

Memo

To: Mr. John R. Pick, City Administrator
From: J. H. Cawley *JR*
CC: Mayor Barrie P. Tilghman
Date: June 14, 2005
Re: Bond Ordinance

Enclosed please find the Bond Ordinance prepared by Funk & Bolton, our bond counsel for the Wastewater Treatment Plant Bond with Maryland Department of the Environment. This ordinance amends the previous Ordinance 1865 for this bond issue, updating it to include the final costs as recently bid by the City and also a contingency amount. The bond amount has been increased to \$46 million, and this represents the maximum City share as well as all issuance costs.

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AN ORDINANCE OF THE COUNCIL OF THE CITY OF SALISBURY TO SUPPLEMENT AND AMEND ORDINANCE NO. 1865, WHICH WAS INTRODUCED ON NOVEMBER 12, 2002, PASSED BY THE COUNCIL ON NOVEMBER 25, 2002, APPROVED BY THE MAYOR ON NOVEMBER 27, 2002 AND BECAME EFFECTIVE ON NOVEMBER 27, 2002, IN ORDER TO PROVIDE THAT (I) THE NOT TO EXCEED AGGREGATE PRINCIPAL AMOUNT OF GENERAL OBLIGATION BONDS AUTHORIZED TO BE ISSUED BY THE CITY PURSUANT TO ORDINANCE NO. 1865 FOR THE PUBLIC PURPOSE OF FINANCING (INCLUDING BY REIMBURSING PRIOR PROJECT EXPENDITURES) OR REFINANCING ALL OR A PORTION OF THE COST OF VARIOUS ACTIVITIES RELATING TO UPGRADING AND IMPROVING THE CITY'S WASTEWATER TREATMENT PLANT AND SYSTEM, TOGETHER WITH THE ACQUISITION OF NECESSARY PROPERTY RIGHTS AND EQUIPMENT, RELATED SITE AND UTILITY IMPROVEMENTS, RELATED ARCHITECTURAL, FINANCIAL, LEGAL, PLANNING, DESIGN, ENGINEERING AND CONSTRUCTION EXPENSES, COSTS OF ISSUANCE AND, IF THE COUNCIL SO DETERMINES IN A SUBSEQUENT RESOLUTION, INTEREST DURING CONSTRUCTION AND FOR A REASONABLE PERIOD THEREAFTER (THE "PROJECT") IS INCREASED FROM \$28,000,000.00 TO \$46,000,000.00 AND (II) THE NOT TO EXCEED AGGREGATE PRINCIPAL AMOUNT OF GENERAL OBLIGATION BOND ANTICIPATION NOTES AUTHORIZED TO BE ISSUED BY THE CITY PURSUANT TO ORDINANCE NO. 1865 IN ORDER TO FINANCE PROJECT COSTS ON AN INTERIM BASIS IS INCREASED FROM \$28,000,000.00 TO \$42,836,639.00; RECOGNIZING THAT ONLY \$42,836,639.00 OF GENERAL OBLIGATION BONDS MAY BE ISSUED FOR PROJECT PURPOSES PURSUANT TO ORDINANCE NO. 1865, AS SUPPLEMENTED AND AMENDED BY THIS ORDINANCE, DUE TO THE PRIOR ISSUANCE OF THE CITY'S \$3,163,361.00 WATER QUALITY BOND, SERIES 2003 PURSUANT TO THE AUTHORITY OF ORDINANCE NO. 1865; AUTHORIZING THE ISSUANCE OF ONE OR MORE SERIES OF GENERAL OBLIGATION BONDS IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$28,000,000.00 IN ORDER TO REFUND ANY OF THE BONDS ISSUED PURSUANT TO THE AUTHORITY OF ORDINANCE NO. 1865, AS SUPPLEMENTED AND AMENDED BY THIS ORDINANCE; AUTHORIZING THE ADOPTION OF A SUBSEQUENT RESOLUTION OR RESOLUTIONS TO MAKE ANY FURTHER DETERMINATIONS DEEMED NECESSARY OR DESIRABLE IN CONNECTION WITH THE ISSUANCE OF ANY SUCH SERIES OF REFUNDING BONDS; PROVIDING THAT THE PRINCIPAL OF AND INTEREST ON ANY SUCH SERIES OF REFUNDING BONDS WILL BE PAYABLE IN THE FIRST INSTANCE FROM REVENUES RECEIVED BY THE CITY IN CONNECTION WITH THE OPERATION OF THE WASTEWATER SYSTEM SERVING THE CITY AND SURROUNDING AREAS; PROVIDING FOR THE LEVY AND COLLECTION OF TAXES TO PAY THE PRINCIPAL OF AND INTEREST ON ANY SUCH SERIES OF REFUNDING BONDS IN EACH FISCAL YEAR; PLEDGING THE FULL FAITH AND CREDIT AND UNLIMITED TAXING POWER OF THE CITY TO THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON ANY SUCH SERIES OF REFUNDING BONDS; PROVIDING THAT THE PRINCIPAL OF AND INTEREST ON ANY SUCH SERIES OF REFUNDING BONDS ALSO MAY BE PAID FROM ANY OTHER SOURCES OF REVENUE LAWFULLY

