

Ordinance No. 2012

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SALISBURY TO APPROVE THE FINANCING OR REIMBURSEMENT BY THE CITY OF A PORTION OF THE COSTS OF THE PLANNING, DESIGN, ENGINEERING, ACQUISITION, CONSTRUCTION, IMPROVEMENT, FURNISHING AND EQUIPPING OF A FIRE STATION TO BE USED BY CITY FIRE PERSONNEL AND PERSONNEL OF SALISBURY FIRE DEPARTMENT, INC. (COMMONLY KNOWN AS VOLUNTEER FIRE COMPANY #16) AS DESCRIBED HEREIN, TOGETHER WITH RELATED COSTS, IN A PRINCIPAL AMOUNT NOT TO EXCEED \$5,320,000.00, PURSUANT TO THE GROUND LEASE, THE LEASE PURCHASE AGREEMENT AND THE ESCROW AGREEMENT DESCRIBED HEREIN; PROVIDING THAT THE CITY'S OBLIGATION TO MAKE LEASE PAYMENTS UNDER THE LEASE PURCHASE AGREEMENT SHALL BE SUBJECT TO APPROPRIATION IN EACH FISCAL YEAR AND THAT THE LEASE PURCHASE AGREEMENT SHALL NEVER CONSTITUTE AN INDEBTEDNESS OR A CHARGE AGAINST THE GENERAL CREDIT OR TAXING POWERS OF THE CITY WITHIN THE MEANING OF ANY CONSTITUTIONAL OR CHARTER PROVISION OR STATUTORY LIMITATION; APPROVING THE FORMS OF THE GROUND LEASE, THE LEASE PURCHASE AGREEMENT AND THE ESCROW AGREEMENT AND AUTHORIZING, DIRECTING AND EMPOWERING THE MAYOR, ON BEHALF OF THE CITY, WITH THE ADVICE OF CERTAIN OFFICIALS, TO NEGOTIATE, EXECUTE AND DELIVER SUCH DOCUMENTS WITH SUCH ADDITIONS, DELETIONS OR MODIFICATIONS THERETO AS SHE SHALL APPROVE, SUBJECT TO CERTAIN LIMITATIONS DESCRIBED HEREIN; MAKING OR PROVIDING FOR THE MAKING OF CERTAIN COVENANTS AND REPRESENTATIONS WITH RESPECT TO THE TAX-EXEMPT STATUS OF THE INTEREST PORTION OF THE LEASE PAYMENTS DUE UNDER THE LEASE PURCHASE AGREEMENT; AUTHORIZING, EMPOWERING AND DIRECTING OFFICIALS AND EMPLOYEES OF THE CITY TO TAKE ANY AND ALL ACTION NECESSARY TO COMPLETE AND CLOSE THE TRANSACTIONS CONTEMPLATED BY THIS ORDINANCE; PROVIDING THAT THIS ORDINANCE CONSTITUTES THE APPROVAL OF THE APPLICABLE ELECTED REPRESENTATIVE OF THE CITY CONTEMPLATED BY SECTION 147(f) OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED; PROVIDING THAT THIS ORDINANCE CONSTITUTES A DECLARATION OF OFFICIAL INTENT WITHIN THE MEANING OF U.S. TREASURY REGULATION SECTION 1.150-2; PROVIDING THAT THIS TITLE SHALL BE DEEMED A STATEMENT OF THE SUBSTANCE OF THIS ORDINANCE FOR ALL PURPOSES; AND OTHERWISE GENERALLY RELATING TO THE TRANSACTIONS CONTEMPLATED BY THIS ORDINANCE.

