan therefor;

(v) a fully executed copy of any contract for the purchase of real property constituting a portion of the Eligible Project Costs described in Exhibit C; and

(vi) evidence satisfactory to the Administration that the conditions (if any) set forth in Exhibit A to this Agreement have been satisfied.

In addition, it shall be a condition precedent to the Administration's obligation to make any advance of Loan proceeds under this Agreement that no Default or Event of Default shall have occurred and be continuing at the time of any such advance.

(c) Interest During Construction. In the event that the Administration has consented to permit the Borrower to pay interest on the Loan from proceeds of the Loan during all or a portion of the period of time related to construction of the Project (as itemized in Exhibit C) ("Construction Period Interest"), the Administration shall on each February 1 and August 1 during such period advance to the Borrower an amount equal to the interest on the Loan due on such February 1 or August 1 and not theretofore paid by the Borrower. Any such amount of Construction Period Interest advanced by the Administration shall constitute part of the principal amount of the Loan hereunder immediately upon its advance to the Borrower in accordance with this paragraph. Notwithstanding the advance of any Construction Period Interest to the Borrower in accordance with this Section, the Borrower shall pay directly to the Administration the Administrative Fee on the dates and in the amounts set forth in Section 3.04(c), and no amounts shall be advanced under the Loan for the payment of the Administrative Fee.

Section 3.04. (a) Amounts Payable. The Borrower shall punctually repay the Loan in installments on the dates, in the amounts, and in the manner specified in the Note. The outstanding amount of the Loan shall bear interest at a rate per annum equal to the rate or rates of interest set forth in Exhibit B, and shall be payable in accordance with the amortization schedule as specified in Exhibit B attached hereto and more particularly set out in the Note (which amortization schedule is subject to adjustment in accordance with this Agreement and the Note). On or prior to the Loan Closing Date, the Borrower shall execute the Note to evidence such obligation. In addition, the Borrower shall pay to the Administration an Administrative Fee in accordance with paragraph (c) of this Section.

(b) Late Charges. In addition to the payments of principal and interest on the Loan required by paragraph (a) of this Section, the Borrower shall pay (i) a late charge for any payment of principal or interest on the Loan that is received later than the tenth day following its due date, in an amount equal to 5% of such payment, and (ii) interest on overdue installments of principal and (to the extent permitted by law) interest at a rate equal to the Default Rate set forth in Exhibit B. Amounts payable pursuant to this paragraph (b) shall be immediately due and payable to the Administration, and interest at the Default Rate shall continue to accrue on overdue installments of principal and (to the extent permitted by law) interest until such amounts are paid in full.

(c) Administrative Fee. (i) On the date specified in Exhibit B for the first payment of the Administrative Fee and on each August 1 thereafter that the Note remains outstanding and unpaid to and including the date of final maturity of the Note (each such date, an "Administrative Fee Payment Date"), the Borrower shall pay to the Administration an Administrative Fee. Subject to paragraph (iv) below, the Administrative Fee for any Administrative Fee Payment Date shall be the (A) Administrative Fee set forth in Exhibit B or (B) after any date on

which the outstanding principal amount of the Loan Commitment is reduced by the Administration by a notice in writing to the Borrower in accordance with this Agreement (other than by reason of the repayment of the principal of the Loan) the Administrative Fee set forth in a notice from the Administration to the Borrower in connection with such reduction. Any adjustment of the Administrative Fee in accordance with the foregoing shall be prospective only, and the Administration shall in no event be obligated to refund any portion of any Administrative Fee payment theretofore received from the Borrower.

(ii) In prescribing the Administrative Fee for a loan with a term of twenty years or more for purposes of paragraph (i) above, the Administration shall employ the following formula, it being understood that any determinations as to the application of such formula shall be within the discretion of the Administration and any Administrative Fee Payment prescribed by the Administration in accordance with the foregoing shall be conclusive and binding upon the Administration and the Borrower: the Administrative Fee equals (A) the aggregate amount of all scheduled payments of principal of and interest on the Note, multiplied by the Percentage Rate (defined in paragraph (iv) below) then in effect, (B) divided by the total number of scheduled Administrative Fee Payment Dates. For example, if the aggregate amount of all scheduled payments of principal of and interest on the Note were \$5,000,000 and the Percentage Rate were 5%, and the total number of scheduled Administrative Fee Payment Dates were 21, the Administrative Fee to be paid each year would equal:

$$\frac{\$5,000,000 \times .05}{21} = \$11,904.76$$

(iii) In prescribing the Administrative Fee for a loan with a term of less than twenty years for purposes of paragraph (i) above, the Administration shall employ the following formula, it being understood that any determinations as to the application of such formula shall be within the discretion of the Administration and any Administrative Fee Payment prescribed by the Administration in accordance with the foregoing shall be conclusive and binding upon the Administration and the Borrower: The Administrative Fee equals (A) the aggregate amount of all scheduled payments of principal of and interest on the Note, multiplied by the Percentage Rate (defined in paragraph (iv) below) then in effect, (B) divided by 20. For example, if the aggregate amount of all scheduled payments of principal of and interest on the Note were \$4,000,000 and the Percentage Rate were 5%, the Administrative Fee to be paid each year would equal:

$$\frac{\$4,000,000 \times .05}{20} = \$10,000.00$$

(iv) The Percentage Rate for each Fiscal Year shall be fixed as a uniform rate for all borrowers receiving loans from the Fund in order to provide sufficient revenues to pay the expenses of the Administration, as approved in the operating budget of the State by the General Assembly of the State; provided, however, that in no event shall the Percentage Rate exceed five percent (5%). In each Fiscal Year the Administration shall review the Percentage Rate then in effect and adjust it for the immediately succeeding Fiscal Year to reflect its approved budget for the

immediately succeeding Fiscal Year, a retainage of not more than ten percent (10%) for an operating reserve within the Administration's general account, and other factors as reasonably determined by the Secretary. No later than June 1 following the end of the Session of the General Assembly in each Fiscal Year, the Administration shall notify the Borrower of the newly established Percentage Rate, which shall be the Percentage Rate applicable to the immediately succeeding Fiscal Year, and of any change in the amount of the Administrative Fee payable by the Borrower in such Fiscal Year as a result of the application of such Percentage Rate.

Section 3.05. Sources of Payment. (a) Dedicated Revenues. In accordance with Section 2.02(f) hereof, the principal of and interest on the Note, and any other amounts due from time to time under this Agreement, shall be payable in the first instance from the dedicated source of revenues described in Exhibit E attached hereto.

(b) General Obligation. In addition, the Note constitutes a general obligation of the Borrower, to the payment of which the full faith and credit and taxing power of the Borrower are pledged.

(c) State Withholding. As further security for the payment of the Note and any other amounts due hereunder, the Borrower hereby pledges the following to the Administration and grants a security interest therein to the Administration: (i) as authorized by Section 9-1606(d) of the Act, the Borrower's share of any and all income tax revenues collected by the State from time to time that would otherwise be payable to the Borrower, and (ii) to the maximum extent permitted by law, any and all other tax revenues, grants, and other monies that the Borrower is or may from time to time be entitled to receive from the State or that may at any time be due from the State, or any department, agency, or instrumentality of the State, to the Borrower. The Borrower further agrees that, upon the occurrence of an Event of Default, among other things, the State Comptroller and the State Treasurer may (i) withhold any such amounts that the Borrower is then or may thereafter be entitled to receive and (ii) at the direction of the Administration, apply the amounts so withheld to the payment of any amounts then due or thereafter becoming due hereunder (including, without limitation, payments under the Note) until the Borrower's obligations hereunder have been fully paid and discharged.

Section 3.06. Unconditional Obligations. The obligations of the Borrower to make payments under the Note as and when due and all other payments required hereunder and to perform and observe the other agreements on its part contained herein shall be absolute and unconditional, and shall not be abated, rebated, set-off, reduced, abrogated, terminated, waived, diminished, postponed or otherwise modified in any manner or to any extent whatsoever, regardless of any contingency, act of God, event or cause whatsoever, including (without limitation) any acts or circumstances that may constitute failure of consideration, eviction or constructive eviction, the taking by eminent domain or destruction of or damage to the Project, commercial frustration of purpose, any change in the laws of the United States of America or of the State or any political subdivision of either or in the rules or regulations of any Governmental Authority, any failure of the Administration, the Department or the State to perform or observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or connected with the Project, this Agreement, or otherwise or any rights of set-off, recoupment, abatement or counterclaim that the Borrower might otherwise have against the Administration, the Department or the State or any other

party or parties; provided, however, that payments hereunder shall not constitute a waiver of any such rights.