AVAILABLE TO THE CITY FOR THAT PURPOSE; AUTHORIZING AND DIRECTING OFFICIALS AND EMPLOYEES OF THE CITY TO TAKE ANY AND ALL ACTION NECESSARY TO COMPLETE AND CLOSE THE ISSUANCE, SALE AND DELIVERY OF ANY SUCH SERIES OF REFUNDING BONDS; PROVIDING THAT FROM AND AFTER THE EFFECTIVE DATE OF THIS ORDINANCE, ORDINANCE NO. 1865 SHALL BE SUPPLEMENTED AND AMENDED AS DESCRIBED HEREIN AND ALL OTHER PROVISIONS OF ORDINANCE NO. 1865 SHALL REMAIN IN FULL FORCE AND EFFECT AND APPLICABLE TO ANY SERIES OF BONDS OR BOND ANTICIPATION NOTES ISSUED PURSUANT TO THE AUTHORITY OF ORDINANCE NO. 1865, AS HEREBY SUPPLEMENTED AND AMENDED; PROVIDING THAT THIS TITLE SHALL BE DEEMED A STATEMENT OF THE SUBSTANCE OF THIS ORDINANCE FOR ALL PURPOSES; AND OTHERWISE GENERALLY RELATING TO THE SUPPLEMENTATION AND AMENDMENT OF ORDINANCE NO. 1865.

RECITALS

WHEREAS, City of Salisbury, a municipal corporation of the State of Maryland (the "City"), is authorized and empowered by Sections 9-1601 to 9-1622, inclusive, of the Environment Article of the Annotated Code of Maryland (West 2002, as replaced, supplemented or amended) (the "Environment Article"), Sections 31 to 37, inclusive, of Article 23A of the Annotated Code of Maryland (West 2002, as replaced, supplemented or amended) (the "Enabling Act") and Section SC7-45 of the Charter of the City of Salisbury, as published in Municipal Charters of Maryland, Volume 6, 1990 Replacement Edition, as replaced, supplemented or amended (the "Charter"), to borrow money for any proper public purpose in connection with the wastewater system serving the City and surrounding areas and to evidence such borrowing by the issuance and sale of its general obligation bonds; and

WHEREAS, the City previously determined to upgrade and improve the City's wastewater treatment plant and system by undertaking one or more of the following activities: upgrading the existing trickling filter process, adding additional filter systems, improving the existing head-works, disinfection and sludge processing facilities and systems, and undertaking other improvements in order to facilitate biological nutrient removal and expand capacity, and, in connection therewith, to acquire or pay for, as the case may be, necessary property rights and equipment, related site and utility improvements, related architectural, financial, legal, planning, design, engineering and construction expenses and costs of issuance, and to borrow money for the public purpose of financing (including by reimbursing prior project expenditures) or refinancing all or a portion of the costs of such project; and

WHEREAS, pursuant to the authority of the Enabling Act and the Charter, the Council of the City passed Ordinance No. 1865 on November 25, 2002, which was approved by the Mayor on November 27, 2002 and became effective on November 27, 2002 ("Ordinance No. 1865"), authorizing the issuance by the City of one or more series of its general obligation bonds in an aggregate principal amount not to exceed Twenty Eight Million Dollars (\$28,000,000.00) (the "Bonds") for the public purpose of financing (including by reimbursing prior project expenditures) or refinancing all or a portion of the costs of the activities described in the

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preceding WHEREAS clause of these Recitals and, if the Council so determined in a subsequent resolution, interest during construction and for a reasonable period thereafter (collectively, the "Project"); and

WHEREAS, Ordinance No. 1865 provides that each series of the Bonds shall be sold to the Maryland Water Quality Financing Administration (the "Administration") by private sale, without public bidding; and

WHEREAS, Ordinance No. 1865 provides that in connection with the issuance and sale of any series of the Bonds, the City will enter into one or more loan agreements with the Administration; and