RECITALS

WHEREAS, City of Salisbury, a municipal corporation of the State of Maryland (the "City"), intends to undertake or arrange for the planning, design, engineering, acquisition, construction, improvement, furnishing and equipping of an approximately 30,000 square foot, one-story with a mezzanine level fire station and related improvements (collectively, the "Project"); and

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WHEREAS, pursuant to a competitive bidding process, the City received a proposal from SunTrust Leasing Corporation (“SLC”) to provide financing in an amount not to exceed \$5,320,000.00 for a portion of the costs of the Project, including related issuance costs, reserves and capitalized interest, if applicable (the “Related Costs”), through a lease-purchase arrangement; and

WHEREAS, SLC’s proposal requires the City to lease the land on which the Project will be located (the “Project Site”) to SLC pursuant to a ground lease (the “Ground Lease”); and

WHEREAS, the Project Site is currently owned by the City and consists of approximately seven (7) acres of property situated on the east side of Cypress Street, on the south side of King Street, on the west side of Lake Street and on the north side of Birch Street, within the corporate limits of Salisbury, Maryland 21801; and

WHEREAS, SLC will lease the Project and sublease the Project Site to the City pursuant to a lease purchase agreement (the “Lease Purchase Agreement”), pursuant to which the City will make lease payments denominated into principal and interest portions (the “Lease Payments”) in order to acquire full and unencumbered title to the Project; and;

WHEREAS, the City’s obligation to make the Lease Payments under the Lease Purchase Agreement shall be subject to appropriation of funds sufficient for such purpose in each fiscal year and the City’s obligations under the Lease Purchase Agreement shall never constitute an indebtedness or a charge against the general credit of taxing powers of the City within the meaning of any constitutional or charter provision or statutory limitation; and

WHEREAS, in the event of a failure to appropriate sufficient funds or in the event of certain defaults under the Lease Purchase Agreement, SLC shall be entitled to assume possession of the Project Site and the Project and sell or lease the same for the remaining term of the Ground Lease, among other remedies; and

WHEREAS, the Project and the Project Site are intended to be used by the City’s Fire Department, which is comprised of career and volunteer personnel, in accordance with the City Charter and the City Code; and

WHEREAS, it is specifically intended that Salisbury Fire Department, Inc., a nonprofit corporation organized under the laws of the State of Maryland that is more commonly known as Volunteer Fire Company #16 (the “VFC”), will staff the Project and the Project Site in conjunction with career personnel of the Fire Department; and

WHEREAS, the VFC received a letter in December 1988, as amended by a letter dated December 20, 2004, from the Department of the Treasury, Internal Revenue Service to the effect that the VFC is an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the “Code”); and

WHEREAS, pursuant to the Lease Purchase Agreement, SLC, the City and SunTrust Bank (the “Bank”) will enter into an escrow agreement (the “Escrow Agreement”) in order to provide for

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the deposit by SLC with the Bank of the principal amount available under the Lease Purchase Agreement to pay or reimburse costs of the Project and the Related Costs, the investment of such funds and the disbursement of such invested funds to pay or reimburse costs of the Project and the Related Costs; and

WHEREAS, forms of the Ground Lease, the Lease Purchase Agreement and the Escrow Agreement (collectively, the “Transaction Documents”) have been submitted to the City and are on file with the City Clerk; and

WHEREAS, the financing of a portion of the costs of the Project and the Related Costs will service the essential public purpose of providing a fire station for use by the City’s Fire Department, including the VFC; and

WHEREAS, it is intended that this Ordinance shall constitute the public approval of the “applicable elected representative” of the City required by Section 147(f) of the Code and applicable regulations, due to the use of the Project and the Project Site by the VFC, which approval follows a public hearing held before the Council of the City on September 11, 2006, notice of which was duly and properly published in a newspaper of general circulation in the City on August 27, 2006, and at which public hearing interested individuals had the opportunity to express their views on the financing described herein and the location and nature of the Project Site and the Project; and

WHEREAS, it is intended that the Lease Purchase Agreement shall qualify as a “qualified 501(c)(3) bond” for purposes of the Code; and

WHEREAS, the City reasonably expects to make “original expenditures” with respect to the Project and/or the Related Costs prior to execution and delivery of the Lease Purchase Agreement within the meaning of U.S. Treasury Regulation Section 1.150-2 (the “Reimbursement Regulations”), and to reimburse such expenditures from proceeds made available under the Lease Purchase Agreement, which constitutes a “reimbursement bond” within the meaning of the Reimbursement Regulations.

