

RESOLUTION NO. 2926

A RESOLUTION OF THE CITY OF SALISBURY, MARYLAND AUTHORIZING THE MAYOR TO ENTER INTO A COOPERATIVE AGREEMENT WITH THE CHESAPEAKE BAY TRUST TO ADMINISTER A GRANT PROGRAM TO IMPLEMENT STORMWATER PROJECTS AND PROGRAMS.

WHEREAS, the City has a Small Municipal Separate Storm Sewer System (MS4) Phase II General Discharge Permit in which the City must comply with the Six Minimum Control Measures and the Impervious Area Restoration efforts; and

WHEREAS, the State of Maryland has issued Watershed Implementation Plan goals and Total Maximum Daily Load goals; and

WHEREAS, the City implemented a Stormwater Utility to provide funding for improvements to the storm drainage system and compliance with the MS4 permit and State water quality goals; and

WHEREAS, pursuant to City Code Chapter 13.30, the City administers the Stormwater Utility Fee to fund projects to improve/reduce impacts of stormwater; and

WHEREAS, the Chesapeake Bay Trust, a nonprofit entity established by the Maryland General Assembly in 1985 to promote public awareness and participation in the restoration and protection of the water quality, aquatic and land resources of the Chesapeake Bay, and other aquatic and land resources of the State, is authorized to contract with other units of government; and

WHEREAS, the Chesapeake Bay Trust has developed a grant management process and possesses the technical, financial and managerial capacity to assist the City with the timely and appropriate commitment and expenditure of funds to expedite the implementation of the City's stormwater goals and regulatory requirements; and

WHEREAS, the Department of Infrastructure and Development has evaluated the opportunity to partner with the Chesapeake Bay Trust through a Cooperative Agreement and has determined it to be an effective way to implement outreach and restoration projects and programs; and


WHEREAS, funding of the Cooperative Agreement would be made on an annual basis as part of the City Budget contingent upon allocation of funds approved by Council; and


WHEREAS, the Mayor and Council have determined that it is in the public interest that the City enter into such an agreement and the Chesapeake Bay Trust has agreed to perform the work described in the attached Cooperative Agreement and to be bound by the terms contained within it.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Salisbury, Maryland does hereby authorize the Mayor to sign the attached Cooperative Agreement with the Chesapeake Bay Trust for the betterment of the City and its residents.

THE ABOVE RESOLUTION was introduced, read and passed at the regular meeting of the Council of the City of Salisbury held on this 11<sup>th</sup> day of March, 2019 and is to become effective immediately upon adoption.

ATTEST:

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

  
\_\_\_\_\_  
John R. Heath, President  
Salisbury City Council

APPROVED BY ME THIS:

  
\_\_\_\_\_, 2019  
12<sup>th</sup> day of MARCH

Jacob R. Day, Mayor



City of  
**Salisbury**  
Jacob R. Day, Mayor

To: Julia Glanz, City Administrator  
From: Amanda Pollack, P.E., Director of Infrastructure and Development *AP*  
Date: February 6, 2019  
Re: Chesapeake Bay Trust Cooperative Agreement

---

The Department of Infrastructure and Development has met with the Chesapeake Bay Trust (CBT) to discuss a partnership opportunity to implement stormwater projects. CBT has a grant management program to implement stormwater projects on behalf of jurisdictions. This program will supplement the work performed by the City for stormwater related projects and initiatives. Attached are two documents issued by CBT regarding this program:

1. About the Chesapeake Bay Trust Third-Party Grantmaker
2. Value of Citizen Outreach, Education, and Engagement through Non-Profit Organization in WIP implementation

Through this program, CBT will solicit for project proposal on behalf of the City. The City will determine the level of funding that it can commit to fund project in each budget year. Project proposals will include a detailed timeline, budget and partner responsibilities. Typically, most grants are complete between 18 and 36 months. Projects must reduce nutrient and sediment loads to the Bay and directly support state and/or local restoration milestones and goals. Best Management Practices (BMPs) must be approved by the Chesapeake Bay Program. Proposed projects may occur on any type of land ownership (private, commercial private, community- owned, non-profit, and government-owned), however, the project sites must be protected under a long-term protection agreement.

The program is a benefit to the City to implement projects without a heavy burden on staff resources. Additionally, the City's funds may be supplemented with CBT grants if there are proposals received that rank highly but are beyond the City's ability to fund.

We met with a representative from Anne Arundel County about their use of the program and received positive feedback. Anne Arundel County is funding approximately one million dollars in projects through this program annually. They provided the attached information regarding the actual cost savings with this project delivery method versus a traditional project delivery method.