Section 3.07. Loan Commitment. The Borrower acknowledges and agrees that the monies attributable to the Borrower's Loan Commitment are the property of the Administration and are held by the Administration to provide for advances to be made to the Borrower in accordance with this Agreement, or to be otherwise disposed of by the Administration in accordance with this Agreement.

Section 3.08. Reduction of Loan Commitment. The Loan Commitment is subject to reduction in accordance with the provisions of this Section 3.08.

(a) Any portion of the Loan Commitment not advanced to the Borrower under Section 3.03 of this Agreement at the later of (1) two years from the date of this Agreement and (2) the earlier of one year following (i) actual completion of construction of the Project or (ii) the estimated completion date specified on Exhibit B attached hereto, shall no longer be available to be advanced to the Borrower and the amount of the Loan Commitment shall be reduced by an amount equal to the portion of the Loan Commitment not advanced, unless otherwise agreed to by the Administration in writing.

(b) The Administration may, by a notice in writing delivered to the Borrower, reduce the amount of the Loan Commitment if the Administration should for any reason determine that it will be unable to fund the full amount of the Loan Commitment (including, without limitation, a determination that the Eligible Project Costs to be paid with proceeds of the Loan are expected to be less than the maximum amount of the Loan Commitment), or if it determines that the Borrower is not proceeding satisfactorily and expeditiously with the Project in accordance with schedules and plans provided to the Administration, or if it determines that the Borrower is no longer able to make the certifications required under Section 3.03 in connection with the submission of requisitions. Such notice shall specify the reason for and the amount of the reduction.

(c) Any reduction in the amount of the Loan Commitment shall not affect the obligation of the Borrower to repay the Loan in accordance with the provisions of this Agreement and the Note.

(d) The Administration shall advise the Borrower in writing of any reduction in the amount of the Loan Commitment. In the event of any such reduction, the Borrower shall repay the Loan in accordance with such revised principal amortization schedule (prepared by applying such amount to reduce the installments of principal due under the Note in inverse order of payment, such that any such reduction is applied first to the last installment of principal due under the Note) as may be prescribed by the Administration in accordance with the provisions of the Note executed in connection therewith. The Administration may require, and the Borrower shall deliver, such certificates, documents, opinions and other evidence as the Administration may deem necessary or advisable in connection with any such reduction in the Loan Commitment. If a new Note is delivered in connection with any such reduction, the Administration shall cancel the Note initially delivered to the Administration by the Borrower pursuant to this Agreement.

Section 3.09. Disclaimer of Warranties. The Administration makes no warranty or representation, either express or implied, as to the value, design, condition, merchantability or fitness for particular purpose or fitness for use of the Project or any portion thereof or any other warranty with respect thereto. In no event shall the Administration be liable for any incidental, indirect, special or consequential damages in connection with or arising out of this Agreement or the Project or the existence, furnishing, functioning or use of the Project or any item or products or services provided for in this Agreement.

Section 3.10. Prepayments. The Loan shall be subject to mandatory prepayment, in whole or in part, as, when and to the extent required by the EPA's State Revolving Fund Program Regulations. Otherwise, the Loan may be prepaid by the Borrower, in whole or in part, only at such times and in such amounts, and upon the payment by the Borrower of such prepayment premium or penalty, as the Director, in his or her discretion, may specify and approve.

Section 3.11. Assignment. Neither this Agreement nor the Note may be assigned by the Borrower for any reason without the prior written consent of the Administration. The Administration may transfer, pledge or assign the Note and any or all rights or interests of the Administration under this Agreement without the prior consent of the Borrower.

## ARTICLE IV

### EVENTS OF DEFAULT AND REMEDIES

Section 4.01. Events of Default. If any of the following events occur, it is hereby defined as and declared to be and to constitute an "Event of Default":

(a) failure by the Borrower to pay any amount required to be paid hereunder or under the Note when due, which failure shall continue for a period of 20 days;

(b) failure by the Borrower to observe and perform any covenant, condition or agreement on its part to be observed or performed under this Agreement, other than as referred to in paragraph (a) of this Section, which failure shall continue for a period of 30 days after written notice, specifying such failure and requesting that it be remedied, is given to the Borrower by the Administration, unless the Administration shall agree in writing to an extension of such time prior to its expiration; provided, however, that if the failure stated in such notice is correctable but cannot be corrected within the applicable period, the Administration will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by the Borrower within the applicable period and diligently pursued until the Default is corrected;

(c) if (i) at any time any representation made by the Borrower in Section 2.01(f)(ii) is incorrect, or (ii) any other representation made by or on behalf of the Borrower contained in this Agreement, or in any instrument furnished in compliance with or with reference to this Agreement, the Loan Commitment or the Loan, is false or misleading in any material respect on the date on which such representation is made;

(d) if an order, judgment or decree is entered by a court of competent jurisdiction (i) appointing a receiver, trustee, or liquidator for the Borrower; (ii) granting relief in involuntary proceedings with respect to the Borrower under the federal bankruptcy act, or (iii) assuming custody or control of the Borrower under the provision of any law for the relief of debtors, and the order, judgment or decree is not set aside or stayed within 60 days from the date of entry of the order, judgment or decree; or

(e) if the Borrower (i) admits in writing its inability to pay its debts generally as they become due, (ii) commences voluntary proceedings in bankruptcy or seeking a composition of indebtedness, (iii) makes an assignment for the benefit of its creditors, (iv) consents to the appointment of a receiver, or (v) consents to the assumption of custody or control of the Borrower by any court of competent jurisdiction under any law for the relief of debtors .

Section 4.02. Notice of Default. The Borrower shall give the Administration prompt telephonic notice by contacting the Director of the Administration, followed by prompt written confirmation, of the occurrence of any event referred to in Section 4.01(d) or (e) hereof and of the occurrence of any other event or condition that constitutes a Default or an Event of Default at such time as any senior administrative or financial officer of the Borrower becomes aware of the existence thereof.

Section 4.03. Remedies on Default. Whenever any Event of Default referred to in Section 4.01 hereof shall have happened and be continuing, the Administration shall have the right to take one or more of the following remedial steps:

(a) declare all amounts due hereunder (including, without limitation, payments under the Note) to be immediately due and payable, and upon notice to the Borrower the same shall become immediately due and payable by the Borrower without further notice or demand; and

(b) take whatever other action at law or in equity that may appear necessary or desirable to collect the amounts then due and thereafter to become due hereunder or to enforce the performance and observance of any obligation, agreement or covenant of the Borrower hereunder.

Section 4.04. Attorneys' Fees and Other Expenses. The Borrower shall on demand pay to the Administration the reasonable fees and expenses of attorneys and the Trustee and other reasonable expenses incurred in the collection of any sum due hereunder or in the enforcement of performance of any other obligations of the Borrower upon an Event of Default.

Section 4.05. Application of Monies. Any monies collected by the Administration pursuant to Section 4.03 hereof shall be applied (a) first, to pay any attorneys' fees or other fees and expenses owed by the Borrower pursuant to Section 4.04 hereof, (b) second, to pay interest due on the Loan, (c) third, to pay principal due on the Loan, (d) fourth, to pay any other amounts due hereunder, and (e) fifth, to pay interest and principal on the Loan and other amounts payable hereunder as such amounts become due and payable.

Section 4.06. No Remedy Exclusive; Waiver; Notice. No remedy herein conferred upon or reserved to the Administration is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right, remedy or power accruing upon any Default or Event of Default shall impair any such right, remedy or power or shall be construed to be a waiver thereof, but any such right, remedy or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Administration to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than such notice as may be required in this Article.

## ARTICLE V

### MISCELLANEOUS

Section 5.01. Notices. All amendments, notices, requests, objections, waivers, rejections, agreements, approvals, disclosures and consents of any kind made pursuant to this Agreement shall be in writing. Any such communication shall be sufficiently given and shall be deemed given when hand delivered or mailed by registered or certified mail, postage prepaid, to the Borrower at the address specified on Exhibit B attached hereto and to the Administration at Maryland Water Quality Financing Administration, 1800 Washington Blvd., Baltimore, Maryland 21230-1718, Attention: Director.

Section 5.02. Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon the Administration and the Borrower and their respective successors and assigns.

Section 5.03. Severability. In the event any provision of this Agreement shall be held illegal, invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate, render unenforceable or otherwise affect any other provision hereof.