WHEREAS, Ordinance No. 1865 provides that the City's full faith and credit and unlimited taxing power shall be pledged to the payment of debt service on any series of the Bonds but that the City expects to pay the principal of and interest on any series of the Bonds in the first instance from revenues received in connection with the operation of the wastewater system serving the City and surrounding areas; and

WHEREAS, pursuant to Ordinance No. 1865, the City pledged any moneys that the City is entitled to receive from the State of Maryland, including the City's share of the State income tax, to secure its obligations under any loan agreements with the Administration; and

WHEREAS, Ordinance No. 1865 provides that the Bonds may be issued in one or more series and that any of such Bonds may be issued in the form of a draw-down and/or installment bond; and

WHEREAS, pursuant to the authority of the Enabling Act, the Environment Article, the Charter, Ordinance No. 1865 and Resolution No. 940, adopted, approved and effective on April 14, 2003, the City issued and sold to the Administration on April 17, 2003 its \$3,163,361.00 City of Salisbury Water Quality Bond, Series 2003 (the "2003 Bond") in order to fund phase 1 costs of the Project; and

WHEREAS, at the time the 2003 Bond was issued, the City anticipated using the remaining \$24,836,639.00 of bonding authority available under Ordinance No. 1865 at a later date to fund phase 2 Project costs; and

WHEREAS, based on the advice of the Project engineer and knowledgeable City officials, the City has determined that it will need to incur debt for phase 2 Project costs in an amount in excess of the \$24,836,639.00 of borrowing authority remaining available under Ordinance No. 1865; and

WHEREAS, the City now reasonably expects that the maximum aggregate principal amount of general obligation bonds it will need to issue for Project purposes (including the 2003 Bond that has already been issued) will not exceed \$46,000,000.00; and

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WHEREAS, the Administration has preliminarily indicated that it should be able to loan the City an amount not in excess of \$46,000,000.00 for Project purposes (including the 2003 Bond); and

WHEREAS, Ordinance No. 1865 provided that prior to issuing any series of the Bonds to the Administration, the City may need to obtain interim financing in order to finance Project costs on a timely basis through the issuance of one or more series of its general obligation bond anticipation notes pursuant to the authority of Section 12 of Article 31 of the Annotated Code of Maryland (West 2002, as replaced, supplemented or amended) (the "Bond Anticipation Note Enabling Act") and the Charter; and

WHEREAS, Ordinance No. 1865 authorized the issuance of general obligation bond anticipation notes for Project purposes in one or more series in an aggregate principal amount not to exceed Twenty Eight Million Dollars (\$28,000,000.00) (the "BANs"), and provided that any such series of the BANs may consist of one or more notes and any such note may be issued in installment and/or draw-down form; and

WHEREAS, Ordinance No. 1865 did not contain authority for the issuance of refunding bonds, but the City has determined that subsequent to the issuance to the Administration of any series of bonds provided for in Ordinance No. 1865, as supplemented and amended by this Ordinance, the City may desire to refund or advance refund all or a portion of such series of bonds pursuant to the authority of Section 24 of Article 31 of the Annotated Code of Maryland (West 2002, as replaced, supplemented or amended) (the "Refunding Act"); and

WHEREAS, the City wishes to adopt this Ordinance for the purpose of (i) increasing the aggregate principal amount of the Bonds authorized to be issued pursuant to Ordinance No. 1865, as supplemented and amended by this Ordinance, from an amount not to exceed \$28,000,000.00 to an amount not to exceed \$46,000,000.00, (ii) increasing the aggregate principal amount of the BANs authorized to be issued pursuant to Ordinance No. 1865, as supplemented and amended by this Ordinance, from an amount not to exceed \$28,000,000.00 to an amount not to exceed \$42,836,639.00, and (iii) authorizing and empowering the City to issue and sell general obligation refunding bonds for the purpose of refunding or advance refunding any of the Bonds authorized by Ordinance No. 1865, as supplemented and amended by this Ordinance.

SECTION 1. NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SALISBURY, MARYLAND that the Recitals to this Resolution are deemed a substantive part of this Resolution and incorporated by reference herein.

