

Introduced: September 28, 2016 Windon and Harrod
Adopted: October 26, 2016
Effective: November 16, 2016

ORDINANCE NO. 480

AN ORDINANCE OF THE COMMISSIONERS OF ST. MICHAELS AUTHORIZING SEPARATE INTERFUND LOANS BETWEEN THE ELECTRIC UTILITY FUND AND THE WATER FUND FOR THE PUBLIC PURPOSE OF FUNDING THE PREPAYMENT IN WHOLE OF THE 1982 WATER BOND AND THE 1997 INFRASTRUCTURE BOND IDENTIFIED HEREIN AND RELATED COSTS; SPECIFYING THE TERMS FOR REPAYMENT OF SUCH INTERFUND LOANS; AUTHORIZING CERTAIN OFFICIALS OF THE TOWN TO TAKE ACTION OR MAKE DETERMINATIONS ON BEHALF OF THE TOWN AS DESCRIBED HEREIN; PROVIDING FOR CERTAIN RULES OF CONSTRUCTION OF THIS ORDINANCE, INCLUDING THAT THE PROVISIONS OF THIS ORDINANCE SHALL BE LIBERALLY CONSTRUED; PROVIDING THAT THIS TITLE CONSTITUTES A SUMMARY OF THIS ORDINANCE; AND GENERALLY RELATING TO SUCH INTERFUND LOANS

WHEREAS, pursuant to Md. Code Ann., Local Gov't §§ 5-203 and 5-205, The Commissioners of St. Michaels, a Maryland municipality (the "Town"), is authorized and empowered to provide for the control and management of the finances of the Town by passing ordinances; and

WHEREAS, pursuant to § C-19(B)(20) of the Charter of the Town of St. Michaels (the "Charter"), The Commissioners of St. Michaels, the governing body of the Town (the "Commissioners"), has general management and control of the finances of the Town and may expend municipal funds for any public purpose as determined by ordinance; and

WHEREAS, on March 18, 1982, pursuant to the authority of Sections 31 to 37, inclusive, of Article 23A of the Annotated Code of Maryland (as then codified), an ordinance passed and approved by the Commissioners on January 26, 1982, and USDA-FmHA Form FmHA 442-47 Loan Resolution (Public Bodies), adopted by the Commissioners on January 26, 1982, the Town on March 18, 1982 issued and delivered to the United States of America, acting through the Farmers Home Administration, its St. Michaels Water Bonds of 1982, which were issued in the form of a single general obligation installment bond in the original principal amount of \$1,287,600 (the "1982 Water Bond"); and

WHEREAS, the 1982 Water Bond was issued for the public purpose of making certain improvements to the Town's water distribution system; and

WHEREAS, as originally issued and delivered, the 1982 Water Bond bears interest at the rate of 5.00% per annum, principal of the 1982 Water Bond is payable on March 1 and September 1 of each year, commencing on March 1, 1983 and ending on March 1, 2022, in the amounts set forth in the 1982 Water Bond unless the 1982 Water Bond is prepaid in whole prior to maturity, and interest on the 1982 Water Bond is payable on March 1 and September 1 in each year, commencing on September 1, 1982, until maturity or prior prepayment in whole; and

WHEREAS, for so long as the 1982 Water Bond is registered in the name of the United States of America, Farmers Home Administration, or its successor, the Town has the right to prepay the 1982 Water Bond at any time at par, plus accrued interest on the principal amount being prepaid to the date fixed for prepayment, without premium or penalty; and

WHEREAS, in the event the 1982 Water Bond is no longer registered in the name of the United States of America, Farmers Home Administration, or its successor, on any interest payment date (each March 1 and September 1) after March 1, 1991, the Town has the right to prepay all or part of the principal installments then remaining unpaid on the 1982 Water Bond, or any portion it may determine, in the inverse order of those installments at a prepayment price for each installment of the principal amount of the installment plus a premium of one-quarter (1/4) of one per centum (1%) of such principal amount for each full twelve-month period, and for any remaining fraction of a twelve-month period from the date of prepayment to the date of maturity of such bond, provided, however, that in no case shall the premium exceed three per centum (3%) of such principal amount; and

WHEREAS, the Town is required by the provisions of the 1982 Water Bond to give at least 30 days' prior written notice of any prepayment thereof fixing the prepayment date and indicating the amount of principal to be prepaid and premium, if any; and

WHEREAS, to the best knowledge of Town officials, the 1982 Water Bond remains registered in the name of the United States of America, Farmers Home Administration, or its successor; and

WHEREAS, pursuant to the authority of Section 2-204(16)(iv) of Article 83B of the Annotated Code of Maryland (as then codified) and Ordinance No, 236, passed by the Commissioners on August 12, 1997, the Town on September 15, 1997 issued and delivered to the Maryland Community Development Administration ("CDA") its The Commissioners of St. Michaels Infrastructure Bonds, 1997 Series, which were issued in the form of a single general obligation installment bond in the original principal amount of \$342,484 (the "1997 Infrastructure Bond"); and