Attached is a Cooperative Agreement with CBT. The amount of the annual funding would be established annually as part of the annual budget process. Initially, \$50,000 is recommended to fund this program in the FY20 budget from the Stormwater Utility. Additionally, attached is a Resolution to authorize the Mayor to sign the Cooperative Agreement. Unless you or the Mayor has further questions, please forward a copy of this memo, the Resolution and the Agreement to the City Council.

Chesapeake Bay Trust – City of Salisbury Cooperative Agreement

COOPERATIVE AGREEMENT

THIS COOPERATIVE AGREEMENT (“The Agreement”),  
entered into this 21<sup>st</sup> day of April, 2019, by and between the

CITY OF SALISBURY, MARYLAND  
125 N. DIVISON STREET  
SALISBURY, MARYLAND 21801  
(A Body Corporate and Politic, “the Jurisdiction”)

and

CHESAPEAKE BAY TRUST  
60 WEST STREET, SUITE 405  
ANNAPOLIS, MARYLAND 21401

(“The Trust”)

WHEREAS, the Jurisdiction and the Trust share the common goal of improving water quality in the Jurisdiction’s tributaries and to make progress on environmental restoration efforts to meet the Jurisdiction’s load reductions goals and requirements, by encouraging outreach and education, and by enhancing public awareness about the benefits of restoration through installation of best management practices; and

WHEREAS, pursuant to City Code Chapter 13.30, the Jurisdiction administers the Stormwater Utility Fee, used for projects to improve/reduce impacts of stormwater; and

WHEREAS, the Trust, a nonprofit entity established by the Maryland General Assembly in 1985 to promote public awareness and participation in the restoration and protection of the water quality, aquatic and land resources of the Chesapeake Bay, and other aquatic and land resources of the State, is authorized to contract with other units of government, including the Jurisdiction; and

WHEREAS, the Trust has developed a grant management process and possesses the technical, financial and managerial capacity to assist the Jurisdiction with the timely and appropriate commitment and expenditure of funds to expedite the implementation of Jurisdiction stormwater goals; and

WHEREAS, the Trust has a governance and oversight structure with formal representation from the local government, State natural resource agencies, and the Maryland General Assembly, and utilizes independent technical review committees to review proposals and recommend awards made through its competitive grant programs; and

WHEREAS, the Jurisdiction has chosen the Trust, and the Trust has agreed to perform the work described herein and to be bound by the terms of this Agreement;

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein, the parties agree as follows:

### **ARTICLE I. SCOPE OF WORK**

The Trust proposes to work in partnership with the City of Salisbury's Department of Infrastructure and Development to administer projects and programs to help the Jurisdiction meet Watershed Implementation Plan (WIP) goals, Total Maximum Daily Load (TMDL) goals and impervious restoration goals in conjunction with the Small Municipal Separate Storm Sewer System (MS4) Phase II General Discharge Permit. Projects and programs will be administered through grants to engage nonprofit organizations in the process to expand the partnership base for implementing best management practices in urbanized areas. Nonprofit organizations can help both with outreach and restoration. A grant program serves as a transparent and fair way to determine which nonprofit entities would be good partners, which propose competitive alternatives for restoration, and which can work most optimally with communities.

The Trust, through this Agreement, will develop a grant program to solicit outreach, education, and restoration projects for the Jurisdiction. To this end, the Trust shall perform the work and provide the services described in the SCOPE OF WORK, attached hereto as "APPENDIX A" and the BUDGET SCHEDULE, attached hereto as "APPENDIX B," all of which are expressly incorporated herein and made a part of this Agreement.

### **ARTICLE II. CONSIDERATION AND METHOD OF PAYMENT**

In consideration for the work performed and services provided by the Trust, in the first year, (as approved by Jurisdiction Council and adopted in the budget year) the Jurisdiction shall provide funding not to exceed fifty thousand dollars (\$50,000.00) for the first year of the agreement. The Trust understands that availability of funds in the second through 5th years of the agreement is subject to Jurisdiction approval. The Jurisdiction may provide additional funds to the Trust for administration upon written approval by both parties of a new budget.

The Trust will request reimbursement from the Jurisdiction in the form of invoices (either quarterly or monthly) in writing, each accompanied by a status report. The Jurisdiction and the Trust agree that the budget and payment schedule will not to exceed ceiling amounts stated on any given fiscal year of this agreement. A standard billing format shall be followed including, but not limited to, reference to the name of the grant and any Agreement Identifying Number. The Jurisdiction will process invoices for payment within 30 days.

