

**ORDINANCE NO. 2793**

**AN ORDINANCE OF THE CITY OF SALISBURY TO AUTHORIZE THE MAYOR TO ENTER INTO A CONTRACT WITH THE MARYLAND STATE ARTS COUNCIL (MSAC) FOR THE PURPOSE OF ACCEPTING GRANT FUNDS IN THE AMOUNT OF \$4,000, AND TO APPROVE A BUDGET AMENDMENT TO THE GRANT FUND TO APPROPRIATE THESE FUNDS TO BE USED FOR ELIGIBLE EXPENSES ASSOCIATED WITH BUNDLE UP AND GET OUTSIDE.**

**WHEREAS**, the City of Salisbury in December 2022 submitted a Creativity Grant application to the Maryland State Arts Council (MSAC), a principal department of the State of Maryland, for financial assistance in carrying out community art activities, specifically to include assistance to fund stipends for the artists associated with Bundle Up And Get Outside; and

**WHEREAS**, MSAC has awarded the Creativity Grant funds to the City of Salisbury in the amount of \$4,000; 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 John R. Heath, on behalf of the City of Salisbury, is hereby authorized to enter into a grant agreement with the Maryland State Arts Council, for the City's acceptance of grant funds in the amount of \$4,000, to be allocated for assistance with Bundle Up And Get Outside.

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

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

**(a)** Increase MSAC Revenue Account No. 10500-42XXXX-XXXX by \$4,000.

**(b)** Increase Operating Expense Account No. 10500-546006-XXXX by \$4,000.

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

**Section 3.** 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 4.** 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.

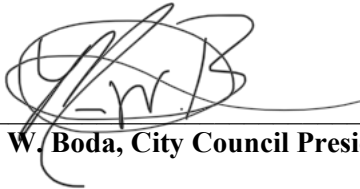
**Section 5.** The recitals set forth hereinabove are incorporated into this section of the Ordinance as if such recitals were specifically set forth at length in this Section 5.

**Section 6.** This Ordinance shall take effect from and after the date of its final passage.

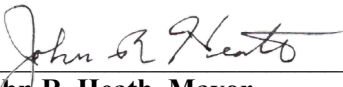
**THIS ORDINANCE** was introduced and read at a Meeting of the Mayor and Council of the City of Salisbury held on the 10<sup>th</sup> day of April, 2023 and thereafter, a statement of the substance of the Ordinance having been published as required by law, in the meantime, was finally passed by the Council of the City of Salisbury on the 24<sup>th</sup> day of April, 2023.

**ATTEST:**

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

  
\_\_\_\_\_  
**Muir W. Boda, City Council President**

Approved by me, this 28th day of April, 2023.

  
\_\_\_\_\_  
**John R. Heath, Mayor**



# City of Salisbury

## MEMORANDUM

**To:** City Council

**From:** Allen Swiger, ABCD Director  
Scott Roberts, ABCD Assistant Director

**Subject:** Creativity Grant

**Date:** 3/14/23

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Attached is an Ordinance to accept funding from the Maryland State Arts Council, Creativity Grant. The purpose of the Creativity Grant is to strengthen the vitality and sustainability of artists and small organizations to maintain a strong and stable arts infrastructure in the State of Maryland. The Creativity Grant also provides opportunities to serve the growing needs of relevant arts projects and collaborations within Maryland communities.

This funding, in the amount of \$4,000, will be utilized to provide artist stipends and supplies for the 2023 Bundle Up And Get Outside (BUAGO) program. BUAGO is an interactive art experience that is free to the community and takes place throughout the City Park.

Included is the proposed Grant Agreement.

January 31, 2023  
Creativity Grant  
2023-19180

## MARYLAND STATE ARTS COUNCIL GRANT AGREEMENT

THIS GRANT AGREEMENT (this "Agreement") is made by and between the Maryland State Arts Council ("MSAC"), a unit of the Department of Commerce (the "Department"), a principal department of the State of Maryland ("State") and [City of Salisbury, MD] ("Grantee") whose Federal Identification Number (FID) or Social Security Number (SSN) is 52-6000806.

### RECITALS

Grantee has requested grant assistance from MSAC in order to undertake activities consistent with Title 4, Subtitle 5 of the Economic Development Article of the Annotated Code of Maryland, which authorizes MSAC to make grants to organizations and individual artists in order to create a nurturing climate for the arts in the State and to ensure that the role of the arts in the lives of citizens of the State shall continue to grow and play a significant part in their welfare and educational experience.