WHEREAS, the 1997 Infrastructure Bond was issued for the public purpose of providing a portion of the funds necessary for constructing a water tower and making other water system improvements, and paying issuance costs, bond insurance premiums and other related costs; and

WHEREAS, as originally issued and delivered, the 1997 Infrastructure Bond bears interest at rates ranging from 5.00% to 5.75%, as set forth therein, principal of the 1997 Infrastructure Bond is payable on each May 1 and November 1, commencing on May 1, 1998 and ending on May 1, 2027, in the amounts set forth in the 1997 Infrastructure Bond unless the 1997 Infrastructure Bond is prepaid in whole prior to maturity, and interest on the 1997 Infrastructure Bond is payable on May 1 and November 1 in each year, commencing on November 1, 1997, until maturity or prior prepayment in whole; and

WHEREAS, at any time on and after September 1, 2009, the 1997 Infrastructure Bond is subject to prepayment in whole or in part by the Town at a prepayment price of 100% of the principal amount

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being prepaid, plus accrued interest to the date fixed for redemption of the corresponding portion of CDA's Bonds (as defined in the Repayment Agreement identified in the succeeding WHEREAS clause), without premium, after giving CDA at least 60 but not more than 90 days' notice before the proposed date fixed for prepayment; and

WHEREAS, pursuant to the provisions of the Repayment Agreement dated April 15, 1997 between the Town and CDA (the "Repayment Agreement"), any partial prepayment of the 1997 Infrastructure Bond shall be in a minimum amount equal to the lesser of the outstanding principal balance of the 1997 Infrastructure Bond or \$50,000 and in integral multiples of \$5,000, any partial prepayment shall be applied to principal installments due on the 1997 Infrastructure Bond in inverse chronological order or in such order as CDA shall determine, and if the Town prepays the 1997 Infrastructure Bond or any portion thereof, it shall also make provision for the payment of ongoing Trustee (as defined in the Repayment Agreement) fees relating to the 1997 Infrastructure Bond or the portion thereof prepaid; and

WHEREAS, although the 1982 Water Bond and the 1997 Infrastructure Bond are general obligation bonds of the Town, backed by a pledge of the Town's full faith and credit and unlimited taxing power, as authorized by applicable law, the Town has been using moneys in the Water Fund to make debt service payments on the 1982 Water Bond and the 1997 Infrastructure Bond in the first instance, to the extent moneys in such fund are available for such purpose; and

WHEREAS, the Town has a surplus in the Electric Utility Fund, and the Town would like to make loans from the Electric Utility Fund to the Water Fund of funds sufficient to prepay the 1982 Water Bond and the 1997 Infrastructure Bond in whole on their respective first available prepayment dates, taking into consideration the giving of any required notices and any necessary coordination with the United States Department of Agriculture, the agency currently responsible for overseeing loans previously made through the Farmers Home Administration ("USDA") and CDA; and

WHEREAS, the Commissioners are desirous of loaning funds from the Electric Utility Fund to the Water Fund for the purpose of the prepaying the 1982 Water Bond and the 1997 Infrastructure Bond in whole and paying related costs, upon the terms and conditions set forth herein; and

WHEREAS, the interfund loans authorized by this Ordinance are in the best interests of the Town, as the Electric Utility Fund has sufficient funds to defray the cost of the prepaying the 1982 Water Bond and the 1997 Infrastructure Bond and paying related costs and the terms of the interfund loans are more advantageous to the Town than a loan from a third-party lender after taking into account the issuance costs of any such general obligation borrowing; and

WHEREAS, the Commissioners are satisfied that the Electric Utility Fund has sufficient funding to make the interfund loans contemplated hereunder, and it is projected that the Electric Utility Fund will have enough moneys available for the other expenditures budgeted or expected to be paid from the Electric Utility Fund during the term of the interfund loans provided for herein; and

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WHEREAS, the Commissioners are satisfied that the revenues anticipated to be generated and deposited to the Water Fund will be adequate to fully repay the interfund loans contemplated hereunder, and the adopted budget for fiscal year 2017 accounts for the interfund loans contemplated hereunder; and

WHEREAS, for the reasons stated above, the Commissioners deem it in the interest of the public health, welfare, and safety of the citizens of the Town, and for the good government of the Town, to enact the following Ordinance.

SECTION 1. NOW, THEREFORE, BE IT ORDAINED AND ENACTED BY THE COMMISSIONERS OF ST. MICHAELS that:

(a) The Recitals to this Ordinance are incorporated by reference herein and deemed a substantive part of this Ordinance. Capitalized terms used in this Ordinance and not otherwise defined in the Sections of this Ordinance shall have the meanings given to such terms in the Recitals.