Section 5.04. Execution in Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 5.05. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Maryland.

Section 5.06. Captions. The captions or headings in this Agreement are for convenience only and shall not in any way define, limit or describe the scope or intent of any provisions or sections of this Agreement.

Section 5.07. Further Assurances. The Borrower shall, at the request of the Administration, execute, acknowledge and deliver such further resolutions, conveyances, transfers, assurances, financing statements, certificates and other instruments as may be necessary or desirable for better assuring, conveying, granting, assigning and confirming the rights, security interests and agreements granted or intended to be granted by this Agreement and the Note.

Section 5.08. Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes all prior oral and written agreements between the parties hereto with respect to the Loan. In the event of any inconsistency between the provisions of this Agreement and anything contained in the Application, the provisions of this Agreement shall prevail.

Section 5.09. Amendment of this Agreement. This Agreement, or any part hereof, may be amended from time to time hereafter only if and to the extent permitted by the Indenture and by an instrument in writing jointly executed by the Administration and the Borrower.

Section 5.10. Disclaimer of Relationships. The Borrower acknowledges that the obligation of the Administration is limited to making the Loan in the manner and on the terms set forth in this Agreement. Nothing in this Agreement nor any act of either the Administration or of the Borrower shall be deemed or construed by either of them, or by third persons, to create any relationship of third-party beneficiary, principal and agent, limited or general partnership, or joint venture, or of any association or relationship whatsoever involving the Borrower and the Administration.

Section 5.11. Effective Date. The effective date of this Agreement shall be the date of the Administration's execution.

Section 5.12. Term of this Agreement. Unless sooner terminated pursuant to Article IV of this Agreement, or by the mutual consent of the Borrower and the Administration, this Agreement shall continue and remain in full force and effect until the Loan, together with interest and all other sums due and owing in connection with this Agreement or the Loan, have been paid in full to the satisfaction of the Administration. Upon payment in full of the Loan together with interest and all other sums due and owing in connection with this Agreement or the Loan from any source whatsoever, this Agreement shall be terminated.

Section 5.13. Delegation Not to Relieve Obligations. The delegation by the Borrower of the planning, construction or carrying out of the Project shall not relieve the Borrower of any obligations under this Agreement and any other documents executed in connection with the Loan.

Section 5.14. Additional Terms. This Agreement shall also be subject to the additional terms, if any, set forth in Exhibit A hereto.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered as of the day and year first above written.

(SEAL)

WITNESS:

MARYLAND WATER QUALITY FINANCING  
ADMINISTRATION

\_\_\_\_\_

\_\_\_\_\_

Jag Khuman  
Director

(SEAL)

ATTEST:

BORROWER: \_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_

Name:  
Title:

Name:  
Title:

Approved for form and legal sufficiency

Approved for form and legal sufficiency

this \_\_\_\_ day of \_\_\_\_\_, 2015

this \_\_\_\_ day of \_\_\_\_\_, 2015

\_\_\_\_\_

Local Attorney for  
Borrower

\_\_\_\_\_

Helen E. Akparanta  
Senior Counsel/Assistant Attorney General

**EXHIBIT A**  
**to Loan Agreement**

**Borrower Name:** City of Salisbury  
**Address:** 125 N. Division Street  
Salisbury, MD 21801-4940  
**Attention:** The Honorable James Ireton, Jr., Mayor  
  
**Project Name:** Salisbury WWTP BNR/ENR Upgrade (CAP)

**IF THIS PROJECT IS FINANCED WITH THE USE OF FEDERAL FUNDS UNDER CFDA #: 66.458, THE BORROWER MAY BE SUBJECT TO A SINGLE AUDIT TO BE UNDERTAKEN BY AN INDEPENDENT AUDITOR IN ACCORDANCE WITH UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS, 2 C.F.R. § 200.501. THE BORROWER HEREBY AGREES TO OBTAIN SUCH SINGLE AUDIT, IF REQUIRED BY THE SINGLE AUDIT ACT.**

**CONDITIONS TO INITIAL ADVANCE UNDER SECTION 3.03(b) (vi) OF LOAN AGREEMENT:**

NONE

**ADDITIONAL TERMS APPLICABLE TO LOAN AGREEMENT:**

The provisions of this Exhibit A shall be deemed to be a part of the foregoing Agreement as if set forth in full therein. In the case of any conflict between this Exhibit A and any provision thereof, the provisions of this Exhibit A shall be controlling, notwithstanding any other provisions contained in the Agreement.

1. Pursuant to the Clean Water Act, as amended by federal Appropriation or Authorization Acts and Section 9-1605(d)(9) of the Environment Article of the Annotated Code of Maryland, as amended, the Administration shall forgive repayment of the principal amount of the Loan and the interest payable thereon under Article III hereof and the Note so long as the Borrower performs all of its other obligations under the Loan Agreement. Upon determination by the Administration that any such other obligations under the Loan Agreement have not been performed by the Borrower, payment of the principal of the Loan and the interest thereon will be due and payable on demand. If the Administration has not demanded payment of the principal of and interest on the Note prior to \_\_\_\_\_, then the Administration shall be deemed to have forgiven repayment of the Loan evidenced by the Note and interest thereon, the Note shall be deemed cancelled and the Loan Agreement shall be terminated and of no further force and effect.
2. Section 2.02(k) "Additional Disclosure Information" is deleted in its entirety.
3. The last sentence of Section 3.03(c) "Interest During Construction" is deleted in its entirety.

DL-04/08/15

**EXHIBIT A  
to Loan Agreement**

**Borrower Name:** City of Salisbury  
**Address:** 125 N. Division Street  
Salisbury, MD 21801-4940  
**Attention:** The Honorable James Ireton, Jr., Mayor  
**Project Name:** Salisbury WWTP BNR/ENR Upgrade (CAP)



**ADDITIONAL TERMS APPLICABLE TO LOAN AGREEMENT (CON'T):**

4. The last sentence of Section 3.04(a) "Amounts Payable" is deleted in its entirety.
5. Section 3.04(b) is deleted in its entirety and inserted in place thereof is the following: "(b) Late Charges. The Borrower shall pay a late charge for any payment of principal or interest on the Loan that is received later than the 30<sup>th</sup> day following its date of demand, in an amount equal to 5% of such payment."
6. Section 3.04(c) "Administrative Fee" is deleted in its entirety.
7. Section 3.10 "Prepayments" is deleted in its entirety.
8. The Borrower agrees to comply with the Davis-Bacon Act requirements of Section 513 of the Federal Water Pollution Control Act for the entirety of construction contract costs of the Project, and shall include specific language regarding compliance in its contracts and subcontracts.
9. The Borrower agrees to comply with the Use of American Iron and Steel requirement of federal law, which provides that all of the iron and steel products used in the Project are produced in the United States, unless a waiver is granted.

DL-04/08/15

Borrower Name: City of Salisbury  
Address: 125 N. Division Street  
Salisbury, MD 21801-4940  
Attention: The Honorable James Ireton, Jr., Mayor  
Project Name: Salisbury WWTP BNR/ENR Upgrade (CAP)

**DESCRIPTION OF THE LOAN**

- (1) Project Name: Salisbury WWTP BNR/ENR Upgrade (CAP)
- (2) Maximum Principal Amount of Loan Commitment: \$1,500,000
- (3) Rate of Interest: 0%
- (4) Amortization Schedule: Due on demand, with interest accruing at the Default Rate from the date of demand, in accordance with Exhibit A to this Loan Agreement.
- (5) Estimated Completion Date of Project: November 2017
- (6) Default Rate: \_\_\_\_\_% (Based upon the (insert month) 2015  
average of the Bond Buyer 11-Bond Index)
- (7) Description of Project: The project entails the planning, design and construction of Biological Nutrient Removal (BNR) and Enhanced Nutrient Removal (ENR) upgrades at the existing 8.5 million gallons per day (mgd) Salisbury Wastewater Treatment Plant (WWTP). Upon completion the BNR and ENR improvements, along with the solids processing and plant drain pump station upgrades, the Salisbury WWTP will be capable of achieving an annual effluent concentration goal of 3.0 mg/L for Total Nitrogen (TN) and 0.3 mg/L for Total Phosphorus (TP), significantly reducing nutrients discharge to Wicomico River and ultimately the Chesapeake Bay.

