

ORDINANCE NO. 2775

AN ORDINANCE OF THE CITY OF SALISBURY AUTHORIZING THE MAYOR TO ENTER INTO GRANT AGREEMENTS WITH THE MARYLAND DEPARTMENT OF TRANSPORTATION (MDOT) MARYLAND BIKEWAYS PROGRAM FOR THE PURPOSE OF ACCEPTING GRANT FUNDS FOR THE DESIGN OF THE RAIL TRAIL, PHASE 2 & 3, CONSTRUCTION OF ARMSTRONG PARKWAY RAIL TRAIL CONNECTOR AND A CITYWIDE PEDESTRIAN AND BIKE COUNTING PROGRAM; AND TO APPROVE A BUDGET AMENDMENT 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 also desires to implement a bike route along railway that runs north-south through the City; and

WHEREAS, it is in the public interest for the City of Salisbury to enhance transportation for pedestrians and bicycle riders through the aforementioned projects, which will increase bicycle safety and assist in prioritizing infrastructure investment based on where active transportation users actually are; and

WHEREAS, in furtherance of these projects, the Maryland Bikeways Program has awarded grants in the total amount of \$289,034.00 to provide for the design of the Rail Trail, Phase 2 & 3 (\$139,700), Construction of Armstrong Parkway Connector (\$100,000), and a Citywide Pedestrian and Bike Counting Program (\$49,334); and

WHEREAS, in accordance with the related grant agreements, which are attached hereto and incorporated by reference herein, the City will provide matching funds in the amount of \$154,036 which matching funds to be allocated as follows: Rail Trail, Phase 2 & 3 (\$40,000), Construction of Armstrong Parkway Connector (\$101,700), and Citywide Pedestrian and Bike Counting Program (\$12,336); and

WHEREAS, the City has surplus funds available in current year operating accounts to accomplish the grant match amounts; and

WHEREAS, § 7-29 of the Salisbury City Charter prohibits the City from entering into a contract that requires an expenditure not appropriated or authorized by the Council of the City of Salisbury; 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 BY THE COUNCIL OF THE CITY OF SALISBURY, MARYLAND, as follows:

Section 1. Mayor Jacob R. Day, on behalf of the City of Salisbury, is hereby authorized to enter into the attached grant agreements, accepting the project term and definition of matching funds for the betterment of the City and its residents, and further accepting the total grant amount of \$289,034.00 from

Maryland Bikeways Program to provide for the design of the Rail Trail, Phase 2 & 3, Construction of Armstrong Parkway Connector and Citywide Pedestrian and Bike Counting Program; and

BE IT FURTHER ENACTED AND ORDAINED BY THE COUNCIL OF THE CITY OF SALISBURY, MARYLAND, as follows:

Section 2. The City of Salisbury's FY23 Grant Fund Budget be and hereby is amended as follows:

Rail Trail, Phase 2 & 3:

Increase MDOT Grant Revenue Account (10500-425805-xxxxx) by \$139,700
Increase Grant Match Revenue Account (10500-499000-xxxxx) by \$40,000
Increase Construction Grant Expense Account (10500-513026-xxxxx) by \$179,700; and

Construction of Armstrong Parkway Connector:

Increase MDOT Grant Revenue Account (10500-425805-xxxxx) by \$100,000
Increase Grant Match Revenue Account (10500-499000-xxxxx) by \$101,700
Increase Construction Grant Expense Account (10500-513026-xxxxx) by \$201,700; and

Bike Counting Program:

Increase MDOT Grant Revenue Account (10500-425805-xxxxx) by \$49,334
Increase Grant Match Revenue Account (10500-499000-xxxxx) by \$12,336
Increase Construction Grant Expense Account (10500-513026-xxxxx) by \$61,670; and

Section 3. The City of Salisbury's FY23 General Fund Budget be and hereby is further amended as follows:

Increase Revenue 01000-469810 Use of Surplus by \$154,036
Increase Expense 91001-599131 Grant Match DID by \$101,700
Increase Expense 91001-599131 Grant Match DID by \$12,336
Increase Expense 91001-599131 Grant Match DID by \$40,000

BE IT FURTHER ENACTED AND ORDAINED BY THE COUNCIL OF THE CITY OF SALISBURY, MARYLAND, as follows:

Section 4. It is the intention of the Mayor and Council of the City of Salisbury that each provision of this Ordinance shall be deemed independent of all other provisions herein.