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

SECTION 2. AND BE IT FURTHER ORDAINED AND ENACTED that:

(a) The Commissioners hereby authorize (i) a loan from the Electric Utility Fund to the Water Fund of an amount sufficient to (A) prepay the 1982 Water Bond in whole on the first available date for prepayment, taking into consideration any coordination necessary with USDA and the requirement to give notice of prepayment, including prepaying outstanding principal, accrued interest from the last date of payment to the date of prepayment, and any premium payable in accordance with such prepayment, to the extent the 1982 Water Bond is no longer registered in the name of the United States of America, Farmers Home Administration, or its successor, and (B) any costs reasonably related to such prepayment, including legal costs (collectively, the “Water Bond Interfund Loan”); and (ii) a loan from the Electric Utility Fund to the Water Fund of an amount sufficient to (A) prepay the 1997 Infrastructure Bond in whole on the first available date for prepayment, taking into consideration any coordination necessary with CDA and the requirement to give notice of prepayment, including prepaying outstanding

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principal and accrued interest from the last date of prepayment to the date determined in accordance with the prepayment requirements of the 1997 Infrastructure Bond and the Repayment Agreement, and (B) any costs reasonably related to such prepayment, including legal costs (including costs of counsel to CDA) and payments owed to the Trustee in accordance with the provisions of the Repayment Agreement (collectively, the “Infrastructure Bond Interfund Loan” and, collectively with the Water Bond Interfund Loan, the “Interfund Loans” or, individually, an “Interfund Loan”).

(b) The Town Clerk/Manager, in consultation with the President of the Commissioners and the Treasurer of the Town (the “Treasurer”) is hereby authorized to determine that all or any portion of the costs identified in sub-clause (B) of clauses (i) and (ii) of subsection (a) above shall be paid from funds otherwise provided for in the Town’s fiscal year 2017 budget and not from one or both of the Interfund Loans. In accordance with § C-50 of the Charter, any two authorized signers provided for in such Section shall cause funds to be withdrawn from the Electric Utility Fund, transferred to the Water Fund (either physically or through a paper transfer) and applied to prepay the 1982 Water Bond and the 1997 Infrastructure Bond on the first available date for prepayment of each such bond determined in accordance with the provisions of this Ordinance, and to pay any related costs contemplated by this Ordinance, provided that, to the extent any such related costs are payable from other available funds, such authorized signers shall cause the payment thereof from such other available funds.

(c) Each Interfund Loan shall bear interest on the unpaid principal balance from the date the Town transmits payment of funds to USDA or CDA (or the Trustee on behalf of CDA), as applicable, to the date of payment in full of such Interfund Loan (whether at maturity, by prepayment in whole or following a default) at the rate of two per centum (2%) per annum, calculated on a year consisting of 12 30-day months; provided that, the Town Clerk/Manager, in consultation with the President of the Commissioners and the Treasurer, may determine that interest shall be calculated on some other reasonable basis with respect to either or both Interfund Loans.

(d) The Water Bond Interfund Loan shall mature on March 1, 2022. Principal of the Water Bond Interfund Loan shall be payable on an approximately level debt service basis, taking into account the interest rate provided for in subsection (c) above, on each March 1 and September 1, commencing on the first September 1 or March 1 following prepayment of the 1982 Water Bond, and ending on March 1, 2022 or such later date as such principal and all accrued interest thereon shall be paid in full.

(e) The Infrastructure Bond Interfund Loan shall mature on May 1, 2027. Principal of the Infrastructure Bond Interfund Loan shall be payable on a roughly level debt service basis, taking into account the interest rate provided for in subsection (c) above, on each November 1 and May 1, commencing on the first November 1 or May 1 following prepayment of the 1997 Infrastructure Bond, and ending on May 1, 2027 or such later date as such principal and all accrued interest thereon shall be paid in full.

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(f) In accordance with § C-50 of the Charter, any two authorized signers provided for in such Section, or any one or more signers authorized pursuant to subsequent amendments to such Section, as applicable, shall cause Interfund Loan repayments to be made from the Water Fund to the Electric Utility Fund in accordance with the provisions of subsections (c) through (e) above.

(g) By resolution (unless applicable law requires that such action be taken by ordinance) the Commissioners may determine to prepay in whole or in part on any date the then-outstanding balance of either Interfund Loan. There shall be no fees or prepayment penalties for early payment towards the outstanding balance of an Interfund Loan, but the prepayment of all or any portion of the outstanding principal balance of an Interfund Loan shall be accompanied by interest accrued on the principal amount being prepaid to the date of prepayment. If the Commissioners determine to prepay an Interfund Loan in part, they shall specify in the resolution (or ordinance, as applicable) authorizing such prepayment the amount to be prepaid (or the method of determining such prepayment amount) and the order of principal installments to which such prepayment amount shall be applied.

