

Ordinance No. 1999

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SALISBURY TO AUTHORIZE AND EMPOWER CITY OF SALISBURY TO ISSUE AND SELL FROM TIME TO TIME, UPON ITS FULL FAITH AND CREDIT, GENERAL OBLIGATION BONDS IN ONE OR MORE SERIES IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED FOUR MILLION ONE HUNDRED THOUSAND DOLLARS (\$4,100,000.00) PURSUANT TO THE AUTHORITY OF SECTIONS 31 TO 37, INCLUSIVE, OF ARTICLE 23A OF THE ANNOTATED CODE OF MARYLAND, SECTION 24 OF ARTICLE 31 OF THE ANNOTATED CODE OF MARYLAND, AND SECTION SC7-45 OF THE CHARTER OF THE CITY OF SALISBURY, THE BONDS TO BE DESIGNATED "CITY OF SALISBURY PUBLIC IMPROVEMENTS REFUNDING BONDS" AND BY YEAR AND/OR SERIES, UNLESS A SUBSEQUENT RESOLUTION OR RESOLUTIONS OF COUNCIL PROVIDES OTHERWISE, THE PROCEEDS OF THE SALE THEREOF TO BE USED AND APPLIED FOR THE PUBLIC PURPOSE OF (I) REFUNDING IN WHOLE OR IN PART THE CITY'S OUTSTANDING GENERAL OBLIGATION PUBLIC IMPROVEMENTS BONDS OF 1994, (II) PAYING COSTS OF ISSUANCE OF THE BONDS, AND (III) TO THE EXTENT DETERMINED BY THE COUNCIL, PAYING INTEREST ON THE BONDS; DETERMINING THAT THE BONDS OF EACH SERIES BE SOLD ON A NEGOTIATED BASIS WITHOUT SOLICITATION OF BIDS UNLESS A SUBSEQUENT RESOLUTION OR RESOLUTIONS OF THE COUNCIL PROVIDES FOR THE SOLICITATION OF COMPETITIVE BIDS AT PUBLIC SALE AFTER PUBLICATION OR DISSEMINATION OF NOTICE OF SALE OF ANY SERIES OF THE BONDS; PROVIDING THAT EACH SERIES OF THE BONDS BE ISSUED AND SOLD AT, ABOVE OR BELOW PAR VALUE, AS PROVIDED IN A SUBSEQUENT RESOLUTION OR RESOLUTIONS OF THE COUNCIL; PROVIDING FOR THE LEVY AND COLLECTION OF AD VALOREM TAXES SUFFICIENT FOR, AND PLEDGING THE FULL FAITH AND CREDIT AND UNLIMITED TAXING POWER OF THE CITY TO, THE PROMPT PAYMENT OF THE PRINCIPAL OF AND INTEREST ON EACH SERIES OF THE BONDS; PROVIDING THAT THE PRINCIPAL OF AND INTEREST ON EACH SERIES OF THE BONDS ALSO MAY BE PAID FROM ANY OTHER SOURCES OF REVENUE LAWFULLY AVAILABLE TO THE CITY FOR SUCH PURPOSE; AUTHORIZING THE ADOPTION OF A RESOLUTION OR RESOLUTIONS OF THE COUNCIL TO DETERMINE, APPROVE OR PROVIDE FOR VARIOUS MATTERS RELATING TO THE AUTHORIZATION, SALE, SECURITY, ISSUANCE, DELIVERY, PAYMENT AND REDEMPTION OF AND FOR EACH SERIES OF THE BONDS; AUTHORIZING THE COUNCIL, BY RESOLUTION, TO COMMIT OR TO PROVIDE FOR THE COMMITMENT OF THE CITY TO PAY TO THE PURCHASER OR THE PURCHASERS OF ANY SERIES OF THE BONDS (I) ANY COMMITMENT OR SIMILAR FEE FOR SUCH PURCHASER'S OR PURCHASERS' AGREEMENT TO PURCHASE SUCH SERIES OF THE BONDS AND/OR (II) 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 THE BONDS; AUTHORIZING THE COUNCIL TO PROVIDE BY RESOLUTION FOR THE ISSUANCE AND SALE FROM TIME TO TIME OF ONE OR MORE SERIES OF ITS GENERAL OBLIGATION BONDS TO REFUND ANY OF THE BONDS ISSUED PURSUANT TO THE AUTHORITY OF THIS ORDINANCE (INCLUDING PAYING RELATED COSTS OF ISSUANCE AND INTEREST ON SUCH REFUNDING BONDS),