Section 5. It is further the intention of the Mayor and Council of the City of Salisbury that if any section, paragraph, subsection, clause or provision of this Ordinance shall be adjudged invalid, unconstitutional or otherwise unenforceable under applicable Maryland or federal law, such adjudication shall apply only to the section, paragraph, subsection, clause or provision so adjudged and all other provisions of this Ordinance shall remain and shall be deemed valid and enforceable.

Section 6. The recitals set forth hereinabove are incorporated into this section of the Ordinance as if such recitals were specifically set forth at length in this Section 5.


Section 7. 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 Mayor and Council of the City of Salisbury held on the 23rd day of January, 2023 and thereafter, a statement of the substance of the Ordinance having been published as required by law, in the meantime, was finally passed by the Council of the City of Salisbury on the 13th day of February, 2023.

ATTEST:

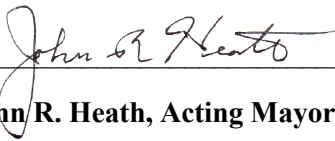


Kimberly R. Nichols, City Clerk



Muir Boda, City Council President

Approved by me, this 15th day of February, 2023.



John R. Heath, Acting Mayor

GRANT AGREEMENT

BY AND BETWEEN

THE MARYLAND DEPARTMENT OF TRANSPORTATION

AND

CITY OF SALISBURY, MARYLAND

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

WITNESSETH:

WHEREAS, the Department has programmed in the Draft FY 2023-2028 Consolidated Transportation Program-2022 State Report on Transportation a total of Fifteen Million Nine Hundred Fifty-Three Thousand Six Hundred Thirty-One Dollars (\$15,953,631) for the Maryland Kim Lamphier Bikeways Network Program (“Program”);

WHEREAS, the Department budgeted within the Program Forty-Nine Thousand Three Hundred Thirty-Four Dollars (\$49,334) for the Citywide Bike and Ped Counting Program, a minor retrofit project described as establishing a bicycle and pedestrian counter program to monitor transportation trends and increase safety (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 Kim Lamphier Bikeways Network 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 up to Twelve Thousand Three Hundred Thirty-Six Dollars (\$12,336) (“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 Sixty-One Thousand Six Hundred Eighty Dollars (\$61,680);

WHEREAS, the Project will accurately count the number of users and the increase/decrease over time, catalog anonymous data trends to be able to justify continued investment in active transportation to the public and prioritize infrastructure investment based on where active transportation users actually are;

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 Forty-Nine Thousand Three Hundred Thirty-Four Dollars (\$49,334) ("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. The establishment of a bicycle and pedestrian counter program to monitor transportation trends and increase safety;
 - b. Provide opportunities for community input on recommendations;
 - c. Submit a list of potential counter locations to MDOT Kim Lamphier Bikeways Network Program for review prior to installation;
 - d. Preparation of quarterly status reports and a final report, as requested by the Department; and
 - e. Monitoring and supervising the compliance with all provisions in this Agreement.
 - f. Provide bicycle traffic count data on a quarterly basis to the Maryland Department of Transportation for five (5) years following the installation of the automated counters. Data will be submitted on the 10th day of January, April, July and October through 2027;

3. Notwithstanding anything to the contrary herein, the maximum amount payable by the Department under this Grant Agreement shall be the lesser of \$49,334 or 80% of the Project's total cost and the maximum amount of the Matching Fund Contribution payable by the County under this Grant Agreement shall be the lesser of \$12,336 or 20% 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, such insurance to name the Grantee, the Department and all respective agencies, officers, official and employees as additional insureds on a primary and non-contributory basis and for ongoing and completed operations;
- 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, 2024**, 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. The Grantee's indemnification obligations under this paragraph are provided to the extent permitted by and subject to the provisions of the Maryland Local Government Tort Claims Act, Sections 5-301 et seq. of the Courts and Judicial Proceedings Article, Annotated Code of Maryland and subject to the appropriation of funds. The foregoing indemnification is not to be deemed as a waiver of any immunity that may exist in any action against the Grantee or its officers, agents, volunteers and employees.