The General Assembly of Maryland has authorized the grant assistance through an appropriation in the annual state budget.

MSAC is also authorized to use certain funds received by various federal entities to help fund its grant assistance programs. All, some, or none of the funds disbursed through this Agreement may be from such federal funding. In the event that some of the funds disbursed through this Agreement contain federal funding, MSAC will make the Grantee aware and Grantee acknowledges and agrees that it may be required to adhere to certain rules, regulations, and/or guidelines imposed by the federal entity providing the federal funding.

MSAC has approved the award of grant funds to the Grantee, to be expended by Grantee in accordance with the terms and conditions of this Agreement.

IN CONSIDERATION of the foregoing and the mutual promises and covenants contained in this Agreement, MSAC and the Grantee agree as follows:

1. **Grant.** Subject to the continuing availability of funds, as determined by MSAC in its sole discretion, MSAC agrees to provide Grantee with funds in an amount not to exceed [\$4,000.00] (the "Grant Funds").

2. **Application.** Grantee's application for grant assistance (the "Application") is available to grantee in Smart Simple where Grantee submitted the application. Grantee can view the application by logging into Smart Simple ([marylandarts.smartsimple.com](http://marylandarts.smartsimple.com)) with their login and password. Grantee warrants and certifies that all of the information and representations contained in the Application are and remain true and complete in all material respects. The Application is incorporated herein as Exhibit A.

3. **Grant Guidelines.** Grantee acknowledges receipt of the FY 2023 Grant Guidelines and Information available on the MSAC website <http://www.msac.org> under the appropriate grant type, incorporated herein by reference, and agrees to abide by its terms and conditions.

4. **Use of Grant Funds:** Grantee will use Grant Funds in accordance with the activities described in Exhibit A and in accordance with all applicable guidelines set forth in Provision 3 above.

5. **Grantee shall not use any Grant Funds to make contributions:**

- (a) to any persons who hold, or are candidates for, elected office;
- (b) to any political party, organization, or action committee; or
- (c) in connection with any political campaign or referendum.

6. **Term of Agreement.**

This Agreement is effective upon execution by MSAC. Unless sooner terminated pursuant to Section 18 or 19 of this Agreement or by the mutual consent of Grantee and MSAC, this Agreement shall remain in effect until the final amounts of the Grant have been disbursed, all reports and records due by the Grantee have been received by MSAC, and there has been a final settlement and conclusion between MSAC and Grantee of all issues arising out of the Grant. It is anticipated and agreed that all reports and records due by Grantee shall be delivered to MSAC no later than the final report due date as communicated to the grantee in grant guidelines, if not sooner as provided otherwise herein or in any exhibit attached and incorporated herein, and that the final settlement and conclusion between MSAC and Grantee shall be no later than the final report due date. Failure by the Grantee to deliver all reports and records by the final report due date and failure by Grantee to provide MSAC with all necessary documents and information to reach final settlement and conclusion by the final report due date shall constitute a material breach by the Grantee of this Agreement.

7. **Disbursement.**

(a) (i) Except for Grantees notified pursuant to paragraph (ii) below, Grants for Organizations grants and Community Arts Development grants, up to seventy five percent (75%) of the Grant shall be disbursed to Grantee upon full execution of the Agreement, provided that Grantee has submitted all reports and documentation for prior year grant(s) required by MSAC, if applicable. The remaining Grant funds shall be disbursed to Grantee after Grantee has met grant report requirements, such as submitting a satisfactory interim report.

(ii) For Grantees notified by MSAC, payment will occur in four payments of 25% based on the review of additional required documentation (quarterly fiscal actuals v. projections; quarterly updated financial recovery plan) by the MSAC Program Director, MSAC Grants Director, MSAC Executive Director, Assistant Secretary of Commerce and/or Secretary of Commerce. Payment release is based on the approval of the quarterly submission review.

(b) For Arts in Education grants, Independent Artist Awards, Maryland Touring grants, Maryland Traditions

Grants, Public Art Across Maryland grants, Network Organizational Development grants, Creativity Grants, and other grants to organizations and independent artists, up to 100% of the Grant shall be disbursed to Grantee upon full execution of the Agreement, provided that Grantee has submitted all reports and documentation for prior year grant(s) required by MSAC, if applicable.

**8. Indirect Costs.**

(a) If Grantee is a nonprofit entity under Section 501(c)(3), (4) or (6) of the Internal Revenue Code, Grant Funds may be applied to indirect costs in accordance with § 2-208 of the State Finance and Procurement Article, Annotated Code of Maryland.