Ordinance No. 1999

PROVIDED THAT ALL SUCH SERIES OF REFUNDING BONDS DO NOT EXCEED AN AGGREGATE PRINCIPAL AMOUNT OF FOUR MILLION ONE HUNDRED THOUSAND DOLLARS (\$4,100,000.00); AUTHORIZING AND DIRECTING OFFICIALS AND EMPLOYEES OF THE CITY TO TAKE ANY AND ALL ACTION NECESSARY TO COMPLETE AND CLOSE THE SALE AND DELIVERY OF THE BONDS AND REFUNDING BONDS PROVIDED FOR HEREBY; PROVIDING THAT THIS TITLE SHALL BE DEEMED A STATEMENT OF THE SUBSTANCE OF THIS ORDINANCE FOR ALL PURPOSES; AND OTHERWISE GENERALLY RELATING TO THE ISSUANCE, SALE, DELIVERY AND PAYMENT OF THE BONDS AND REFUNDING BONDS PROVIDED FOR HEREBY.

RECITALS

WHEREAS, City of Salisbury, a municipal corporation of the State of Maryland (the "City"), is authorized and empowered by Sections 31 to 37, inclusive, of Article 23A of the Annotated Code of Maryland, as replaced, supplemented or amended (the "Enabling Act"), and 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 and to evidence such borrowing by the issuance and sale of its general obligation bonds; and

WHEREAS, pursuant to Section 24 of Article 31 of the Annotated Code of Maryland, as replaced, supplemented or amended (the "Refunding Act"), the City is further authorized to issue bonds for the purpose of refunding any of its bonds then outstanding for the public purpose of realizing debt service savings or debt restructuring; and

WHEREAS, pursuant to the Refunding Act, the procedures for the issuance of refunding bonds shall be the same as those applicable to the bonds being refunded, except that refunding bonds may be sold on a negotiated basis without solicitation of bids if the City determines in a public meeting that such procedure is in the public interest; and

WHEREAS, on March 1, 1994, the City issued and delivered its City of Salisbury Public Improvements Bonds of 1994 in the aggregate principal amount of \$6,975,000 (the "1994 Bonds"); and

WHEREAS, the City irrevocably pledged its full faith and credit and unlimited taxing power to the payment of the 1994 Bonds and the 1994 Bonds were issued as general obligation bonds of the City; and

WHEREAS, the 1994 Bonds were issued pursuant to Ordinance No. 1581, introduced at a meeting of the Council of the City on January 10, 1994, passed by the Council of the City on January 24, 1994, approved by the Mayor on January 24, 1994 and effective on January 24, 1994, which specified that the proceeds of the 1994 Bonds would be applied to the costs of certain projects identified therein as (i) Police Building and Communications, (ii) Upgrade City Yard, (iii) Road Improvements, (iv) Fire Engine (Pumper), (v) New Chlorine Building and (vi) Costs of Issuance and Contingency (collectively, the "Public Improvements Projects") including, without

Ordinance No. 1999

limitation, the costs of the planning, construction, reconstruction, demolition, improvement, refurbishing, renovation, restoration, extension, alteration, installation, repair, acquisition, conversion, and modernization of structures; the acquisition of sites, rights-of-way, and any interests in land; the planning, construction, installation, repair, improvement, acquisition, and development of projects; the planning, construction, installation, repair, improvement, acquisition, and relocation of storm drainage systems and sanitary water and sewer rate systems; architectural, engineering, legal and other related professional services, including preparation of surveys, reports, plans, drawings, and specifications; all customary and necessary furnishings and fixed permanent equipment for the above; and expenses incurred in applying for any Federal or State of Maryland grants related to the above; and

WHEREAS, as originally issued and delivered, the 1994 Bonds mature on February 1 in the years 1995 to 2014, inclusive, and interest on the 1994 Bonds is payable each February 1 and August 1 until maturity or prior prepayment; and

WHEREAS, as of the date of introduction of this Ordinance, the 1994 Bonds are outstanding in the aggregate principal amount of \$3,850,000; and

WHEREAS, the 1994 Bonds maturing on or after February 1, 2006 are subject to redemption (following at least 30 days prior written notice and publication of the redemption date) as a whole at any time or in part on any interest payment date, in any order of maturities at the option of the City, at the redemption price of 100% of the principal amount of the 1994 Bonds or portions thereof to be redeemed, together with interest accrued to the date fixed for redemption; and

WHEREAS, the financial advisor engaged by the City has advised that under current market conditions the City may achieve favorable interest rate savings by refunding in whole or in part the outstanding 1994 Bonds; and