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. This Agreement may be executed in counterparts; all such counterparts will be deemed one agreement. This agreement may be executed by facsimile or electronic (.pdf) signature and a facsimile or electronic (.pdf) signature will constitute an original for all purposes without delivery of an original signature being thereafter required.

30. 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:

William White
Transportation Project Specialist
City of Salisbury 125 N. Division St
Salisbury, MD 21811
wwhite@salisbury.md
410-548-3170

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

By:

John R. Heath
Acting Mayor

GRANT AGREEMENT

BY AND BETWEEN

THE MARYLAND DEPARTMENT OF TRANSPORTATION

AND

CITY OF SALISBURY, MARYLAND

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

WITNESSETH:

WHEREAS, the Department has programmed in the Draft FY 2023-2028 Consolidated Transportation Program-2022 State Report on Transportation a total of Fifteen Million Nine Hundred Fifty-Three Thousand Six Hundred Thirty-One Dollars (\$15,953,631) for the Maryland Kim Lamphier Bikeways Network Program (“Program”);

WHEREAS, the Department budgeted within the Program One Hundred Thousand Dollars (\$100,000) for the Salisbury Naylor Mill Connector, a minor retrofit project described as repurposing Armstrong Road to create a shared-use path connecting Naylor Mill Road to Salisbury Boulevard (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 Kim Lamphier Bikeways Network 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 up to One Hundred One Thousand Seven Hundred Dollars (\$101,700) (“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 Two Hundred One Thousand Seven Hundred Dollars (\$201,700);

WHEREAS, the Project will provide a safe, separated, low-level of stress, shared-use biking and walking path connecting Naylor Mill Rd via Armstrong Rd and Marvel Rd, to Northwood Drive;

WHEREAS, the Project is consistent with the Salisbury Rail Trail Master Plan and MoveSBY – the City Active Transportation Masterplan;

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. The safe, separated, low-level of stress, shared-use biking and walking path connecting Naylor Mill Rd via Armstrong Rd and Marvel Rd;
 - b. Provide opportunities for community input on recommendations;
 - c. Submit draft 65% plans to MDOT Kim Lamphier Bikeways Network Program for review and comment prior to finalizing plan;
 - d. Preparation of quarterly status reports and a final report, as requested by the Department; and
 - e. 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 50% of the Project's total cost and the maximum amount of the Matching Fund Contribution payable by the County under this Grant Agreement shall be the lesser of \$101,700 or 50% 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, such insurance to name the Grantee, the Department and all respective agencies, officers, official and employees as additional insureds on a primary and non-contributory basis and for ongoing and completed operations;
- 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, 2024**, 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. The Grantee's indemnification obligations under this paragraph are provided to the extent permitted by and subject to the provisions of the Maryland Local Government Tort Claims Act, Sections 5-301 et seq. of the Courts and Judicial Proceedings Article, Annotated Code of Maryland and subject to the appropriation of funds. The foregoing indemnification is not to be deemed as a waiver of any immunity that may exist in any action against the Grantee or its officers, agents, volunteers and employees.

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. This Agreement may be executed in counterparts; all such counterparts will be deemed one agreement. This agreement may be executed by facsimile or electronic (.pdf) signature and a facsimile or electronic (.pdf) signature will constitute an original for all purposes without delivery of an original signature being thereafter required.

30. 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:

William White
Transportation Project Specialist
City of Salisbury
125 N. Division St
Salisbury, MD 21811
wwhite@salisbury.md
410-548-3170

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

By:

John R. Heath
Acting Mayor

GRANT AGREEMENT

BY AND BETWEEN

THE MARYLAND DEPARTMENT OF TRANSPORTATION

AND

CITY OF SALISBURY, MARYLAND

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

WITNESSETH:

WHEREAS, the Department has programmed in the Draft FY 2023-2028 Consolidated Transportation Program-2022 State Report on Transportation a total of Fifteen Million Nine Hundred Fifty-Three Thousand Six Hundred Thirty-One Dollars (\$15,953,631) for the Maryland Kim Lamphier Bikeways Network Program (“Program”);

