

ORDINANCE NO. 2579

AN ORDINANCE OF THE CITY OF SALISBURY AUTHORIZING THE MAYOR TO SIGN THE GRANT AGREEMENT AND ACCEPT A GRANT OF \$100,000.00 FROM THE MARYLAND DEPARTMENT OF TRANSPORTATION (MDOT) MARYLAND BIKEWAYS PROGRAM FOR THE DESIGN AND CONSTRUCTION OF THE WEST SIDE BIKE NETWORK AND APPROVING AN AMENDMENT OF THE FY20 BUDGET TO ALLOCATE SAID FUNDS FOR PURPOSES OF IMPLEMENTATION.

WHEREAS, the Maryland Department of Transportation has a Maryland Bikeways Program for providing grant funds to support and expedite projects improving bicycle and pedestrian transportation in the State; and

WHEREAS, Maryland Department of Transportation and the City of Salisbury have been working together to improve bicycle connectivity throughout the City of Salisbury; and

WHEREAS, the City of Salisbury desires to implement a bike route along Isabella Street and Lake Street as part of a wider West Side Bike Network with the intent of connecting cyclists on the West Side to the larger network; and

WHEREAS, the Project will enhance bicycle safety and access to the population of the City residing west of the Wicomico River; and

WHEREAS, Maryland Bikeways Program has awarded a grant in the amount of \$100,000.00 to provide for the design and implementation of the West Side Bike Network, Phase 1; and

WHEREAS, the City shall accept the grant in form of reimbursements and transfer those funds from the MDOT Reimbursement account to the Bikeways Capital Projects Account; and

WHEREAS, § 7-29 of the Salisbury City Charter prohibits the City from entering into an contract that requires an expenditure not appropriated or authorized by the City Council; and

WHEREAS, appropriations necessary to execute the purpose of this grant must be made upon the recommendation of the Mayor and the approval of four-fifths of the Council of the City of Salisbury.

NOW, THEREFORE, BE IT ENACTED AND ORDAINED that the City Council of the City of Salisbury, Maryland does hereby authorize the Mayor to sign the attached Grant Agreement dated _____, 2020 accepting the project term and definition of matching funds, for the betterment of the City and its residents, and accepts the grant of \$100,000.00 from Maryland Bikeways Program to design and implement funding for the West Side Bike Network, Phase 1 and further authorizes grant reimbursements to be transferred to the appropriate Bikeways Capital Projects Account.

BE IT FURTHER ORDAINED the City's Grant Fund Budget be amended as follows:

- 1) Increase the FY20 Maryland Bikeways Program Grant Revenue Account (10500-425805-xxxxx) by \$100,000
- 2) Increase the FY20 Maryland Bikeways Program Grant Expense Account (10500-513026-xxxxx) by \$100,000

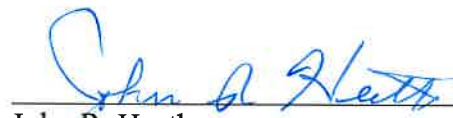
BE IT FURTHER ORDAINED that this Ordinance shall take effect from and after the date of its final passage.

THIS ORDINANCE was introduced and read at a meeting of the Council of the City of Salisbury held on this 10th day of February, 2020, and thereafter, a statement of the substance of the Ordinance having been published as required by law, was finally passed by the Council on the 24th day of February, 2020.

ATTEST:



Kimberly R. Nichols
CITY CLERK



John R. Heath
PRESIDENT, City Council

APPROVED by me this 26th day of FEBRUARY, 2020



Jacob R. Day
MAYOR, City of Salisbury



City of
Salisbury
Jacob R. Day, Mayor

To: Julia Glanz, City Administrator
From: Amanda Pollack, P.E., Director of Infrastructure and Development AP
Date: December 24, 2019
Re: Ordinance to Accept MDOT Bikeways Funds, Sign the Grant Agreement and Allocate funds via a Budget Amendment

In June 2019, the City of Salisbury applied for a grant from the Maryland Bikeways Program to provide funding for final design and implementation of the West Side Bike Network Project, Phase 1. The Maryland Department of Transportation (MDOT) approved this grant in the amount of \$100,000. The Office of Planning and Capital Programming of the Maryland Department of Transportation prepared the attached Grant Agreement after MDOT's review and approval of the design RFP.