DL-04/07/15

Borrower Name: City of Salisbury  
Address: 125 N. Division Street  
Salisbury, MD 21801-4940  
Attention: The Honorable James Ireton, Jr., Mayor  
Project Name: Salisbury WWTP BNR/ENR Upgrade (CAP)

**PROJECT BUDGET**



**Breakdown of Eligible Project Costs:**

**A. Portion of Eligible Project Costs to be directly financed:**

Description

Eligible Project Costs include administrative and legal expenses, planning/design engineering fees, construction costs, construction phase engineering/inspection fees and contingencies

Allocated  
Amount of Loan\*

**Subtotal Loan:** \$ \_\_\_\_\_

**B. Portion of Eligible Project Costs for which Borrower will be reimbursed at closing, which the Borrower hereby certifies were paid or incurred prior to the date of the Agreement, in anticipation of being reimbursed through a loan from the Administration (and subject to compliance with Section 3.03(a) of the Agreement):**

Description

Eligible Project Costs include administrative and legal expenses, planning/design engineering fees, construction costs, construction phase engineering/inspection fees and contingencies

Allocated  
Amount of Loan

**Total Reimbursement at Closing:** \$       -0-      

**Total Loan:** \$ 1,500,000

DL-04/07/15

Borrower Name: City of Salisbury  
Address: 125 N. Division Street  
Salisbury, MD 21801-4940  
Attention: The Honorable James Ireton, Jr., Mayor  
Project Name: Salisbury WWTP BNR/ENR Upgrade (CAP)

DRAFT

C. Construction Cash Draw Schedule\*

<u>Federal Quarter</u>	<u>Cash Disbursements*</u>
FFY 15 Q4 (Jul 15 – Sep 15)	\$ 180,225
FFY 16 Q1 (Oct 15 – Dec 15)	\$ 180,225
FFY 16 Q2 (Jan 16 – Mar 16)	\$ 180,225
FFY 16 Q3 (Apr 16 – Jun 16)	\$ 180,225
FFY 16 Q4 (Jul 16 – Sep 16)	\$ 180,225
FFY 17 Q1 (Oct 16 – Dec 16)	\$ 180,225
FFY 17 Q2 (Jan 17 – Mar 17)	\$ 180,225
FFY 17 Q3 (Apr 17 – Jun 17)	\$ 180,225
FFY 17 Q4 (Jul 17 – Sep 17)	\$ 58,200
<b>Total Disbursements:</b>	<b>\$1,500,000**</b>

\* SUBJECT TO CHANGE WITH CONSENT OF THE ADMINISTRATION IN ITS DISCRETION UNDER SECTION 2.02(d) OF THIS AGREEMENT

\*\* PRINCIPAL FORGIVENSS WILL BE PAID IN FULL

DL-04/13/15

OPINION OF BORROWER'S COUNSEL

[LETTERHEAD OF COUNSEL TO BORROWER]

[CLOSING DATE]

Maryland Water Quality  
Financing Administration  
1800 Washington Blvd.  
Baltimore, Maryland 21230-1718

Ladies and Gentlemen:

We are counsel to [NAME OF BORROWER], a [body politic and corporate and a political subdivision] [municipal corporation] [other appropriate description] of the State of Maryland (the "Borrower") in connection with the loan (the "Loan") by Maryland Water Quality Financing Administration (the "Administration") to the Borrower of funds to finance all or a portion of the costs of a project (the "Project") described in Exhibit B to the Loan Agreement dated as of \_\_\_\_\_, 2015 (the "Agreement") by and between the Administration and the Borrower.

In this connection, we have reviewed such records, certificates, and other documents as we have considered necessary or appropriate for the purposes of this opinion, including, without limitation, the Agreement and the Borrower's \$ \_\_\_\_\_ Water Quality Bond, Series 2015, dated \_\_\_\_\_, 2015 (the "Note"). The Agreement and the Note are referred to herein collectively as the "Loan Documents". Based on such review, and such other considerations of law and fact as we believe to be relevant, we are of the opinion that:

(a) The Borrower is a validly created and existing [body politic and corporate and a political subdivision] [municipal corporation] [other appropriate description] of the State of Maryland, possessing authority to acquire, construct and operate the Project and to enter into the Loan Documents and perform its obligations thereunder.

(b) The Borrower has duly authorized, executed and delivered the Loan Documents and, assuming due authorization, execution and delivery of the Agreement by the Administration, the Loan Documents constitute legal, valid and binding obligations of the Borrower enforceable in accordance with their respective terms.

(c) The Note is a general obligation of the Borrower to which its full faith and credit is pledged, payable if and to the extent not paid from other sources as described in the Agreement from ad valorem taxes, unlimited as to rate and amount, which the Borrower is empowered to levy on all real and tangible personal property within its corporate limits subject to assessment for unlimited taxation by the Borrower.

(d) The Loan Documents and the enforceability thereof are subject to bankruptcy, insolvency, moratorium, reorganization and other state and federal laws affecting the enforcement of creditors' rights and to general principles of equity.

(e) To the best of our knowledge after reasonable investigation, the Borrower has all necessary licenses, approvals and permits required to date under federal, state and local law to own, construct and acquire the Project.

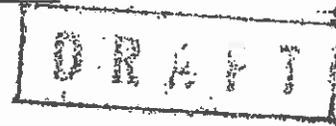
(f) Neither the execution and delivery of the Loan Documents, the consummation of the transactions contemplated thereby, the acquisition and construction of the Project nor the fulfillment of or compliance with the terms and conditions of the Loan Documents conflicts with or results in a breach of or default under any of the terms, conditions or provisions of the charter or laws governing the Borrower (including any limit on indebtedness) or, to the best of our knowledge after reasonable investigation, any agreement, contract or other instrument, or law, ordinance, regulation, or judicial or other governmental order, to which the Borrower is now a party or by which the Borrower or its properties are otherwise subject or bound, and the Borrower is not otherwise in violation of any of the foregoing in a manner material to the transactions contemplated by the Loan Documents.

(g) To the best of our knowledge after reasonable investigation, there is no action, suit, proceeding or investigation, at law or in equity, before or by any court, governmental agency or public board or body pending or threatened against or affecting the Borrower that, if adversely determined, would materially affect the ability of the Borrower to perform its obligations under the Loan Documents, which has not been disclosed in writing to the Administration.

We hereby authorize Bond Counsel to the Administration to rely on this opinion as if we had addressed this opinion to them in addition to you.

Very truly yours,

Borrower Name: City of Salisbury  
Address: 125 N. Division Street  
Salisbury, MD 21801-4940  
Attention: The Honorable James Ireton, Jr., Mayor  
Project Name: Salisbury WWTP BNR/ENR Upgrade (CAP)



**DESCRIPTION OF DEDICATED REVENUES\***

Sewer and Water user charges, including any and all fees for use of the public sewer and water system or connection to it.

\* The identification of the dedicated source or sources of revenues above is intended to specify a source or sources of revenues available in sufficient amount to provide for the payment of the costs of operating and maintaining the Project as well as the payment of the costs of debt service of any borrowing incurred to finance the Project. The specification of a dedicated source or sources of revenues above is not intended to constitute an undertaking by the Borrower to pledge, segregate or otherwise set aside any specific funds of the Borrower with the expectation that such funds would be used to pay the debt service on the Loan.

DL-04/08/15

\$(MAX. AMT.)

R-1

UNITED STATES OF AMERICA  
STATE OF MARYLAND

[NAME OF BORROWER]  
WATER QUALITY BOND, SERIES 2015  
Dated \_\_\_\_\_, 2015

PAYMENTS OF PRINCIPAL AND INTEREST ON THIS BOND ARE MADE BY CHECK, DRAFT OR ELECTRONIC FUNDS TRANSFER TO THE REGISTERED OWNER AND IT CANNOT BE DETERMINED FROM THE FACE OF THIS BOND WHETHER ALL OR ANY PART OF THE PRINCIPAL OF OR INTEREST ON THIS BOND HAS BEEN PAID.

REGISTERED OWNER: Maryland Water Quality Financing  
Administration

\_\_\_\_\_, a [body politic and corporate] [municipal corporation] [other appropriate description] of the State of Maryland (the "Borrower"), hereby acknowledges itself obligated to pay to the Registered Owner shown above, the principal amount of \$\_\_\_\_\_ (the "Maximum Principal Amount") or so much thereof as shall have been advanced from time to time under the terms of the Loan Agreement dated as of \_\_\_\_\_, 2015 (the "Loan Agreement") by and between the Borrower and the Maryland Water Quality Financing Administration (the "Administration"), plus interest on the unpaid principal advanced under the terms of the Loan Agreement as provided for herein.