WHEREAS, with the expectation that market conditions will continue to remain favorable, the City has determined to authorize the issuance of one or more series of its general obligation bonds in order to (i) refund all or a portion of the then-outstanding and unpaid principal amounts of the 1994 Bonds, and in connection therewith, to pay interest accrued or to accrue to the dates of maturity or redemption of such refunded bonds, for the public purpose of (X) realizing savings in the aggregate cost of debt service on a direct comparison or present value basis, or (Y) debt restructuring that in the aggregate effects such a reduction in the cost of debt service or is determined by the Council to be in the best interests of the City, to be consistent with the City's long-term financial plan, and to realize a financial objective of the City, as contemplated in the Refunding Act and as to be determined pursuant to a subsequent resolution or resolutions of the Council, (ii) to pay all or a portion of the related costs of issuance of such refunding bonds, and (iii) to the extent determined by the Council pursuant to a subsequent resolution or resolutions, to pay interest on such refunding bonds; and

WHEREAS, the City has determined to pledge its full faith and credit and unlimited taxing power to the prompt payment of debt service on the refunding bonds; and

Ordinance No. 1999

WHEREAS, the City has determined that, as authorized by the Refunding Act, each series of the refunding bonds shall be sold on a negotiated basis without solicitation of bids unless, following the recommendation of the financial advisor to the City, a subsequent resolution or resolutions of the Council provides for solicitation of competitive bids at public sale of any series of the refunding bonds; and

WHEREAS, the City has determined to issue each series of the refunding bonds in accordance with terms and conditions provided for in a resolution or resolutions to be adopted by the Council pursuant to this Ordinance; and

WHEREAS, the City further desires to authorize the issuance from time to time in one or more series of additional general obligation refunding bonds in order to refund in whole or in part any of the refunding bonds initially issued and delivered pursuant to this Ordinance.

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

SECTION 2. BE IT FURTHER ORDAINED that pursuant to the authority of the Enabling Act, the Refunding Act and the Charter, the City hereby determines to borrow money and incur indebtedness for the public purpose of (i) refunding all or a portion of the then-outstanding and unpaid principal amounts of the 1994 Bonds, and in connection therewith and to pay all or a portion of interest accrued or to accrue to the dates of maturity or redemption of such refunded 1994 Bonds, in order to realize an objective authorized by the Refunding Act, as determined in the Resolution (as hereinafter defined), (ii) paying all or a portion of related costs of issuance of such refunding bonds, including, without limitation, legal and financial costs and costs of any credit enhancement, and (iii) to the extent determined by the Council pursuant to the Resolution, paying interest on such refunding bonds (collectively, the "Refunding Project"). The total cost of the portion of the Refunding Project to be financed from proceeds of the bonds authorized by this Section 2 will not exceed Four Million One Hundred Thousand Dollars (\$4,100,000.00).

SECTION 3. BE IT FURTHER ORDAINED that to evidence the borrowing and indebtedness authorized in Section 2 of this Ordinance, the City, acting pursuant to the authority of the Enabling Act, the Refunding Act and the Charter, hereby determines to issue and sell from time to time, in one or more series, upon its full faith and credit, its general obligation bonds in an aggregate principal amount not to exceed Four Million One Hundred Thousand Dollars (\$4,100,000.00) (the "Bonds"). Each series of the Bonds shall be designated "City of Salisbury Public Improvements Refunding Bonds" and by year and/or series or by such other designation or designations as the Council may determine in the Resolution. Any series of the Bonds may be issued as one or more general obligation installment bonds.

SECTION 4. BE IT FURTHER ORDAINED that pursuant to the authority of the Enabling Act, the Refunding Act and the Charter, the City hereby determines that it is in the public interest of the City to sell each series of the Bonds on a negotiated basis without solicitation of bids due to the ability to time the market, negotiate flexible terms and achieve a beneficial interest rate or rates,

Ordinance No. 1999

unless the Resolution provides for the solicitation of competitive bids at public sale after publication or dissemination of the notice of sale upon the recommendation of the financial advisor to the City that such solicitation of competitive bids will be more advantageous to the City.

SECTION 5. BE IT FURTHER ORDAINED that pursuant to the authority of the Charter, the City hereby determines and provides that each series of the Bonds shall be issued and sold for a price or prices which may be at, above or below the par value thereof, as provided in the Resolution.

SECTION 6. BE IT FURTHER ORDAINED that the proceeds of the Bonds shall be used and applied by the City exclusively and solely for the public purposes described in Section 2 of this Ordinance, unless a supplemental ordinance is enacted by the Council to provide for the use and application of such proceeds for some other proper public purpose authorized by the Enabling Act, the Refunding Act or the Charter.