The Scope of Work identified within this Grant Agreement includes the final design and implementation of the of the bike route extending the bike lanes on Isabella street through the Delaware Avenue intersection, upgrading the entire facility to a striped buffer protected bike lane, and installing new bike lanes on Lake Street in conjunction with resurfacing programmed along that corridor. The final design will include preparing striping drawings that show the lane striping, lane markings, bicycle markings on-pavement, bicycle-friendly inlet grates and bike route signage. The project will add 1.4 miles of bike lanes, increase the protection of an existing 0.45 miles of bike lanes, and will serve to connect the west side population to Downtown via crossings at Isabella Street, Lake Street and North Division Street.

Please find attached an Ordinance to sign the Grant Agreement with MDOT and to accept the Maryland Bikeways Program Grant in the amount of \$100,000.00. The Ordinance also serves as the Budget Amendment to allocate funding for this project. The City will provide in-kind services via project management and coordination. Additionally, the City shall pay for the previously planned resurfacing of Lake Street and a portion of Isabella Street via the Citywide Street Maintenance account. The in kind and associated work will provide the City's match of \$74,000. Department of Infrastructure and Development recommends approval of the Grant Agreement.

Unless you or the Mayor has further questions, please forward this memo, Ordinance and Grant Agreement to City Council.

GRANT AGREEMENT

BY AND BETWEEN

THE MARYLAND DEPARTMENT OF TRANSPORTATION

AND

CITY OF SALISBURY, MARYLAND

THIS GRANT AGREEMENT executed in triplicate and entered into this _____ day of _____, 2019, by and between the Maryland Department of Transportation (“Department” or “MDOT”) and City of Salisbury (“Grantee”), Maryland.

WITNESSETH:

WHEREAS, the Department has programmed in the Draft FY 2020-2025 Consolidated Transportation Program /2020 State Report on Transportation a total of Eight Million Nine Hundred and Thirty-Seven Thousand Dollars (\$8,937,000) for the Maryland Bikeways Program (“Program”);

WHEREAS, the Department budgeted within the Program One-Hundred Thousand Dollars (\$100,000) for the Northwest Salisbury Bikeways – Phase 1, a Minor Retrofit project described as a low-stress bicycle network with bike lanes and traffic calming features on Isabella Street, Lake Street and Small Street, in Salisbury, Maryland (the “Project”);

WHEREAS, pursuant to Section 2-602 of the Transportation Article of the Annotated Code of Maryland, it is in the public interest for the State of Maryland to include enhanced transportation facilities for pedestrians and bicycle riders as an essential component of the State’s transportation system;

WHEREAS, the Maryland Bikeways Program was established and approved by the General Assembly to provide state transportation funding to support and expedite projects that improve bicycle transportation in the State;

WHEREAS, the Grantee has committed a matching fund contribution of Seventy-Four Thousand Dollars (\$74,000) (“Matching Fund Contribution”) to the Project;

WHEREAS, the total Project cost estimate (“Estimate”) as set forth in the Grantee’s grant application and accepted by MDOT is One Hundred Seventy-Four Thousand Dollars (\$174,000);

WHEREAS, the Project will create a low-stress bikeways network connecting citizens and visitors with economic and recreational opportunities;

WHEREAS, the Project is consistent with the 2017 Salisbury Bikeways Network Master Plan and includes opportunities for public input;

WHEREAS, the Grantee will assume all maintenance and operating costs associated with the Project when it is completed;

WHEREAS, the Project is a valuable component of Maryland's transportation system;

WHEREAS, the Department has supported similar projects in various locations in the State;

WHEREAS, the Department and the Grantee agree that the Project will benefit the parties to this Agreement and will promote the safety, health, and general welfare of the citizens of the State of Maryland;

WHEREAS, Section 2-103(i) of the Transportation Article of the Annotated Code of Maryland (2015 Replacement Volume, as amended and supplemented), authorizes the Secretary of Transportation, to the extent permitted by the State budget, to make grants-in-aid to any person, including political subdivisions of the State of Maryland, for any transportation related purpose;

NOW, THEREFORE, THIS AGREEMENT WITNESSETH: That for and in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. The above recitals are re-affirmed and incorporated herein by reference.
2. The Department hereby grants to the Grantee a sum not to exceed One-Hundred Thousand Dollars (\$100,000) ("Grant") to be used by the Grantee for the completion of the Project. The Grantee shall be responsible for all work in connection with the Project, including the following:
 - a. Conduct traffic analysis and final design for the project;
 - b. Submit Draft Plans to the Department for review and comment;
 - c. Conduct community outreach and provide a public comment period;
 - d. Install bicycle-friendly storm drain grates, vertical delineators, signing, pavement marking and adjust signal timing as needed;
 - e. Preparation of quarterly status reports and a final report, as requested by the Department; and
 - f. Monitoring and supervising the compliance with all provisions in this Agreement.