At any time prior to \_\_\_\_\_, the principal advanced under the Loan Agreement shall be payable in full on demand by the Administration in accordance with the Loan Agreement and the second succeeding paragraph below, together with interest at the rate of \_\_\_\_\_ per centum (\_\_\_\_\_% ) per annum accruing from the date on which such demand is made by the Administration.

If the Administration determines at any time to reduce the maximum amount of the Loan Commitment (as defined in the Loan Agreement) in accordance with Section 3.08 of the Loan Agreement, the Maximum Principal Amount shall be reduced accordingly. Any such reduction shall not affect the obligation of the Borrower to pay the principal of and interest on this bond as and when the same shall become due in accordance with the terms hereof.

PURSUANT TO THE CLEAN WATER ACT, AS AMENDED BY FEDERAL APPROPRIATION OR AUTHORIZATION ACTS AND SECTION 9-1605(D)(9) OF THE ENVIRONMENT ARTICLE OF THE ANNOTATED CODE OF MARYLAND, AS AMENDED, THE ADMINISTRATION SHALL FORGIVE REPAYMENT OF THE PRINCIPAL AMOUNT OF THE LOAN (AS DEFINED IN THE LOAN AGREEMENT) AND THE INTEREST PAYABLE THEREON UNDER ARTICLE III OF THE LOAN AGREEMENT AND THIS BOND, SO LONG AS THE BORROWER PERFORMS ALL OF ITS OTHER OBLIGATIONS UNDER THE LOAN AGREEMENT. UPON DETERMINATION BY THE ADMINISTRATION THAT ANY SUCH OTHER OBLIGATIONS UNDER THE LOAN AGREEMENT HAVE NOT BEEN PERFORMED BY THE BORROWER, PAYMENT OF THE PRINCIPAL OF THE LOAN AND THE INTEREST THEREON WILL BE DUE AND PAYABLE ON DEMAND. IF THE ADMINISTRATION HAS NOT DEMANDED PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THIS BOND PRIOR TO \_\_\_\_\_, THEN THE ADMINISTRATION SHALL BE DEEMED TO HAVE FORGIVEN REPAYMENT OF THE LOAN EVIDENCED BY THIS BOND AND INTEREST THEREON, THIS BOND SHALL BE DEEMED CANCELLED AND THE LOAN EVIDENCED BY THIS BOND AND THE LOAN AGREEMENT SHALL BE TERMINATED AND OF NO FURTHER FORCE AND EFFECT.

Both the principal of and interest on this bond will be paid to the registered owner in lawful money of the United States of America, at the time of payment, and will be paid by electronic funds transfer, or by check or draft mailed (by depositing such check or draft, correctly addressed and postage prepaid, in the United States mails before the payment date) to the registered owner at such address as the registered owner may designate from time to time by a notice in writing delivered to the [INSERT BORROWER'S AUTHORIZED OFFICER].

This bond is issued pursuant to and in full conformity with the provisions of [INSERT BORROWER'S LOCAL ACT(S)] and the Maryland Water Quality Financing Administration Act (codified as Sections 9-1601 to 9-1622, inclusive, of the Environment Article of the Annotated Code of Maryland, as amended), and by virtue of due proceedings had and taken by the Borrower, particularly a [AN ORDINANCE AND OR A RESOLUTION] (numbered \_\_\_\_ ) [INSERT BORROWER'S AUTHORIZING ORDINANCE OR RESOLUTION] (collectively, the "Resolution") adopted by Borrower.

This bond, together with the Loan Agreement, evidences the Loan (as defined in the Loan Agreement) to the Borrower from the Maryland Water Quality Financing Administration. In accordance with the Loan Agreement, the principal amount of the Loan, being the amount denominated as principal under this bond, is subject to reduction or adjustment by the Administration in accordance with the Loan Agreement.

The full faith and credit and unlimited taxing power of the Borrower are hereby irrevocably pledged to the prompt payment of the principal of and interest on this bond according to its terms, and the Borrower does hereby covenant and agree to pay the principal of and interest on this bond at the dates and in the manner prescribed herein.

This bond is transferable only after the Maximum Principal Amount has been borrowed upon the books of the Borrower at the office of the [INSERT BORROWER'S AUTHORIZED OFFICERS] by the registered owner hereof in person or by his attorney duly authorized in writing, upon surrender hereof, together with a written instrument of transfer satisfactory to the [INSERT BORROWER'S AUTHORIZED OFFICER], duly executed by the registered owner or his duly authorized attorney. The Borrower shall, within a reasonable time, issue in the name of the transferee a new registered bond or bonds, in such denominations as the Borrower shall by resolution approve, in an aggregate principal amount equal to the unpaid principal amount of the bond or bonds surrendered of the same series and with the same maturity and interest rate and the same forgiveness provisions. The new bond or bonds shall be delivered to the transferee only after payment of any taxes on and any shipping or insurance expenses relating to such transfer. The Borrower may deem and treat the party in whose name this bond is registered as the absolute owner hereof for the purpose of receiving payment of or on account of the principal hereof and interest due hereon and for all other purposes.

It is hereby certified and recited that all conditions, acts and things required by the Constitution or statutes of the State of Maryland and the Resolution to exist, to have happened or to have been performed precedent to or in the issuance of this bond, exist, have happened and have been performed, and that the issuance of this bond, together with all other indebtedness of the Borrower, is within every debt and other limit prescribed by said Constitution or statutes.

**IN WITNESS WHEREOF**, this bond has been executed by the manual signature of the [INSERT AUTHORIZED OFFICERS] and the seal of the Borrower has been affixed hereto, attested by the manual signature of the [INSERT AUTHORIZED OFFICER], all as of the \_\_\_\_ day of \_\_\_\_\_, 2015.

(SEAL)

ATTEST:

[NAME OF BORROWER]

\_\_\_\_\_  
[AUTHORIZED OFFICER]

By: \_\_\_\_\_  
[AUTHORIZED OFFICER]

# City of Salisbury



MARYLAND



JAMES IRETON, JR.  
MAYOR

M. THOMAS STEVENSON, JR.  
CITY ADMINISTRATOR

JULIA GLANZ  
ASSISTANT CITY ADMINISTRATOR

125 NORTH DIVISION STREET  
SALISBURY, MARYLAND 21801  
Tel: 410-548-3170  
Fax: 410-548-3107

MICHAEL S MOULDS, P.E.  
DIRECTOR OF PUBLIC WORKS

To: Thomas Stevenson, Jr., City Administrator  
From: Michael Moulds, Director of Public Works *MM*  
Date: April 20, 2015  
Re: Salisbury WWTP BNR/ENR Upgrade Resolution for Grant Acceptance

---

The Wastewater Treatment Plant (WWTP) Biological Nutrient Removal (BNR) and Enhanced Nutrient Removal (ENR) Upgrade will begin construction in June 2015. The City has entered into a Biological Nutrient Removal Agreement and an Enhanced Nutrient Removal Agreement with the Maryland Department of the Environment (MDE). Per the agreements, MDE will fund the planning, design, construction management and construction of the WWTP Upgrade.

Pursuant to approval at the May 13, 2015 Board of Public Works meeting, the City of Salisbury will be awarded additional grants in the amounts of \$13,237,890 from the Bay Restoration Fund and \$11,491,080 from a Biological Nutrient Removal grant. The draft Board of Public Works Secretary's Action Agenda is attached for reference. The grant amounts are based on the actual construction bids and design and construction management contracts. The total grant eligible percentage for this project is 41.685%.

Public Works recommends approval of the grants. Unless you or the Mayor has further questions, please forward this Resolution to the City Council.

**BOARD OF PUBLIC WORKS  
SECRETARY'S  
ACTION AGENDA  
May 13, 2015**

*Contact Person: Terri Wilson (410) 537-4155  
terria.wilson@maryland.gov / cheryl.reilly@maryland.gov*

**MARYLAND DEPARTMENT OF THE ENVIRONMENT:**

**Recommendation:** That the Board of Public Works approve further funding up to \$60,776,970 to the City of Salisbury for the **Salisbury Wastewater Treatment Plant (WWTP) Biological Nutrient Removal (BNR) and Enhanced Nutrient Removal (ENR) Upgrade** project in Wicomico County. The funding may involve multiple sources including GO bonds as the required 20% State match to federal funds. (Legislative District 37A)

**A. New Loan Estimated of \$34,548,000 (estimated) – Water Quality State Revolving Loan Fund.** This loan will be repaid over a period not to exceed 20 years following project completion, at an interest rate of 0.0% of the Average of the Bond Buyer 11-Bond Index for the month preceding loan closing. To secure this debt, The City of Salisbury will deliver its bond, along with its full faith and credit endorsement, to the Maryland Water Quality Financing Administration.