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 Article 23A of the Annotated Code of Maryland, as amended, and the Charter of the City, the City hereby determines to finance or reimburse a portion of the costs of the Project and the Related Costs through the lease-purchase transactions described in this Ordinance, provided that the maximum principal amount to be financed through such mechanism shall not exceed Five Million Three Hundred Twenty Thousand Dollars (\$5,320,000.00) and the maximum interest rate pursuant to which the interest portion of the Lease Payments payable under the Lease Purchase Agreement shall be calculated shall not exceed five and two-tenths percent (5.2%) per annum (subject to any increase in such maximum rate in the event the interest portion of the Lease Payments is determined

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to be includable in gross income of the holder of the Lease Purchase Agreement for federal income tax purposes as the City may agree to); and the Mayor, on behalf of the City, is hereby authorized, empowered and directed to approve the final principal amount of the financing and the maximum interest rate or interest rates (subject to increase, if applicable) to be borne under the Lease Purchase Agreement, subject to the limitations set forth in this Section 2, such approval to be conclusively evidenced by the Mayor's execution and delivery of the Lease Purchase Agreement.

SECTION 3. BE IT FURTHER ORDAINED, that the City's obligation to make the Lease Payments due under the Lease Purchase Agreement shall be subject to annual appropriation of sufficient funds for such purpose in each fiscal year during the term of the Lease Purchase Agreement. THE LEASE PURCHASE AGREEMENT SHALL NEVER CONSTITUTE AN INDEBTEDNESS OR A CHARGE AGAINST THE GENERAL CREDIT OR TAXING POWERS OF THE CITY WITHIN THE MEANING OF ANY CONSTITUTIONAL OR CHARTER PROVISION OR STATUTORY LIMITATION.

SECTION 4. BE IT FURTHER ORDAINED that the forms of the Transaction Documents on file with the City Clerk are hereby approved; provided that, the executed Ground Lease may provide for a term of no more than forty (40) years from the date thereof (and shall be subject to earlier termination in the event the City makes or prepays all required payments due under the Lease Purchase Agreement) and the executed Lease Purchase Agreement may provide for a term of no more than twenty (20) years from the date thereof. The City agrees to abide by and perform the covenants and agreements set forth in the Transaction Documents as though such covenants and agreements were set forth in full in this Ordinance.

SECTION 5. BE IT FURTHER ORDAINED that the Mayor, on behalf of the City, with the advice of the City Administrator, the Director of Internal Services and the City Attorney, is hereby authorized, empowered and directed to negotiate or cause to be negotiated, execute and deliver, the Transaction Documents, in substantially the forms on file with the City Clerk, with such additions, deletions and modifications as she shall approve not materially adverse to the interests of the City, subject to the provisions of Sections 2, 3 and 4 of this Ordinance, such approval to be evidenced conclusively by the Mayor's execution and delivery of the Transaction Documents.

SECTION 6. BE IT FURTHER ORDAINED that any two of the Mayor, the City Administrator and the Director of Internal Services shall be the officials of the City responsible for the issuance of the Lease Purchase Agreement within the meaning of Section 1.148-2(b)(2) of the Arbitrage Regulations (defined below). Any two of the Mayor, the City Administrator and the Director of Internal Services also shall be the officials of the City responsible for the execution and delivery (on the date of the issuance of the Lease Purchase Agreement) of a certificate of the City (the "Section 148 Certificate") that complies with the requirements of Section 148 of the Code and the applicable regulations thereunder (the "Arbitrage Regulations"), and such officials are hereby authorized and directed to execute and deliver the Section 148 Certificate to counsel rendering an opinion on the tax-exempt status of the interest portion of the Lease Payments on the date of the issuance of the Lease Purchase Agreement.