3. Notwithstanding anything to the contrary herein, the maximum amount payable by the Department under this Grant Agreement shall be the lesser of \$100,000 or 80% of the Project's total cost.

4. The Project shall be consistent with relevant design standards and guidelines, including 2012 American Association of State Highway and Transportation Officials (AASHTO) Bicycle Design Guidelines, the Association of Pedestrian and Bicycle Professionals Bicycle Parking Guidelines, the Maryland Manual of Uniform Traffic Control Devices, and the Access Board Advance Notice of Proposed Rulemaking (ANPRM) on Accessibility Guideline for Shared Use Paths.

5. The Grantee shall engage a professional engineer, registered in the State of Maryland, for design services on the Project. The Grantee shall provide to the Department draft design plans for review and comment and final design plans for the Project record. Notwithstanding anything to the contrary herein, the Grantee shall have final rights of approval.

6. Prior to commencement of work on the Project, the Grantee shall require all contractors and subcontractors to secure and keep in force during the term of this Agreement, from insurance companies, government self-insurance pools or government self-retention funds, authorized to do business in Maryland, the following insurance coverages:

- a. commercial general liability, including premises or operations, contractual, and products or completed operations coverages (if applicable), with minimum liability limits of \$250,000 per person and \$1,000,000 per occurrence;
- b. automobile liability, including Owned (if any), Hired, and Non-Owned automobiles, with minimum liability limits of \$250,000 per person and \$1,000,000 per occurrence;
- c. workers compensation coverage meeting all statutory requirements.

This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and must be placed with insurers rated "A-" or better by A.M. Best Company, Inc., provided any excess policy follows form for coverage. The Grantee shall evidence limits of insurability for general liability coverage in an amount of \$800,000 aggregate and \$400,000 each occurrence. The Grantee shall have the right to self-insure. These are the maximum limits of liability for which the Grantee's Self-Insurance Program is responsible, as determined by Section 5-301 *et seq.* of the Courts and Judicial Proceedings Article of the Annotated Code of Maryland, also known as the "Local Government Tort Claims Act."

The Department and its agencies, officers, and employees shall be endorsed on the commercial general liability policies, including any excess policies (to the extent applicable), as an additional insured. Coverage will be primary and noncontributory with any other insurance and self-insurance. There will be no cancellation, material change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without thirty (30) days written notice to the

Department. Certificates of insurance shall be provided to the Department upon request. All endorsements shall be provided as soon as practicable. Failure to provide insurance as required in this Agreement is a material breach of contract entitling the Department to terminate this Agreement.

7. The Grant represents the maximum financial liability of the Department under this Agreement subject to, limited by and contingent upon the appropriation and availability of funds, as well as the types of liabilities, damage caps, and notice requirements stated in the Maryland Torts Claims Act ("MTCA") currently found at the State Government Article, Section 12-101 *et seq.* of the Maryland Annotated Code.

8. The parties agree that the Grantee will utilize the Grant for the Project in conjunction with other funds it has obtained from funding sources other than the Maryland Bikeways Program to complete the Project.

9. The Grantee shall maintain facilities and equipment funded through this Grant for the duration of their useful life, and in any event not less than five years. At the request of the Department, the Grantee shall refund expenditures paid by the Department if Project facilities and equipment are not so maintained.

10. The Grantee may use funds only for costs incurred in connection with the Project. Payment of the Grant by the Department shall be made on a reimbursable basis upon the Grantee's submission of invoices for such payment, subject to the following conditions.

All invoices for payment shall include:

- (a) actual expenditures incurred by the Grantee in connection with the Project;
- (b) a certification by the Grantee that all costs charged to the Project are in connection therewith and supported by properly executed records, vouchers, invoices or contracts evidencing the nature and propriety of the charges.