SECTION 7. BE IT FURTHER ORDAINED that (a) the City shall levy or cause to be levied in all fiscal years in which any series of the Bonds are outstanding, upon all real and tangible personal property within its corporate limits subject to assessment for unlimited municipal taxation, ad valorem taxes in rate and amount sufficient to provide for the prompt payment of the principal of and interest on such series of the Bonds in each such fiscal year. If the proceeds from the taxes so levied in any such fiscal year are inadequate for such payment, additional taxes shall be levied in the succeeding fiscal year to make up such 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 the Bonds as and when they become due and 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 the Bonds. The City hereby covenants and agrees with the registered owners, from time to time, of each series of the Bonds to levy and collect the taxes hereinabove described and to take any further action that may be appropriate from time to time during the period that such series of the Bonds remains outstanding and unpaid to provide the funds necessary to pay promptly the principal thereof and the 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 any series of the 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 any series of the 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, 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 pursuant to the authority of this Ordinance, the Council, prior to the issuance, sale and delivery of each series of the Bonds, shall adopt a resolution or resolutions (the "Resolution") specifying, prescribing, determining, providing for and approving such matters, details, forms (including, without limitation, the complete forms of the Bonds of such series and the bond purchase agreement or any similar agreement with the

Ordinance No. 1999

purchaser or purchasers of such series of Bonds, if deemed necessary or desirable, or if the bonds are sold by solicitation of competitive binds at public sale, the form of notice of sale of such series of Bonds), documents or procedures as may be required by the Enabling Act, the Refunding Act, the Charter or this Ordinance or as the Council may deem appropriate for the authorization, sale, security, issuance, delivery, payment or redemption of or for such series of the Bonds. The Resolution shall set forth, approve or provide for the approval of, among other things, the aggregate principal amount of the Bonds of such series; the maturities of or principal installments payable on the Bonds of such series; the rate or rates of interest, or the method of determining the rate or rates of interest, which may be fixed or variable, payable on the Bonds of such series; provisions relating to the redemption of the Bonds of such series; the procedure for the sale on a negotiated basis of the Bonds of such series, unless the Resolution shall provide for the solicitation of competitive bids at public sale of the Bonds of such series, in which case the Resolution shall set forth the procedures for such sale and the award of the bonds to the successful bidder; and all other terms and conditions pursuant to which the Bonds will be issued, sold and delivered. Among other matters, the Council, pursuant to the Resolution, may authorize, approve or otherwise provide for (i) the obtaining of credit enhancement for any series of the Bonds (and the execution and delivery of any agreements or documents relating thereto), and (ii) any other agreements necessary to enhance the marketability of or as security for any series of the Bonds, including (without limitation) any continuing disclosure undertaking required to satisfy the requirements of Securities and Exchange Commission Rule 15c2-12.

SECTION 9. BE IT FURTHER ORDAINED that the Council is hereby authorized, pursuant to the Resolution, to commit or to provide for the commitment of the City to pay to the purchaser or the purchasers of any series of the Bonds (i) any commitment or similar fee for such purchaser's or purchasers' agreement to purchase such series of the Bonds and/or (ii) 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 the Bonds, and, in connection therewith, to approve or to provide for the approval, and the execution and delivery of, any agreement deemed necessary or desirable relating to such payment or payments.

SECTION 10. BE IT FURTHER ORDAINED that pursuant to the authority of the Enabling Act, the Refunding Act and the Charter, the City is hereby further authorized and empowered to issue and sell from time to time one or more series of general obligation bonds in an aggregate principal amount not to exceed Four Million One Hundred Thousand Dollars (\$4,100,000.00) for the public purpose of refunding or advance refunding any of the Bonds authorized hereby then outstanding, 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, paying costs and expenses in connection with the issuance, sale and delivery of such refunding bonds, and, to the extent determined by the Council, paying 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. Prior to the issuance, sale and delivery of any series of such general obligation refunding bonds, the Council shall adopt a resolution or resolutions authorizing such series of refunding bonds and specifying, describing, determining, providing for and approving such matters, details, forms, documents or procedures as may be

Ordinance No. 1999

authorized or required by applicable law. Any series of such refunding bonds may be sold on a negotiated basis without solicitation of bids unless the Council determines to sell such series of refunding bonds at public sale pursuant to a resolution. The pledge and agreement detailed in Section 7 of this Ordinance with respect to the Bonds is hereby deemed and determined to apply to the refunding bonds authorized by this Section 10 as if set forth in this Section 10.

SECTION 11. BE IT FURTHER ORDAINED that the Mayor, the City Administrator, the Finance Director, the City Clerk and all other 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 the Bonds or the refunding bonds contemplated by Section 10 hereof and to execute and deliver all documents, certificates and instruments necessary or appropriate in connection therewith.

SECTION 12. 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 13. 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 provision of Section SC2-12 of the Charter.

THIS ORDINANCE was introduced and read at a meeting of the Council of the City of Salisbury held on the \_\_\_\_\_ day of \_\_\_\_\_, 2006, 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 \_\_\_\_\_, 2006.

ATTEST:

\_\_\_\_\_  
Brenda J. Colegrove  
CITY CLERK

\_\_\_\_\_  
Michael P. Dunn  
PRESIDENT, City Council

Approved by me this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

\_\_\_\_\_  
Barrie P. Tilghman  
MAYOR, City of Salisbury