WHEREAS, the Department budgeted within the Program One Hundred Thirty-Nine Thousand Seven Hundred Dollars (\$139,700) for the Salisbury Rail Trail, Phases 2 & 3, a design project described as design of a shared-use path adjacent to the railway connecting Phase 1 Salisbury Rail Trail with Salisbury University (“SU”) (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 Kim Lamphier Bikeways Network 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 up to Forty Thousand Dollars (\$40,000) (“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-Nine Thousand Seven Hundred Dollars (\$179,700);

WHEREAS, the Project will connect residents to the extension of Phase 1 (in design), the pedestrian tunnel under US 13 to SU’s Main Campus and US 13 crossings at W College Ave;

WHEREAS, the Project is consistent with the Citywide Bike Masterplan (2017), Salisbury Boulevard Masterplan (2018) and Rail Trail Masterplan (2019); 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 Thirty-Nine Thousand Seven Hundred Dollars (\$139,700) ("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. The design of a shared-use path adjacent to the railway connecting Phase 1 Salisbury Rail Trail with Salisbury University;
 - b. Provide opportunities for community input on recommendations;
 - c. Submit draft 30% plans to MDOT Kim Lamphier Bikeways Network Program for review and comment prior to finalizing plan;
 - d. Preparation of quarterly status reports and a final report, as requested by the Department; and
 - e. 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 \$139,700 or 78% of the Project's total cost and the maximum amount of the Matching Fund Contribution payable by the County under this Grant Agreement shall be the lesser of \$40,000 or 22% 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, such insurance to name the Grantee, the Department and all respective agencies, officers, official and employees as additional insureds on a primary and non-contributory basis and for ongoing and completed operations;
- 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, 2024**, 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. The Grantee's indemnification obligations under this paragraph are provided to the extent permitted by and subject to the provisions of the Maryland Local Government Tort Claims Act, Sections 5-301 et seq. of the Courts and Judicial Proceedings Article, Annotated Code of Maryland and subject to the appropriation of funds. The foregoing indemnification is not to be deemed as a waiver of any immunity that may exist in any action against the Grantee or its officers, agents, volunteers and employees.

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. This Agreement may be executed in counterparts; all such counterparts will be deemed one agreement. This agreement may be executed by facsimile or electronic (.pdf) signature and a facsimile or electronic (.pdf) signature will constitute an original for all purposes without delivery of an original signature being thereafter required.

30. 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:

William White
Transportation Project Specialist
City of Salisbury
125 N. Division St
Salisbury, MD 21811
wwhite@salisbury.md
410-548-3170

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:

Jaelyn Hartman, Chief Financial Officer
Office of Finance

Brenden Lee Hodge, Assistant Attorney General
Maryland Department of Transportation


CITY OF SALISBURY, MARYLAND

By:

John R. Heath
Acting Mayor



City of
Salisbury
Jacob R. Day, Mayor

To: Julia Glanz, City Administrator
From: Richard Baldwin, Director of Infrastructure & Development 
Date: December 7, 2022
Re: FY23 MDOT Bikeways Grant Agreement Ordinance

The Maryland Department of Transportation Bikeways Program has awarded the City of Salisbury three grants. Two grants for design and improvement of the Rail Trail and a third grant for a Citywide Pedestrian and Bike Counting Program. These awards total \$289,034.00 to which the City is to provide \$154,036 of matching funds.

The Rail Trail grants consist of \$139,700 for design of Rail Trail Phases 2 & 3 to which \$40,000 in matching funds are to be allocated, and \$100,000 for Construction of Armstrong Parkway Connector, to which \$101,700 in matching funds are to be allocated. The Citywide Pedestrian and Bike Counting Program consists of \$49,334 of grant funding to which \$12,336 in matching funds are to be allocated. The City has surplus funds available in the current year operating accounts to meet the matching fund requirements.

Attached are a draft ordinance to enter into agreements to accept these grants that includes a budget amendment to allocate the required matching funds and copies of the grant agreements.

Unless you or the Mayor have further questions, please forward a copy of this memo and Ordinance for presentation to the Council.