Invoices/requests for reimbursement will be submitted not more frequently than once per month (30 days). Invoices/requests for reimbursement will be reviewed by MDOT to determine (a) that the indicated costs are allowable hereunder and (b) that the invoiced work contributes directly to the accomplishment of the Project. Failure to meet these conditions will result in disallowed costs that will be deducted from the authorized appropriated amount. Payment shall be made by the Department to the Grantee within thirty (30) days of the Department's receipt and approval of the invoice and accompanying certifications. The final invoice may not be paid until documentation of the Matching Fund Contribution and the final report is submitted. No Project costs incurred prior to the execution of this Agreement will be reimbursed.

11. The Grantee shall comply with all applicable Federal, State and local laws in expending Grant funds and in carrying out the Project, including compliance with the Americans with Disabilities Act of 1990, particularly as it relates to public meetings held in connection with the Project.

12. The term of this Agreement shall commence upon the date first set forth above and shall terminate when all payments of the Grant have been made or on December 31, 2021, whichever is sooner. All work on the Project that is reimbursable under this Grant must be completed and all invoices/requests for reimbursement must be submitted by the Grantee before the grant termination date. Any invoices/requests for reimbursement submitted after the grant termination date will be identified as a disallowed cost and not processed for payment by MDOT. At its discretion, the Department may elect to extend the term of the Grant by up to six months, upon written notice by MDOT.

13. The Department reserves the right to suspend or terminate all or part of the financial assistance herein provided and to terminate this Agreement, in whole or in part, if:

- (a) the Grantee breaches or fails to fulfill any of the terms of this Agreement;
or
- (b) funds are not appropriated by the General Assembly of Maryland to fund this Grant.

The Grantee acknowledges and agrees that funding under this Agreement is expressly dependent upon the availability to the Department of funds appropriated by the General Assembly and that, except as otherwise provided for herein, the Department shall not be liable for any breach of this Agreement due to the absence of an appropriation. Termination of this Agreement will not invalidate obligations properly incurred by the Grantee prior to the date of termination if such obligations are unable to be canceled. The acceptance of a remittance from the Department of any or all funds, or the closing out of the Department's financial participation under this Agreement, shall not constitute a waiver of any claim that the Department may otherwise have against the Grantee arising out of this Agreement. If, upon termination of this Agreement, it is determined by the Department that funds are due to the Department, the Grantee shall promptly remit such amount to the Department within forty-five (45) days following written notification to the Grantee from the Department. The Grantee's agreement to remit any excess Grant funds to the Department shall survive the termination of this Agreement.

In addition to the Department's remedies under this Section, the Department may proceed to protect and enforce all rights available to it, by suit in equity, action in law or by any other appropriate proceedings, any or all of which may be exercised contemporaneously with each other and all of which rights and remedies shall survive the termination of this Agreement.

14. The Grantee shall maintain separate and complete accounting records that are consistent with generally accepted accounting procedures and accurately reflect all income and expenditures of Grant funds for the Project. Grantee accounting records shall be maintained for a period of three (3) years after the termination of this Agreement. The records of the Grantee must be in sufficient detail to determine the nature of the costs incurred and/or expenditures made by the Grantee for the Project.

15. The Department reserves the right to perform interim and final audits of the Grant provided for under this Agreement. Any final audit shall commence within three (3) years of the expiration or earlier termination of this Agreement. In connection with any audit undertaken

hereunder, the Grantee shall provide access to all records with respect to the Project. Following the completion of any audit undertaken hereunder, the Grantee shall refund to the Department within forty-five (45) days following notification by the Department any Grant payments that are found to be unsupported by acceptable accounting records or not expended in accordance with the terms of this Agreement. The Grantee's covenant to repay any excess Grant payments shall survive the expiration or earlier termination of this Agreement.

16. This Agreement may be modified only by written instrument, executed by the Department and the Grantee, except for the Grant extension pursuant to paragraph 12.

17. The Grantee shall, to the extent permitted by law, defend, indemnify, and hold harmless the Department, its officers, agents, and employees, from any and all claims, demands, suits, causes of action, liability, damages, losses, costs and expenses (including reasonable attorneys' fees) of whatsoever nature, including, without limitation, those arising on account of any injury or death of persons or damage to property, caused by, arising out of, or resulting from any and all services and activities performed by the Grantee or its employees, agents, subcontractors, or consultants relating to the Project and this Agreement.