SECTION 2. BE IT FURTHER ORDAINED that from and after the effective date of this Ordinance, Section 2 of Ordinance No. 1865 shall be supplemented and amended to provide that the aggregate principal amount of the Bonds (as defined in Section 2 of Ordinance No. 1865) authorized to be issued by the City in order to evidence the borrowing and indebtedness authorized by Section 1 of Ordinance No. 1865, including the 2003 Bond previously issued and delivered pursuant to the authority of Ordinance No. 1865, is Forty Six Million Dollars (\$46,000,000.00). Such indicated amount is an increase of \$18,000,000.00 from the aggregate principal amount of \$28,000,000.00 of the Bonds authorized by Ordinance No. 1865. Therefore, from and after the effective date of this Ordinance, additional Bonds may be issued by the City pursuant to Ordinance No. 1865, as supplemented and amended hereby, in an aggregate principal amount not to exceed Forty Two Million Eight Hundred Thirty Six Thousand Six Hundred Thirty Nine Dollars (\$42,836,639.00) (after giving effect to the issuance of the 2003 Bond).

SECTION 3. BE IT FURTHER ORDAINED that from and after the effective date of this Ordinance, Section 12 of Ordinance No. 1865 shall be supplemented and amended to provide that the aggregate principal amount of the BANs (as defined in Section 12 of Ordinance No. 1865) authorized to be issued by the City in order to evidence the interim borrowing and indebtedness authorized by Section 12 of Ordinance No. 1865, is Forty Two Million Eight Hundred Thirty Six Thousand Six Hundred Thirty Nine Dollars (\$42,836,639.00). Such indicated amount is an increase of \$14,836,639.00 from the aggregate principal amount of \$28,000,000.00 of the BANs authorized by Ordinance No. 1865 and represents the aggregate principal amount of the Bonds authorized by Ordinance No. 1865, as supplemented and amended by this Ordinance (\$46,000,000.00), minus \$3,163,361.00 (the amount of the 2003 Bond previously issued pursuant to the authority of Ordinance No. 1865).

SECTION 4. BE IT FURTHER ORDAINED that from and after the effective date of this Ordinance, (i) all references to the Bonds contained in Ordinance No. 1865 shall be construed to refer to the aggregate principal amount of the Bonds authorized to be issued pursuant to Ordinance No. 1865, as supplemented and amended by this Ordinance, and (ii) all references to the BANs contained in Ordinance No. 1865 shall be construed to refer to the aggregate principal amount of the BANs authorized to be issued pursuant to Ordinance No. 1865, as supplemented and amended by this Ordinance

SECTION 5. BE IT FURTHER ORDAINED that pursuant to authority of the Refunding Act, the City is hereby authorized and empowered to issue and sell, upon its full faith and credit, one or more series of general obligation bonds in an aggregate principal amount not to exceed Forty Six Million Dollars (\$46,000,000.00) (collectively, the "Refunding Bonds") for the purpose of refunding or advance refunding any of the Bonds then-outstanding issued pursuant to the authority of Ordinance No. 1865, as supplemented and amended by this Ordinance, including the payment of any redemption premium and any interest accrued or to accrue to the date of redemption, purchase or maturity of the Bonds to be refunded, and paying costs and expenses in

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connection with the issuance, sale and delivery of such Refunding Bonds, and, to the extent determined by the Council in a resolution or resolutions, interest on such Refunding Bonds, for the public purpose of realizing savings to the City in the aggregate cost of debt service on either a direct comparison, present value or other basis or in order to accomplish any debt restructuring that is permitted by applicable law. Any such series of Refunding Bonds may consist of one or more bonds and any bond may be issued in installment and/or draw-down form. Prior to the issuance, sale and delivery of any series of Refunding Bonds, the Council shall adopt a resolution or resolutions pursuant to the authority of the Refunding Act and this Ordinance authorizing such series of Refunding Bonds and specifying, describing, determining, providing for and approving such matters, details, forms, documents or procedures as may be authorized or required by applicable law. Unless the Council determines otherwise in a resolution providing for any series of Refunding Bonds, such series of Refunding Bonds may be sold at private sale, without advertisement or publication of notice of sale or solicitation of competitive bids.

SECTION 6. BE IT FURTHER ORDAINED that the Council is hereby authorized, pursuant to a subsequent resolution or resolutions, to make any further determinations or approvals or provide for any matters or actions deemed necessary or desirable in connection with the issuance of any series of Refunding Bonds authorized hereby, including, without limitation, (i) any determination authorized by the Refunding Act, (ii) to provide that any Refunding Bonds may be issued in installment and/or draw-down form, (iii) to commit or provide for the commitment of the City to pay to the purchaser or purchasers of any series of Refunding Bonds (A) any commitment fee or similar fee and any legal costs in connection with such purchaser's or purchasers' agreement to purchase such series of Refunding Bonds and/or (B) any breakage compensation or other amount that may be determined to be due to such purchaser or purchasers in the event the City fails to deliver such series of Refunding Bonds and, in connection therewith, to approve or provide for the approval of, and the execution and delivery of, any agreement relating to such payment or payments (which such agreement may, but shall not be required to be, contained within any purchase or similar agreement for such series of Refunding Bonds), and (iv) to provide for any credit enhancement, ratings, offering documents or continuing disclosure undertakings relating to such series of Refunding Bonds.