The Trust agrees to follow a cost accounting practice, which is in accordance with the standards, principles, and procedures in Code of Maryland Regulation (COMAR) 21.09 and uniform accounting practices of the profession, as acceptable to the Jurisdiction.

### **ARTICLE III. TERM AND RENEWAL**

Subject to approval of the availability of funds by Jurisdiction, the Agreement Period shall be from July 1, 2019, through June 30, 2024, allowing for 3 years of provision of grant resources through 3 annual grant cycles and two additional years to allow grantees to complete the grant projects. This agreement shall be renewable for one additional term of five (5) years upon written agreement by both parties. It is contemplated that successful completion of this

Agreement may lead to funding for subsequent grant and/or project cycles under separate Cooperative Agreements.

**ARTICLE IV. AGREEMENT REPRESENTATIVES**

The following individuals shall have authority to act under this Agreement for their respective parties:

Jurisdiction: Mayor Jacob R. Day  
City of Salisbury  
410-548-3100  
[jday@salisbury.md](mailto:jday@salisbury.md)

Trust: Jana Davis, Ph.D.  
Executive Director  
Chesapeake Bay Trust  
410-974-2941 x100  
[jdavis@cbtrust.org](mailto:jdavis@cbtrust.org)

**ARTICLE V. KEY PERSONNEL**

The parties agree that the following named individuals are considered to be essential to the work being performed hereunder and are designated as key personnel who shall be made available to the full extent required to carry out the work under this Agreement:

Jurisdiction Amanda H. Pollack, P.E.  
Director, Department of Infrastructure and  
Development  
City of Salisbury  
410-548-3170  
[apollack@salisbury.md](mailto:apollack@salisbury.md)

Trust: Sadie Drescher  
Director, Restoration Programs  
Chesapeake Bay Trust  
410-974-2941 x105  
[sdrescher@cbtrust.org](mailto:sdrescher@cbtrust.org)

Should these individuals become unavailable during the period of performance, personnel of equivalent capability shall be assigned to complete the work related to this Agreement. Any such substitutions shall require prior written approval by the Jurisdiction, which approval may be denied by the Jurisdiction at its sole discretion, but shall not be unreasonably denied. Should the Trust be unable to provide substitutes acceptable to the Jurisdiction, the Jurisdiction may terminate this Agreement, or at its option, negotiate with the Trust for an acceptable modification in the work and/or payment under the Agreement relative to the loss of such key personnel.

**ARTICLE VI. MERGER**

This Agreement, all exhibits and approved modifications hereto (hereinafter referred to

collectively as “Agreement Documents”), embody the entire agreement of the parties. There are no promises, terms, conditions, or obligations referring to the subject matter, other than those contained herein or incorporated herein by reference. The Trust’s performance of any work under the Agreement constitutes the Trust’s acceptance of all of the Agreement Documents.

#### **ARTICLE VII. AMENDMENT**

Only a writing executed by both parties may amend this Agreement.

#### **ARTICLE VIII. GOVERNING LAW**

This Agreement shall be governed by and construed under the laws of the State of Maryland.

#### **ARTICLE IX. NO THIRD-PARTY BENEFICIARIES**

Nothing in this Agreement shall be construed to: (1) provide a benefit to any third party; (2) operate in any way as a promise, covenant, warranty, or other assurance to any third party; or (3) create any obligation to any third party.

#### **ARTICLE X. INDEMNIFICATION**

The Trust shall indemnify, defend, and hold harmless the Jurisdiction, its officers, directors, agents and employees (each, including the Jurisdiction, a “Covered Person”) from and against any and all pending or threatened claims, losses, liabilities, litigation, damage, penalty, expense and demands of every kind and nature whatsoever (any of the foregoing a “Loss”), including, without limitation, the costs as and when incurred of defending any such Loss, and including, without limitation, reasonable attorneys’ fees and disbursements therefore, incurred by a Covered Person resulting from or arising in connection with the performance of this Agreement, caused in part or in whole by any negligent or willful act or omission of the Trust, its officers, agents, employees or representatives. The Trust expressly understands and agrees that any performance bond or insurance protection required by this Agreement or otherwise provided shall in no way limit the responsibility to indemnify, keep and save harmless and defend the Jurisdiction as herein provided. The Jurisdiction does not waive any right or defense, or forebear any action, in connection herewith.