18. It is understood and agreed that the sole obligation of the Department is the payment to the Grantee the sum of money specified in Section 2 of this Agreement.

19. All payments hereunder by the Department to the Grantee are subject to the budgetary and appropriation requirements of Section 3-216(d)(2) of the Transportation Article of the Annotated Code of Maryland, (2015 Replacement Volume, as amended and supplemented).

20. No right, benefit or advantage inuring to the Grantee under this Agreement may be assigned and no burden imposed on the Grantee hereunder may be delegated or assigned without the prior written approval of the Department.

21. The parties hereby agree that this Agreement shall be construed in accordance with the law of the State of Maryland.

22. As an inducement to the Department to make the Grant, the Grantee hereby certifies to the Department that:

- (a) any resolution, ordinance or other action which may be required by local law has been introduced and adopted, passed, enacted or taken as an official act of the Grantee's governing body, authorizing the execution and delivery of this Agreement by the Grantee in such manner and form as to comply with all applicable laws to make this Agreement the valid and legally binding act and agreement of the Grantee;
- (b) no officer or employee of the Grantee, or its designees or agents, no consultants, no member of the Grantee's governing body, and no other public official of the Grantee, who exercises any functions or responsibilities over the Project or the Grant shall have or obtain a personal or financial interest or benefit from any activity in connection

with the Project or Grant or have an interest in any contract, subcontract or agreement with respect therewith;

- (c) the Grantee is not in arrears with respect to the payment of any moneys due and owing the State of Maryland, or any department or unit thereof, including, but not limited to, the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of this Agreement.

23. The Department and the Grantee certify that they prohibit, and covenant that they will continue to prohibit, discrimination on the basis of:

- (a) age, ancestry, color, creed, marital status, national origin, race or religious or political affiliation, belief or opinion, or sexual orientation;
- (b) sex or age, except when age or sex constitutes a bona fide occupational qualification; or
- (c) the physical or mental disability of a qualified individual with a disability.

Upon the request of the other party, the Department and the Grantee will submit to the other party information relating to its operating policies and procedures with regard to age, ancestry, color, creed, marital status, mental or physical disability, national origin, race, religious or political affiliation, belief or opinion or sex or sexual orientation.

24. The Department and the Grantee shall comply with the State's policy concerning drug and alcohol-free workplaces, as set forth in Executive Order 01.01.1989.18 and COMAR 21.11.08, and must remain in compliance throughout the term of this Agreement.

25. It is specifically agreed between the Department and the Grantee that it is not intended by any of the provisions of this Agreement to create in any public entity, or any member thereof, or in any private entity third party beneficiary status in connection with the performance of the obligations herein.

26. If any provision of this Agreement is held to be illegal, invalid or unenforceable by a court of competent jurisdiction:

- (a) such provision shall be fully severable;
- (b) this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Agreement; and
- (c) the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance from this Agreement.

27. This Agreement may be executed in several identical counterparts, each of which shall constitute an original and all of which shall constitute, collectively, one agreement.

28. This Agreement shall inure to and be binding upon the parties hereto, their agents, successors and, to the extent an assignment has been approved pursuant to Section 20 of this Agreement, their assigns.

29. Each notice, invoice, demand, request, consent, approval, disapproval, designation or other communications between the parties, to the extent required to be in writing shall be made by United States Postal Mail to the following:

In the case of MDOT:

Heather Murphy, Director
Office of Planning and Capital
Programming
7201 Corporate Center Drive
Hanover, MD 21076

In the case of the Grantee:

Mr. William White
Transportation Projects Specialist
City of Salisbury
Department of Public Works
125 North Division Street
Salisbury, MD 21801

The next page is the signature page.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

MARYLAND DEPARTMENT OF TRANSPORTATION

WITNESS:

By: _____
R. Earl Lewis, Jr. Date
Deputy Secretary

FUNDS AVAILABLE:

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

Jaclyn Hartman, Chief Financial Officer
Office of Finance

Brenden Lee Hodge, Assistant Attorney General
Maryland Department of Transportation

CITY OF SALISBURY, MARYLAND

WITNESS:

THE CITY OF SALISBURY

By: _____
Jacob R. Day Date
Mayor