(b) If Grantee opts to apply Grant Funds to indirect costs:

(i) the total amount of Grant Funds provided under this Grant Agreement will not be increased;

(ii) the costs to be paid with Grant Funds under this Agreement as described in Exhibit A of this Agreement will be reduced on a pro rata basis to reflect that certain indirect costs have been paid with Grant Funds; and

(iii) Grantee shall report any Grant Funds applied to indirect costs in funding requests and financial reports submitted to Commerce and shall provide the basis and documentation for the calculation of indirect costs in compliance with subsection (a) of this section.

**9. Inspection of Records.** Grantee shall allow any duly authorized representative of MSAC, the Department, or the State to inspect and audit, at reasonable times, all records and documents of Grantee relating to this Grant, which records shall be retained by Grantee for at least three (3) years after the termination of this Agreement.

**10. Acknowledgement.** Grantee shall acknowledge MSAC funding in all programs and promotional materials relating to the funded activities in the manner set forth in the Grant Recognition Guidelines, which can be viewed on the MSAC website, <https://msac.org/resources/recognizing-msac-grants>, incorporated herein by reference.

**11. Reports.** Grantee shall provide MSAC with reports or information in a form acceptable to the MSAC, as MSAC may from time to time require.

**12. Unused Funds.** Grantee shall repay to MSAC any disbursed Grant Funds not spent or obligated by Grantee on or before June 30, 2023.

**13. Fair Practices Certification.** Grantee certifies that it prohibits, and covenants that it will continue to prohibit, discrimination on the basis of: (a) political or religious opinion or affiliation, marital status, race, color, creed, ancestry genetic information, or national origin; or (b) age, sex, sexual orientation, gender identification, or any otherwise unlawful use of characteristics, except when such characteristic constitutes a bona fide occupational qualification; or (c) the physical or mental handicap of a qualified handicapped individual. Upon the request of MSAC, Grantee will submit to MSAC information relating to its operations, with regard to political or religious opinion or affiliation, marital status, physical or mental handicap, race, color, creed, sex, age, or national origin.

**14. Anti-Discrimination.** Grantee shall operate under this Agreement so that no person, otherwise qualified, is denied employment, subcontract, or other benefits on the basis of race, color, religion, creed,

age, sex, sexual orientation, gender identification, marital status, national origin, ancestry genetic information or any otherwise unlawful use of characteristics, or disability of a qualified individual with a disability unrelated in nature and extent so as to reasonably preclude the performance of the employment or contract, or the individual's refusal to submit to a genetic test or make available the results of a genetic test. Except in subcontracts for standard commercial supplies or raw materials, Grantee shall include a clause similar to this clause in all subcontracts. Grantee and each subcontractor shall post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause. Grantee shall not retaliate against any person for reporting instances of such discrimination. The Grantee further covenants that it shall prohibit its contractors from engaging in such discrimination in the hiring of subcontractors to carry out any portion of the project funded by proceeds of the Grant.

**15. Legal Compliance.** Grantee covenants that it shall comply with all applicable federal, State, and local laws and regulations. Grantee acknowledges and agrees that it is responsible for knowing and understanding all applicable federal, State, and local laws and regulations.

**16. Grantee's Certifications.** Grantee certifies to MSAC that:

(a) Grantee, if a corporation or other form of limited liability entity, is duly organized and validly existing under Maryland law, and has all requisite power and authority to enter into this Agreement; and

(b) This Agreement has been duly authorized, executed and delivered by 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 Grantee.

**17. Drug and Alcohol-Free Workplace.** Grantee warrants that Grantee shall comply with the State's policy concerning drug and alcohol-free workplaces as set forth in COMAR 01.01.1989.18.

**18. Default, Repayment and Remedies.**

(a) A default shall consist of (i) any use of Grant Funds for any purposes other than authorized by this Agreement; or (ii) any breach of any covenant, agreement, provision, representation or warranty of Grantee which was made in this Agreement.

(b) Upon the occurrence of any default, MSAC immediately may suspend Grantee's authority to receive any undisbursed Grant funds by written notice at any time to Grantee.