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(b) The City shall set forth in the Section 148 Certificate its reasonable expectations as to relevant facts, estimates and circumstances relating to the use of the proceeds of the Lease Purchase Agreement or of any monies, securities or other obligations to the credit of any account of the City which may be deemed to be proceeds of the Lease Purchase Agreement pursuant to Section 148 or the Arbitrage Regulations (collectively, the "Proceeds"). The City covenants with the registered owner or owners from time to time of the Lease Purchase Agreement that the facts, estimates and circumstances set forth in the Section 148 Certificate will be based on the City's reasonable expectations on the date of issuance of the Lease Purchase Agreement and will be, to the best of the certifying officials' knowledge, true and correct as of that date.

(c) The City covenants with the registered owner or owners from time to time of the Lease Purchase Agreement that it will not make, or (to the extent that it exercises control or direction) permit to be made, any use of the Proceeds that would cause the Lease Purchase Agreement to be an "arbitrage bond" within the meaning of Section 148 and the Arbitrage Regulations, and that it will comply with those provisions of Section 148 and the Arbitrage Regulations as may be applicable to the Lease Purchase Agreement on its date of issuance and which may subsequently lawfully be made applicable to the Lease Purchase Agreement as long as the Lease Payments remain outstanding and unpaid.

SECTION 7. BE IT FURTHER ORDAINED that the City specifically covenants that it will comply with the provisions of the Code and the Arbitrage Regulations applicable to the Lease Purchase Agreement, including, without limitation, compliance with provisions regarding the timing of the expenditure of the Proceeds, the use of the Proceeds and the facilities financed with the Proceeds, the restriction of investment yields, the filing of information with the Internal Revenue Service, and the rebate of certain earnings resulting from the investment of the Proceeds or payments in lieu thereof. The City further covenants that it shall make such use of the Proceeds, regulate the investment of the Proceeds and take such other and further actions as may be required to maintain the exemption from federal income taxation of the interest portion of the Lease Payments. All officials, officers, employees and agents of the City are hereby authorized and directed to provide such certifications of facts and estimates regarding the amount and use of the Proceeds as may be necessary or appropriate.

SECTION 8. BE IT FURTHER ORDAINED that the Mayor, the City Administrator, the Director of Internal Services, and all other appropriate officials and employees of the City, are expressly authorized, empowered and directed to take any and all action necessary to complete and close the transactions contemplated by the Transaction Documents and to negotiate, approve, execute and deliver all documents, certificates and instruments necessary or appropriate in connection therewith, including any documents, certificates or instruments required by SLC or the Bank or their counsel in connection with the transactions contemplated by the Transaction Documents, including (without limitation) a Form 8038-G, any required financing statements or title documentation, delivery and acceptance certificates, essential use certificates, insurance certificates and memoranda of the Ground Lease and/or the Lease Purchase Agreement, and to pay any fees or costs in connection therewith.

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SECTION 9. BE IT FURTHER ORDAINED that on September 11, 2006, a public hearing on the proposed financing of the Project and the Related Costs and the entry into the Ground Lease and the Lease Purchase Agreement in connection therewith was held before the Mayor and Council in accordance with law and Section 147(f) of the Code. The City hereby ratifies, approves and confirms the publication on August 27, 2006 of the notice of that public hearing in The Daily Times. As the “applicable elected representative” of the City within the meaning of Section 147(f) of the Code and the regulations promulgated thereunder, the Mayor and Council hereby approve the entry into the Ground Lease, the Lease Purchase Agreement and the Escrow Agreement and the use of the Proceeds to finance or reimburse the costs of the Project and the Related Costs as described herein for the purposes of Section 147(f) of the Code.

SECTION 10. BE IT FURTHER ORDAINED that the City reasonably expects to make “original expenditures” with respect to the Project and the Related Costs (within the meaning of the Reimbursement Regulations) prior to entry into the Transaction Documents and to reimburse some or all of such original expenditures from the Proceeds. The City intends for this Ordinance to serve as a declaration of “official intent” for purposes of the Reimbursement Regulations with respect to the Project and the Related Costs and the financing thereof in the maximum principal amount of \$5,320,000.00 contemplated by this Ordinance.

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 provision of Section SC2-12 of the Charter, and shall be subject to petition to referendum in accordance with the provisions of Section SC2-16 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 _____, 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

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