#### **ARTICLE XI. ACCOUNTING**

- A. *Retention of Records.* The Trust shall retain and maintain all records and documents relating to this Agreement for three (3) years after final payment or any applicable statute of limitations, whichever is longer. Records and documents relating to this Agreement shall include, but not be limited to, all documentation prepared by or for the Grantees and rebate recipients in connection with the completion of their Stormwater Management Retrofit and Rain Check Rebate Projects.
- B. *Audit.* The Trust shall make available for inspection all records and documents relating to this Agreement upon request of the Jurisdiction. All records and documents relating to this Agreement are subject to audit by the Jurisdiction or an authorized representative of the Jurisdiction. The Trust shall promptly grant access to its facilities to authorized

Jurisdiction representative(s) for review of documents, information and interviews of Trust personnel. The Trust will provide to the Jurisdiction upon request copies of any invoices, records, timesheets, work logs, contracts, or any other documents or information needed in order for the Jurisdiction to comply with State or federal reporting and audit requirements.

- C. *Payment.* Payments to the Trust shall be made in accordance with the terms of the Agreement.

**ARTICLE XII. TERMINATION**

A. *Termination for Default*

The Jurisdiction reserves the right to terminate this contract should the Trust default in its responsibilities under this agreement. Any remaining unencumbered funds will be returned to the Jurisdiction within sixty days (60) of the termination by default date.

B. *Termination by Convenience*

The Jurisdiction at its sole discretion can terminate this contract upon a ninety (90) day notice to the Trust. The Jurisdiction will fulfill its financial obligations for costs incurred and encumbrances made by the Trust covering the period up to the termination date. The Trust at its own discretion can terminate this contract upon a ninety (90) day notice to the Jurisdiction.

IN WITNESS WHEREOF, the parties have executed this Agreement by causing the same to be signed by their duly authorized representatives on the day and year first above written.

**City of Salisbury, Maryland**

Kemherly R. Nichols  
WITNESS

Jacob R. Day  
Mayor Jacob R. Day  
Salisbury, Maryland

Date: 12 MAR 19

Approved as to Legal Sufficiency

[Signature]  
Office of Law

Date: 4-4-19



**CHESAPEAKE BAY TRUST**



WITNESS



Jana Davis, Ph.D.  
Executive Director  
Chesapeake Bay Trust

Date: 4/21/19

**APPENDIX "A"**  
**COOPERATIVE AGREEMENT BETWEEN SALISBURY, MARYLAND, AND**  
**CHESAPEAKE BAY TRUST**  
**SCOPE OF WORK**

**I. Project Goal**

The goal of this Agreement is to implement stormwater restoration and outreach projects that will help the Jurisdiction meet its Watershed Implementation Plan goals, Total Maximum Daily Load goals and impervious restoration goals in conjunction with the Small Municipal Separate Storm Sewer System (MS4) Phase II General Discharge Permit.

**II. Scope of Work**

The Trust shall administer Grant Program Funds received from the Jurisdiction to Grantees during each Grant Cycle in accordance with the Trust's standard operating procedures and pro-forma grant agreement.

**III. Services**

To fulfill its obligations under this Agreement, the Trust shall provide the following services:

**1. Request For Proposal (RFP) stage**

The Trust will work with Jurisdiction staff to develop or modify one or more RFP(s) to be used to solicit project proposals. RFP development/modification includes articulation of grant program criteria used to evaluate each proposal, including maximum award amount, project type, type of applicant, capacity of applicant to lead a project.

**2. Outreach and Technical Assistance**

The Trust will work with Jurisdiction staff on outreach, technical assistance, project solicitation, project selection, implementation schedule, and monitoring protocols for the Grant Program. The Trust will offer site visits and/or technical meetings to potential applicants, assist in the identification of engineers or contractors, and in appropriate cases, provide sample conceptual designs to potential grantees. The Trust may organize, with the Jurisdiction's participation, workshops to answer any questions and assist in proposal development. The Trust will use its existing system of online grant applications to electronically receive proposals.

**3. Review Stage**

All awards in the Grant Program(s) will be made through a competitive process developed by the Trust, and reviewed and approved by the Jurisdiction. The Trust will establish one or more Technical Review Committees (Committees), in cooperation with the Jurisdiction, composed of funding partners, Trust staff and board members, and technical experts, and the Jurisdiction's Program Manager authorized to allocate funding to awards on behalf of the Jurisdiction.

The Committee will evaluate each project based on information in the proposal, as well as information from site visits undertaken by members of the Trust and/or the Jurisdiction. A ranking process developed by the Trust, and reviewed and approved by the Jurisdiction, and interviews with applicants will be used by the Committee to evaluate

proposals and make the best determinations for grant awards. The Trust's Board of Trustees has fiduciary oversight responsibility.

In addition, the Technical Review Committee will be asked to recommend refinements to the Request for Proposals (RFP) based on new scientific data, experiences from the previous cycle, or other information that has been collected.