**B. New Loan Forgiveness/Grant (up to) \$1,500,000 – Water Quality State Revolving Loan Fund.** This funding is provided under the Disadvantaged Community criteria of the Water Quality State Revolving Loan Fund Program. The principal forgiveness loan terms/grant conditions are enforceable should there be a programmatic default on the agreement.

**C. Grant Increase (up to) \$13,237,890 - Bay Restoration Fund (BR-NR 04.23)** These funds may be expended using multi-year appropriations based on project schedule and will be used only for eligible Enhanced Nutrient Removal (ENR) costs, as determined by the Department

**D. Grant Increase (up to) \$11,491,080 - Chesapeake Bay Water Quality Projects - Biological Nutrient Removal (NR 06.23)**

**Project Description:** The project entails the design and construction of Biological Nutrient Removal (BNR) and Enhanced Nutrient Removal (ENR) upgrades at the existing 8.5 million gallons per day (mgd) Salisbury Wastewater Treatment Plant (WWTP). Upon completion the BNR and ENR improvements, along with the solids processing and plant drain pump station upgrades, the City of Salisbury WWTP will be capable of achieving Total Nitrogen (TN) goal of 3.0 mg/L and Total Phosphorus (TP) goal of 0.3 mg/L reducing nutrients to Wicomico River and ultimately to the Chesapeake Bay. This action is for design and construction phases. The construction of plant drain pump station is completed. This is part of the Corrective Action Plan.

**BOARD OF PUBLIC WORKS  
SECRETARY'S  
ACTION AGENDA  
May 13, 2015**

**MARYLAND DEPARTMENT OF THE ENVIRONMENT** (cont'd)

***Project Funding Sources:***

<b>Water Quality State Revolving Loan Fund (this action)</b>	<b>\$34,548,000</b>
<b>Water Quality State Revolving Loan Fund w/Principal Forgiveness/Grant (this action)</b>	<b>\$ 1,500,000</b>
<b>Bay Restoration Fund Grant BR-NR 04.23 (this action)</b>	<b>\$13,237,890</b>
Bay Restoration Fund Grant BR-NR 04.23 (previously approved 7/24/13)	\$ 665,000
Bay Restoration Fund Grant BR-NR 03.23 (previously approved 1/2/13)	\$ 188,000
<b>Biological Nutrient Removal NR 06.23 MCCBL 2010-10066 (this action)</b>	<b>\$ 111,159</b>
<b>Biological Nutrient Removal NR 06.23 MCCBL 2013-13094 (this action)</b>	<b>\$11,379,921</b>
Biological Nutrient Removal NR 06.23 (previously approved 7/24/13)	\$ 374,000
Biological Nutrient Removal NR 01.23 MCCBL 2012-12073 (previously approved 1/2/13)	\$ 211,302
Federal (EPA)	\$ 472,100
Local Share	<u>\$ 2,763,052</u>
<b>TOTAL ESTIMATED PROJECT COST:</b>	<b>\$65,450,424</b>

MDE certifies that the proposed actions comply with the tax-exempt bond provisions of the Internal Revenue Code and do not constitute a change in use or private activity.

***Authority:*** Sections 9-1601 through 9-1622 of the Environment Article, Maryland Code, known as the Maryland Water Quality Financing Administration Act.

MDE has determined that its recommendation is consistent with Maryland's Priority Places Strategy in accordance with Executive Order 01.01.2003.33 and State Clearinghouse comments and recommendations.

**BOARD OF PUBLIC WORKS**

**THIS ITEM WAS**

**APPROVED**

**DISAPPROVED**

**DEFERRED**

**WITHDRAWN**

**WITH DISCUSSION**

**WITHOUT DISCUSSION**

1 RESOLUTION NO. \_\_\_\_\_

2  
3 A RESOLUTION OF THE CITY OF SALISBURY, MARYLAND ACCEPTING BAY  
4 RESTORATION FUND GRANTS AND BIOLOGICAL NUTRIENT REMOVAL GRANTS  
5 FROM THE MARYLAND DEPARTMENT OF THE ENVIRONMENT FOR THE UPGRADE  
6 OF THE CITY'S WASTEWATER TREATMENT PLANT.

7  
8 WHEREAS, the Salisbury Wastewater Treatment Plant is owned and operated by the City of  
9 Salisbury and discharges into the Lower Wicomico River, a tributary of the Chesapeake Bay;  
10 and

11  
12 WHEREAS, the City of Salisbury desires to further improve the water quality of the Chesapeake  
13 Bay and its tributaries by further reducing the amount of nutrients being discharged from sewage  
14 treatment plants located on the Chesapeake Bay and its tributaries; and

15  
16 WHEREAS, the Maryland Department of the Environment supports the efforts of the City of  
17 Salisbury in reducing the amount of nutrients being discharged from the Wastewater Treatment  
18 Plant by providing State grants to aid in financing the planning, design, construction  
19 management and construction of Biological Nutrient Removal and Enhanced Nutrient Removal  
20 facilities at the existing Salisbury Wastewater Treatment Plant; and

21  
22 WHEREAS, the City of Salisbury entered into a Biological Nutrient Removal Agreement with  
23 the Maryland Department of the Environment on May 19, 2003 and an Enhanced Nutrient  
24 Removal Agreement with the Maryland Department of the Environment on August 14, 2012;  
25 and

26  
27 WHEREAS, pursuant to the agreements, the City of Salisbury is performing a Biological  
28 Nutrient Removal (BNR) and Enhanced Nutrient Removal (ENR) Upgrade of the Wastewater  
29 Treatment Plant by utilizing Bay Restoration Fund Grants, Biological Nutrient Removal Grants  
30 and a Water Quality State Revolving Loan from the Maryland Department of the Environment.

31  
32 NOW, THEREFORE, BE IT RESOLVED that the Council of the City of Salisbury, Maryland  
33 does hereby accept Bay Restoration Fund Grants from the Maryland Department of Environment  
34 in the amount up to \$13,237,890 and Biological Nutrient Removal Grants from the Maryland  
35 Department of the Environment in an amount up to \$11,491,080.

36  
37 THE ABOVE RESOLUTION was introduced and read and passed at the regular meeting of the  
38 Council of the City of Salisbury held on this \_\_\_\_ day of \_\_\_\_\_, 2015 and is to become  
39 effective immediately upon adoption.

40  
41 ATTEST:

42  
43  
44 \_\_\_\_\_  
45 Kimberly R. Nichols  
46 CITY CLERK

47 \_\_\_\_\_  
48 Jacob R. Day  
49 PRESIDENT, City Council

47  
48  
49  
50  
51  
52  
53

APPROVED by me this \_\_\_\_\_ day of \_\_\_\_\_, 2015

\_\_\_\_\_  
James Ireton, Jr.  
MAYOR, City of Salisbury

# City of Salisbury



MARYLAND



JAMES IRETON, JR.  
MAYOR

M. THOMAS STEVENSON, JR.  
CITY ADMINISTRATOR

JULIA GLANZ  
ASSISTANT CITY ADMINISTRATOR

125 NORTH DIVISION STREET  
SALISBURY, MARYLAND 21801  
Tel: 410-548-3170  
Fax: 410-548-3107

MICHAEL S MOULDS, P.E.  
DIRECTOR OF PUBLIC WORKS

To: Thomas Stevenson, Jr., City Administrator  
From: Michael Moulds, Director of Public Works *MSM*  
Date: April 20, 2015  
Re: Change Order Procedures for Contract 107-15 Salisbury WWTP BNR/ENR Upgrade

---

The Wastewater Treatment Plant (WWTP) Biological Nutrient Removal (BNR) and Enhanced Nutrient Removal (ENR) Upgrade will begin construction in June 2015. The City is operating under a Consent Order from the State of Maryland which requires that the startup of the upgraded WWTP must be achieved by December 31, 2017. The construction contract value is \$50,150,000. The existing WWTP will stay in operation during the upgrade as treatment processes are constructed and brought into service. Due to the size and complexity of the project, there is a potential for change orders for unforeseen conditions. Change orders can delay the project and can jeopardize the schedule.