(c) Upon the occurrence of any default, Grantee shall have 30 days from the date MSAC's notice is postmarked to cure the default. After the conclusion of this 30 day period, if Grantee has not cured the default to the satisfaction of MSAC, MSAC may terminate this Agreement. In the event of termination:

(i) Grantee's authority to request a disbursement shall cease and Grantee shall have no right, title or interest in or to any of the Grant funds not disbursed;

(ii) MSAC may immediately demand repayment of all or any portion of the Grant Funds which have been disbursed; and

(iii) MSAC's remedies of withholding disbursement and of obtaining repayment as described in Section 18(c) (i) and (ii) above may be exercised contemporaneously with remedies pursuant to Section 18(d)

below, and all of such rights shall survive any termination of this Agreement.

(d) If a default occurs, MSAC may at any time proceed to protect and enforce all rights available to MSAC, by suit in equity, action at law, or by any other appropriate proceedings.

**19. Termination Prior to Expiration of Term Period** MSAC, the Department, and/or the State reserves the right to terminate this Agreement by written notice to Grantee if (a) the purpose of the Agreement can no longer be fulfilled or met and/or (b) it's in the best interest of the Grantor and/or the State to terminate. If so terminated, the Grantor shall disburse Grant Funds to cover the eligible expenses, as determined in its sole discretion by MSAC, incurred by Grantee prior to termination. Grantee shall return to Grantor any Grant Funds, in excess of permitted eligible expenses, received prior to such termination.

**20. Indemnification.** Grantee releases MSAC, the Department, the State, and its employees or agents from, agrees that MSAC, the Department, the State, and its employees or agents shall not have any liability for, and agrees to protect, indemnify and save harmless MSAC, the Department, the State, and its employees or agents from and against any and all liabilities, suits, actions, claims, demands, losses, expenses and costs of every kind and nature incurred by, or asserted or imposed against, all or any of them, as a result of or in connection with the Grant. All money expended as a result of such liabilities, suits, actions, claims, demands, losses, expenses or costs, together with interest at a rate not to exceed the maximum interest rate permitted by law, shall constitute an indebtedness of Grantee and shall be immediately and without notice due and payable by Grantee to MSAC, the Department, the State, and/or its employees or agents, as their interests may appear. If Grantee is a government agency of the State of Maryland, any and all such indemnification obligations of Grantee are conditioned upon the availability of appropriations for use by Grantee at the time such indemnification obligations arise; further, if Grantee is a government agency of the State of Maryland, any and all such indemnification obligations of Grantee are limited to the extent of the State of Maryland's statutory waiver of its sovereign immunity.

**21. Notices.** All notices, requests, approvals and consents of any kind made pursuant to this Agreement shall be in writing. Any such communication, unless otherwise specified, shall be deemed effective as of the date it is postmarked, postage prepaid, addressed as follows:

(a) Communications to MSAC shall be mailed to: Maryland State Arts Council, 401 E. Pratt Street, Suite 1400 Baltimore, MD 21202 or emailed.

(b) Communications to Grantee shall be mailed to Grantee or emailed.

**22. Amendment.** This Agreement, or any part hereof, may be amended from time to time only by a written instrument executed by both parties, or in the case of a modification of Section 4, by action of MSAC.

**23. Assignment.** Grantee may neither assign all or any of the benefits of, nor delegate all or any of the duties imposed upon Grantee by this Agreement, without the prior written approval of MSAC.

**24. Governing Law.** This Agreement shall be construed, interpreted and enforced in accordance with the laws of the State of Maryland.

**25. Setoff.** The State has the right to set off and apply Grant Funds against amounts that Grantee may owe the State as an unpaid liability, without notice and without resort to any judicial proceeding. Should this occur, it will affect the amount of Grant Funds received by Grantee.



**26. Entire Agreement; Counterparts; Signatures.** This Agreement, together with any exhibits, documents, and/or electronic or internet based documents, incorporated by reference, represents the complete and final understanding of the parties. No other understanding, oral or written, regarding the subject matter of this Agreement, may be deemed to exist or to bind the parties at the time of execution. This Agreement may be executed in any number of duplicate originals or counterparts, each of which such duplicate originals or counterparts shall be deemed to be an original and all taken together shall constitute one and the same instrument. Signatures provided by facsimile or other electronic means, for example, and not by way of limitation, in Adobe .PDF sent by electronic mail, shall be deemed to be original signatures.

**THIS AGREEMENT**, together with the documents incorporated herein by reference, represents the complete, total and final understanding of the parties and no other understanding or representations, oral or written, regarding the subject matter of this Agreement, shall be deemed to exist or to bind the parties hereto at the time of execution. THIS FORM WAS APPROVED FOR FORM AND LEGAL SUFFICIENCY BY AN ASSISTANT ATTORNEY GENERAL IN JULY 2022.