(h) The President of the Commissioners and the Town Clerk/Manager, on behalf of the Town, are each hereby authorized to (i) accept any waiver by USDA or CDA of the respective prepayment notice requirements relating to the 1982 Water Bond or the 1997 Infrastructure Bond, (ii) accept any agreement by USDA or CDA to a shortened prepayment notice period requirement with respect to the 1982 Water Bond or the 1997 Infrastructure Bond, respectively, (iii) give any notice of prepayment of the 1982 Water Bond or the 1997 Infrastructure Bond (either of which notice may be conditioned on the availability of sufficient funds for such purpose), (iv) negotiate, approve, execute and deliver any and all documents, certificates or instruments required by USDA or CDA, their respective legal counsel or legal counsel to the Town, and (v) take any other action deemed necessary or desirable in order to effectuate the transactions contemplated by this Ordinance, the Interfund Loans and the prepayment of the 1982 Water Bond and the 1997 Infrastructure Bond in whole.

(i) The Town Clerk/Manager is authorized and directed to maintain accounting records relative to the Interfund Loans and the repayment thereof.

SECTION 3. AND BE IT FURTHER ORDAINED AND ENACTED that the provisions of this Ordinance are declared to be severable. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held invalid or unconstitutional by any court or competent jurisdiction, the same shall be deemed separate, distinct, and independent from, and such holding shall not affect the validity of, the remaining portions of this Ordinance, it being the intention of the Commissioners that this Ordinance shall stand, notwithstanding the invalidity of any section, subsection, sentence, clause, phrase, or portion hereof.

SECTION 4. AND BE IT FURTHER ORDAINED AND ENACTED that all ordinances or parts of ordinances of the Town inconsistent with the provisions of this Ordinance are hereby repealed to the extent of such inconsistency.


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SECTION 5. AND BE IT FURTHER ORDAINED AND ENACTED that the provisions of this Ordinance shall be liberally construed in order to effectuate the making of the Interfund Loans, the prepayment of the 1982 Water Bond and the 1997 Infrastructure Bond as described herein, and the repayment of the Interfund Loans.

SECTION 6. AND BE IT FURTHER ORDAINED AND ENACTED that the title of this Ordinance, or a condensed version thereof, shall be deemed to be, and is, a summary of this Ordinance for publication and all other purposes.

SECTION 7. AND BE IT FURTHER ORDAINED AND ENACTED that this Ordinance shall take effect at the expiration of twenty (20) days from the date of its passage, having been read at two (2) meetings of The Commissioners of St. Michaels and having been passed by a yea and nay vote of The Commissioners of St. Michaels, subject to the provisions of § C-16 of the Charter.

HAVING BEEN INTRODUCED, read for the first time and ordered posted on the Town bulletin board at the public meeting of The Commissioners of St. Michaels held on the 28th day of September, 2016, at 6 o'clock p.m., in the meeting room at the Edgar M. Bosley, Jr. Building (Town Office), 300 Mill Street, St. Michaels, Maryland.

 (SEAL)
Jean R. Weisman
Town Clerk/Manager

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HAVING BEEN READ for the second time and passed by a yea and nay vote of The Commissioners of St. Michaels at a public meeting of The Commissioners of St. Michaels held on the 26th day of October, 2016 at 6 o'clock p.m., in the meeting room of the Edgar M. Bosley, Jr. Building (Town Office), St. Michaels, Maryland.

Bibb - ___yea___
Boos - ___yea___
Harrod - ___yea___
Myers - ___yea___
Winton - ___yea___

I HEREBY CERTIFY that the above Ordinance No. 480 was passed by a yea and nay vote of The Commissioners of St. Michaels on the 26th day of October, 2016.

ATTEST:

THE COMMISSIONERS OF ST. MICHAELS

Jean R. Weisman
Jean R. Weisman, Town Clerk/Manager

By: Roy B. Myers (SEAL)
Roy B. Myers, President

I HEREBY CERTIFY that an exact copy of this Ordinance was posted from the 27th day of October, 2016, at 8:30 o'clock a.m. to the 15th day of November, 2016, at 4:30 o'clock p.m., on the bulletin board at the Town Office in St. Michaels, Maryland, and that a summary of the aforesaid Ordinance No. 480, the date of its passage, its effective date and the fact that the entire text of this Ordinance may be read on the bulletin board of the Town Office for at least twenty (20) days following its passage, has been published at least once each week for two (2) successive weeks within the twenty (20) days following the passage of said Ordinance in a newspaper having general circulation in the Town of St. Michaels.

Date: Nov 16, 2016

Jean R. Weisman
Jean R. Weisman, Town Clerk/Manager

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