During the previous WWTP upgrade in 2006 (Contract 114-05), Resolution No. 1360 was passed to modify and temporarily increase the approval limits for change orders. Contract 114-05 had a total of 27 change orders. The breakdown of change order tiers are:

<\$50,000	11 change orders
\$50,000 to \$100,000	7 change orders
\$100,000 to \$150,000	6 change orders
Other (time only or >\$150,000)	3 change orders
Contract 114-05 Total	27 change orders

Public Works found this process to be successful and respectfully requests consideration to temporarily increase the change order approval limits for the current WWTP upgrade as noted on the attached Resolution.

Unless you or the Mayor has further questions, please forward this Resolution to the City Council.

1 RESOLUTION NO. \_\_\_\_\_

2  
3 A RESOLUTION OF THE CITY OF SALISBURY, MARYLAND APPROVING THE  
4 TEMPORARY INCREASE OF THE APPROVAL LIMITS OF THE CHANGE ORDERS FOR  
5 THE UPGRADE OF THE CITY'S WASTEWATER TREATMENT PLANT.

6  
7 WHEREAS, the City of Salisbury is performing a complex and challenging upgrade of the  
8 Wastewater Treatment Plant; and

9  
10 WHEREAS, despite very detailed engineering and review, there is a high probability of needing  
11 to make changes to the construction documents due to numerous variables and unforeseen site  
12 conditions; and

13  
14 WHEREAS, the "Change Order" is the financial and contractual authorization and management  
15 control document used by the City to make modifications to a contract in time, financial, or other  
16 consideration; and

17  
18 WHEREAS, since this project's scope is large and requires considerable amount of expensive  
19 equipment, numerous sub-contractors, and specialized materials requiring long lead-times,  
20 change orders need to be approved quickly or the City risks delay claims by the contractor if  
21 their workforce is idle during an unanticipated time period; and

22  
23 WHEREAS, depending on when an idle period could occur in the construction schedule and how  
24 it impacts the project's critical path, the idle period could impact the overall construction  
25 completion date; and

26  
27 WHEREAS, the City is under an Amended Consent Order with the State of Maryland to start up  
28 the upgraded Wastewater Treatment Plant by December 31, 2017; and

29  
30 WHEREAS, implementing a temporary increase to the change order limit will minimize the  
31 potential liability of the City by causing time delay of the General Construction Contractor in  
32 approving Change Orders to the upgrade of the Wastewater Treatment Plant contract.

33  
34 NOW, THEREFORE, BE IT RESOLVED that the Council of the City of Salisbury, Maryland  
35 does hereby authorize temporary increase in Change Orders authorizations in accordance with  
36 the following provisions:

- 37 1. Project Specific: -The Change Order limit changes are only applicable to the City of  
38 Salisbury Contract No. 107-15 Wastewater Treatment Plant Upgrade.
- 39 2. Time Period: The change is only authorized during the period of June 1, 2015 to  
40 December 31, 2017 unless otherwise adjusted by authorized change order.
- 41 3. All change orders shall be initiated by the Department of Public Works and submitted to  
42 the Procurement Department for review and processing.
- 43 4. Tiered Authority: Three tiers of authority are proposed to be established, which are:  
44 a. \$50,000 or less approved by the Assistant Director of Internal Services – Procurement  
45 & Parking;  
46 b. \$50,000 to \$100,000 approved by the Mayor; and

- 47 c. \$100,000 to \$150,000 approved by the Mayor and a City Council member selected by  
48 the President of the City Council.
- 49 5. Budget Authority: Regardless of amount, Change Orders shall only be approved within  
50 the City Council and Maryland Department of the Environment allocated funds for the  
51 project. Any change order exceeding funds available for the project shall be approved by  
52 the City Council and Maryland Department of the Environment.
- 53 6. Timely Notification: The City Council shall be informed in writing on the Change Order  
54 and justification within two business days following the approval of the Change Order as  
55 defined in the tiered authority in paragraph 3, above.
- 56 7. Public Meeting: All Change Orders shall be placed on the Agenda of the next legislative  
57 City Council meeting after the Change Order was issued for ratification.

58  
59 THE ABOVE RESOLUTION was introduced and read and passed at the regular meeting of the  
60 Council of the City of Salisbury held on this \_\_\_\_ day of \_\_\_\_\_, 2015 and is to become  
61 effective immediately upon adoption.

62  
63 ATTEST:

64  
65  
66

67 \_\_\_\_\_  
68 Kimberly R. Nichols  
69 CITY CLERK

\_\_\_\_\_   
Jacob R. Day  
PRESIDENT, City Council

70 APPROVED by me this \_\_\_\_\_ day of \_\_\_\_\_, 2015

71  
72  
73 \_\_\_\_\_  
74 James Ireton, Jr.  
75 MAYOR, City of Salisbury

RESOLUTION No. 1360

A RESOLUTION OF THE COUNCIL OF THE CITY OF SALISBURY, MARYLAND APPROVING THE TEMPORARY INCREASE OF THE APPROVAL LIMITS OF THE CHANGE ORDERS FOR THE UPGRADE AND EXPANSION OF THE CITY'S WASTE WATER TREATMENT PLANT.

WHEREAS, the City of Salisbury is upgrading and expanding its waste water treatment plant, which is a very complex and challenging project; and

WHEREAS, despite very detailed engineering and review, there is a high probability of needing to make changes to the engineering specifications and construction documents because numerous variables and unforeseen site conditions; and

WHEREAS, the "Change Order" is the financial and contractual authorization and management control document used by the City to make modifications to a contract in time, financial, or other consideration; and

WHEREAS, this project's scope is so large and requires considerable amount of expensive equipment, numerous sub-contractors, and specialized materials requiring long lead-times, change orders need to be approved quickly or the City risks delay claims by the contractor because the contractor's workforce was idle during an unanticipated time period; and

WHEREAS, depending on when an idle period could occur in the construction schedule, the City's construction contractor estimated that a one-day of delay could cost upward of \$ 15,000 per day; and

WHEREAS, implementing a temporary increase to the change order limit will minimize the potential liability of the City by causing time delay of the General Construction Contractor in approving Change Orders to the expansion and upgrade of the Waste Water Treatment Plant contract.

NOW, THEREFORE, BE IT RESOLVED that the Council of the City of Salisbury, Maryland does hereby authorize temporary increase in Change Orders authorizations in accordance with the following provisions:

1. Project Specific: The Change Order limit changes are only applicable to the City of Salisbury Contracts No. 114-05: North Side and South Side Pump Stations and No. 115-05: Wastewater Treatment Plant.

2. Temporary Time Period: The change is only authorized during the period of February 15, 2006 to December 31, 2008 unless otherwise adjusted by authorized change order.
3. Tiered Authority: Three tiers of authority are proposed to be established, which are: \$ 50,000.00 or less approved by the Purchasing Director; \$ 50,000.01 to \$ 100,000.00 approved by the Mayor; and \$ 100,000.01 to \$ 150,000.00 approved by the Mayor and a City Council member selected by the President of the City Council.
4. Budget Authority: Regardless of amount, Change Orders shall only be approved within the City Council, Maryland Department of the Environment, and United States Environmental Protection Agency allocated funds for the project. Any change order exceeding funds available for the project shall be approved by the City Council and Maryland Department of the Environment.
5. Timely Notification: The City Council shall be informed in writing on the Change Order and justification within two business days following the approval of the Change Order as defined in the tiered authority in paragraph 3, above.
6. Public Meeting: All Change Orders shall be placed on the Agenda of the next City Council meeting after the Change Order was issued for ratification.

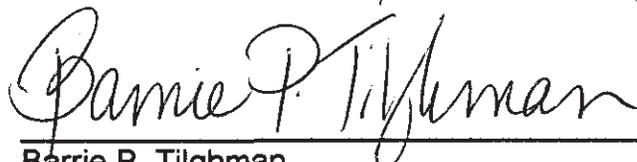
THE ABOVE RESOLUTION was introduced and duly passed at a meeting of the Council of the City of Salisbury, Maryland held on February 13, 2006 and is to become effective immediately upon adoption.