SECTION 7. BE IT FURTHER ORDAINED that (a) the principal of and interest on each series of the Refunding Bonds will be payable in the first instance from revenues received by the City in connection with the operation of the wastewater system serving the City and surrounding areas. In the event such moneys are insufficient in any fiscal year to provide for the prompt payment, when due, of the principal of and interest on such series of the Refunding Bonds, the City shall levy or cause to be levied, for each and every fiscal year during which such series of Refunding Bonds may be outstanding, ad valorem taxes upon all real and tangible personal property within its corporate limits subject to assessment for unlimited municipal taxation in rate and amount sufficient to provide for the payment, when due, of the principal of and interest on such series of Refunding Bonds payable in each such fiscal year and, in the event the proceeds from the collection of the taxes so levied may prove inadequate for such purposes in any fiscal year, additional taxes shall be levied in the subsequent fiscal year to make up any deficiency.

(b) The full faith and credit and unlimited taxing power of the City are hereby irrevocably pledged to the prompt payment of the principal of and interest on each series of

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Refunding Bonds as and when the same are payable and to the levy and collection of the taxes hereinabove described as and when such taxes may become necessary in order to provide sufficient funds to meet the debt service requirements of such series of Refunding Bonds. The City hereby covenants with the registered owner of each Refunding Bond to take any action that may be appropriate from time to time during the period that such Refunding Bond remains outstanding and unpaid to provide the funds necessary to pay promptly the principal and interest due thereon.

(c) The foregoing provisions shall not be construed so as to prohibit the City from paying the principal of and interest on each series of the Refunding Bonds from the proceeds of the sale of any other obligations of the City or from any other funds legally available for that purpose. The City may apply to the payment of the principal of or interest on each series of the Refunding Bonds any funds received by it from the State of Maryland or the United States of America, or any governmental agency or instrumentality, or from any other source, if the funds are granted or paid to the City for the purpose of assisting the City in accomplishing the type of project which such series of the Refunding Bonds are issued to refinance, and to the extent of any such funds received or receivable in any fiscal year, the taxes hereby required to be levied may be reduced proportionately.

SECTION 8. BE IT FURTHER ORDAINED that the Mayor, the City Administrator, the Finance Director, the City Clerk and all other appropriate officials and employees of the City are hereby authorized and directed to take any and all action necessary to complete and close the sale and delivery of any series of Refunding Bonds authorized hereby and to execute and deliver all documents, certificates and instruments necessary or appropriate in connection therewith.

SECTION 9. BE IT FURTHER ORDAINED that this Ordinance is intended to supplement and amend Ordinance No. 1865 primarily to provide authority for the City to borrow money for purposes relating the Project in amounts in excess of the applicable amounts indicated in Ordinance No. 1865 and to provide authority to issue refunding bonds for Project purposes. This Ordinance does not revoke, repeal or rescind Ordinance No. 1865 but supplements and amends such Ordinance to increase the total amount of debt authorized to be issued for Project purposes.

SECTION 10. BE IT FURTHER ORDAINED that from and after the effective date of this Ordinance, Ordinance No. 1865 shall be supplemented and amended as described herein and all other provisions of Ordinance 1865 shall remain in full force and effect and be applicable to any series of Bonds or BANs issued pursuant to Ordinance No. 1865, as supplemented or amended hereby, except as expressly provided herein.

SECTION 11. BE IT FURTHER ORDAINED that the title of this Ordinance shall be deemed to be, and is, a statement of the substance of this Ordinance for publication and all other purposes.

SECTION 12. BE IT FURTHER ORDAINED that this Ordinance shall become effective following approval by the Mayor or subsequent passage by the Council in accordance with the provisions of Section SC2-12 of the Charter.

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THIS ORDINANCE was introduced and read at a meeting of the Council of the City of Salisbury held on the _____ day of _____, 2005, and thereafter, a statement of the substance of this Ordinance having been published as required by law, was finally passed by the Council on the _____ day of _____, 2005.

ATTEST:

Brenda J. Colegrove
CITY CLERK

Michael P. Dunn
PRESIDENT, City Council

Approved by me this _____ day of _____, 2005.

Barrie P. Tilghman
MAYOR, City of Salisbury

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