**4. Award and Project Management Stage**

The Trust will meet with all Grantees undertaking restoration projects at key phases of project implementation, including finalization of design, pre-construction meetings, construction oversight site visits at a frequency to be determined on a project-by-project basis depending on the characteristics of the project and the experience and capacity of the grantee, and final construction walkthrough. Projects that require construction permits through the Jurisdiction will be inspected for permit compliance by the Jurisdiction. The Trust will manage tasks such as distribution of grant dollars, phasing grant awards, reviewing grant revisions, reviewing status reports, managing budgets, reviewing final grant award reports, and documenting and preparing achievements of impervious area treatment and relevant stormwater management project information. The Trust will require applicants to submit maintenance agreements for all projects on private and/or municipal properties.

**5. Reporting**

The Trust will require all Grantees to submit progress and final reports including a detailed description of the project and any associated copies of invoices. In addition, the Trust will conduct final site visits for all completed restoration construction projects. As appropriate, the Trust will modify its data collection and reporting forms to include additional information requested by the Jurisdiction.

**6. Final Project Stage**

The Trust will provide project data to the Jurisdiction for each implementation project for the Jurisdiction's records and subsequent inspections under the MS4 Triennial Compliance. The Trust will not be responsible for project monitoring or maintenance.

For these services, the Trust may invoice the Jurisdiction an administrative fee not to exceed 5% of the program funds.

**IV. Tentative Work Schedule**

The Trust will administer the Grant Program according to the following tentative work schedule.

<b>GRANT CYCLE – YEAR 1</b> (to be repeated each subsequent year of the Agreement)	
Date to be determined	Trust and Jurisdiction develop/modify Request(s) for Proposals
Date to be determined	Trust releases Request(s) for Proposals

<b>GRANT CYCLE – YEAR 1</b> (to be repeated each subsequent year of the Agreement)	
Date to be determined	Trust provide program outreach until the due date and beyond
Date to be determined	Trust identifies Technical Review Committee members with input from the Jurisdiction
Date to be determined	Proposals due
Date to be determined	Technical Review Committee meets to recommend proposals for funding
Date to be determined	Trust board meeting
Date to be determined	Trust submits Award Notification and Project Descriptions letter to Jurisdiction
Date to be determined	Trust distributes first phase of funding to grantees and projects begin
Ongoing throughout the Agreement period	Trust submits quarterly Interim Progress Reports to Jurisdiction
Date to be determined	Grantees awarded in Year 1 of the Agreement are to have completed their projects within two years

**V. Progress Report Schedule**

The Trust will furnish the Jurisdiction with an Award Notification and Project Descriptions letter, Interim Progress Reports and a Final Report indicating progress and performance according to the schedule provided in the table below.

<b>PROGRESS REPORT SCHEDULE</b>	
Date to be determined	Award notification and project descriptions from Year 1 Cycle Awards
Date to be determined	Interim Progress Report 1
Date to be determined	Interim Progress Report 2
Date to be determined	Interim Progress Report 3
Date to be determined	Interim Progress Report 4, Award notification and project descriptions from Year 2 Cycle Awards
Date to be determined	Interim Progress Report 5
Date to be determined	Interim Progress Report 6
Date to be determined	Interim Progress Report 7
Date to be determined	Interim Progress Report 8, Award notification and project descriptions from Year 3 Cycle Awards
Date to be determined	Interim Progress Report 9
Date to be determined	Interim Progress Report 10
Date to be determined	Interim Progress Report 11

Date to be determined	Interim Progress Report 12 Award notification and project descriptions from Year 4 Cycle Awards
Date to be determined	Interim Progress Report 13
Date to be determined	Interim Progress Report 14
Date to be determined	Interim Progress Report 15
Date to be determined	Interim Progress Report 16, Award notification and project descriptions from Year 5 Cycle Awards
Date to be determined	Interim Progress Report 17
Date to be determined	Interim Progress Report 18
Date to be determined	Interim Progress Report 19
Date to be determined	Interim Progress Report 20
Date to be determined	Interim Progress Report 21
Date to be determined	Interim Progress Report 22
Date to be determined	Interim Progress Report 23
Date to be determined	Final Report

**APPENDIX "B"**  
**BUDGET SCHEDULE**

The Trust shall apply 95% of the annual Program Funds to grants for implementation of watershed restoration, protection, or outreach/education projects. The Trust may retain the remaining 5% as an administration fee.

<b>Table 1. Budget for \$50,000 of Annual Program Funds.</b>	
<b>Description</b>	<b>Funding Level</b>
Grant Funds	\$47,500
Administrative Fee	\$2,500
Program Funds - Total	\$50,000