ATTEST:

  
 Brenda J. Colegrove  
 CITY CLERK

  
 Michael Dunn  
 PRESIDENT, City Council

APPROVED by me this 15<sup>th</sup> day of February 2006

  
 Barrie P. Tilghman  
 MAYOR, City of Salisbury

# City of Salisbury



MARYLAND



JAMES IRETON, JR.  
MAYOR

M. THOMAS STEVENSON, JR.  
CITY ADMINISTRATOR

JULIA GLANZ  
ASST. CITY ADMINISTRATOR

125 NORTH DIVISION STREET  
SALISBURY, MARYLAND 21801  
Tel: 410-548-3170  
Fax: 410-548-3107

MICHAEL S. MOULDS, P.E.  
DIRECTOR OF PUBLIC WORKS

To: Tom Stevenson, City Administrator  
From: Mike Moulds, Director of Public Works   
Date: April 20, 2015  
Re: Ben's Red Swings Restroom Project Plans

---

The Department of Public Works has been meeting with Mr. Matt Drew and Mr. Chris Eccleston on behalf of Layton family to develop concept drawings for the construction of restrooms to replace the portable toilets at the Ben's Red Swings playground. The attached revised drawings submitted by AWB Engineers address the comments from our meeting.

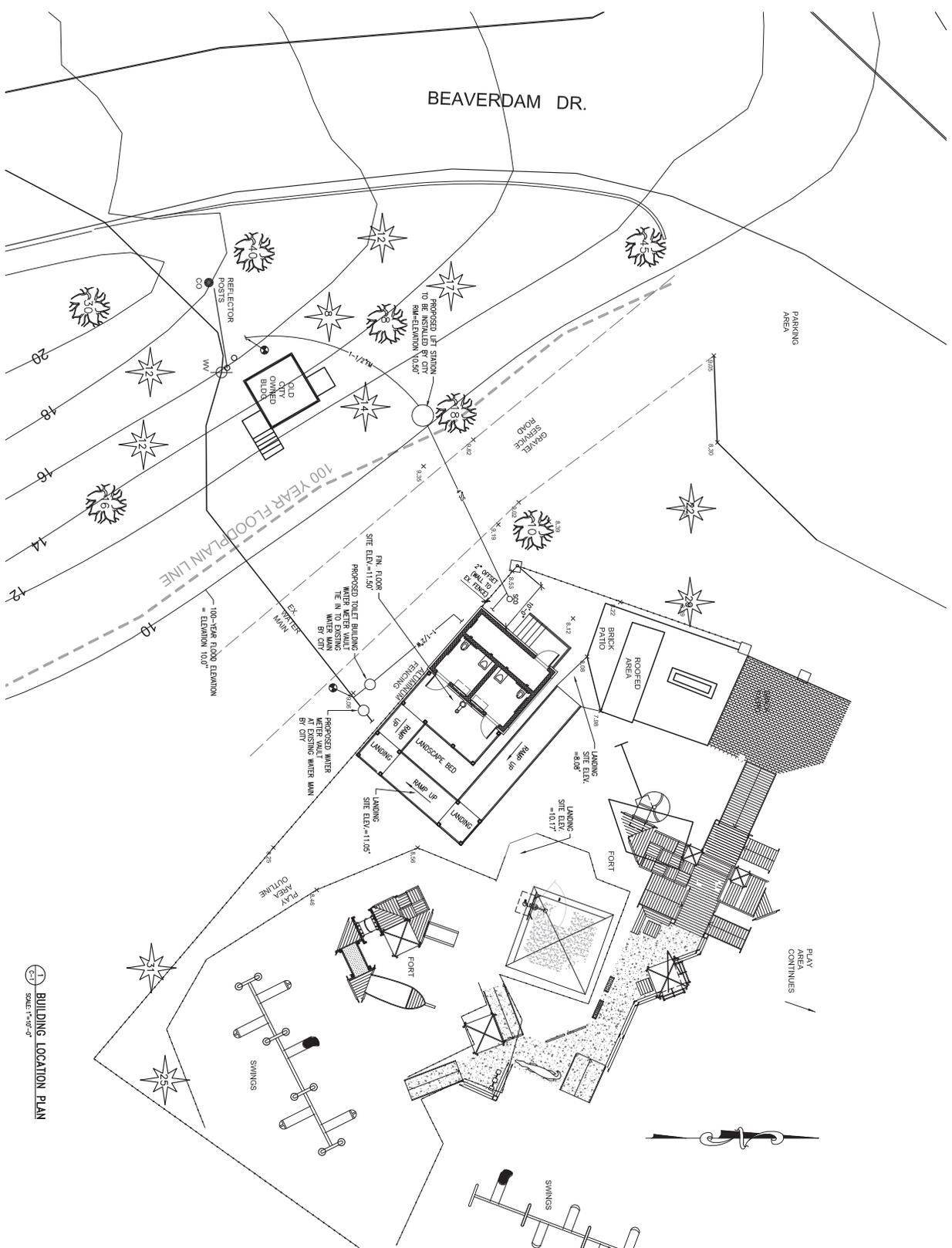
We are providing the drawings for Council's review of the Ben's Red Swings restroom project. Representatives from Ben's Red Swings will be able to attend the May 4<sup>th</sup> Work Session to provide information and answer questions from Council.

Mr. Drew has indicated that the Layton's have raised \$70,000 to date. The project would be community funded and constructed and then donated to the City to operate and maintain.

Enclosed is a draft Resolution for review to approve the concept plans and accept the donation. The Resolution is patterned after the prior Resolution 1000 dated August 2003 accepting the original Ben's Red Swings Playground Concept.

Please let us know if you require any additional information.






**BUILDING LOCATION PLAN**  
 SCALE: 1"=10'-0"

THE INFORMATION PRESENTED ON THIS PLAN IS PRELIMINARY IN NATURE AND IS NOT TO BE USED FOR CONSTRUCTION. THE USER SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES AND AUTHORITIES. THE USER SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES AND AUTHORITIES. THE USER SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES AND AUTHORITIES.

**C-1**  
 SHEET NO. 150111  
 DATE: 12/11/11  
 PROJECT: EDC-1

**BUILDING LOCATION PLAN**  
**RESTROOM BUILDING**  
 BEN'S RED SWINGS - SALISBURY, MARYLAND

SHEET: PRELIMINARY  
 SCALE: 1"=10'-0"  
 DRAWN: EDC  
 CHECKED: EDC  
 PROJECT: EDC  
 DATE: 12/11/11  
 FILE: EDC-1


**ENGINEERS/ARCHITECTS**  
 1942 WORTHWOOD DRIVE, SALISBURY, MARYLAND 21061-7824  
 PH: (410) 742-7299 FAX: (410) 742-0273

RELEASE BY: EDC  
 DATE: 12/15/11

PROJECT NO. 150111  
 SHEET NO. 150111  
 DATE: 12/15/11

1 RESOLUTION NO. \_\_\_\_\_

2  
3 A RESOLUTION OF THE CITY OF SALISBURY MARYLAND APPROVING THE  
4 CONCEPT TO CONSTRUCT AND ACCEPTING THE DONATION OF A COMMUNITY  
5 BUILT RESTROOM BUILDING AT THE BEN'S RED SWINGS PLAYGROUND IN THE  
6 CITY PARK.

7  
8 WHEREAS, The City of Salisbury is interested in improving the City's playground  
9 facilities; and

10  
11 WHEREAS, a plan to provide permanent restroom facilities at the Ben's Red Swings  
12 playground has been proposed by the Family and Friends of Benjamin Layton in his memory;  
13 and

14  
15 WHEREAS, the proposal includes concept architectural and site drawings of the  
16 proposed restroom building prepared by AWB Engineers ( Job 150111), dated March 18 and 19<sup>th</sup>  
17 2015 respectively; and

18  
19 WHEREAS, funding for construction will be raised by the Family and Friends of  
20 Benjamin Layton in his memory; and

21  
22 WHEREAS, the Family and Friends of Benjamin Layton will be responsible for the  
23 construction of the restroom building.

24  
25 NOW, THEREFORE BE IT RESOLVED, that the Council of the City of Salisbury,  
26 Maryland does hereby approve of the concept drawings to construct the restroom building at the  
27 location as shown on the concept site plan.

28  
29 AND BE IT FURTHER RESOLVED that the City of Salisbury will accept the donation  
30 of the restroom building for maintenance upon completion of an acceptable inspection by the  
31 Department of Public Works.

32  
33 THE ABOVE RESOLUTION was introduced and read and passed at the regular meeting  
34 of the Council of the City of Salisbury held on this \_\_\_\_ day of \_\_\_\_\_, 2015 and is to  
35 become effective immediately upon adoption.

36  
37 ATTEST:

38  
39 \_\_\_\_\_  
40 Kimberly R. Nichols  
41 CITY CLERK

42 \_\_\_\_\_  
43 Jacob R. Day  
44 PRESIDENT, City Council

45  
46 APPROVED by me this \_\_\_\_\_ day of \_\_\_\_\_, 2015

\_\_\_\_\_

James Ireton, Jr.

