

City of Salisbury
DEPARTMENT OF PUBLIC WORKS

February 4, 2005

TO: John Pick, City Administrator

FROM: Newell W. Messick III, Deputy Director

SUBJECT: Resolution for City/MDE Enhanced Nutrient Removal Agreement For Salisbury WWTP Expansion & BNR/ENR Upgrade, 8.5MDG

I request the City Council to authorize the Mayor to sign and execute, on behalf of the City, the Enhanced Nutrient Removal Agreement between the City and the MD Department of the Environment (MDE). Execution of this agreement will allow MDE to provide State grants to finance 100% of the funds needed to assist the City with the planning, design, and construction of the facilities needed to implement Enhanced Nutrient Removal (ENR), as part of the City's wastewater treatment plant expansion and water-quality-upgrade project, to further reduce nutrients being discharged to the Wicomico River and the Chesapeake Bay.

The Best Available Technology Biological Nutrient Removal (BNR) Process Alternative Evaluation Report, prepared by the City's engineering consultant, O'Brien & Gere Engineers, Inc. (OBG) for the referenced project, was submitted to MDE on October 12, 2001. This report recommended Advanced BNR as the best available technology and contained capital costs, grant eligible costs, and corresponding estimated MDE and EPA grant and City local (State Revolving Loan) cost-share responsibilities. In August 2002, MDE approved the report recommendation for Advanced BNR treatment and confirmed the estimated grant and local cost-share percentages.

The Preliminary Engineering Update Report for the design of the referenced project, prepared by OBG, was submitted to MDE on July 15, 2003. In September 2003, MDE accepted the report and requested the City to proceed with final design and preparation of construction bid documents for the referenced project, based on a discharge limit of 5.0 mg/l for Total Nitrogen.

The State of Maryland Legislature passed the "Flush Tax" legislation on April 4, 2004, as represented in Senate Bill 320, to obtain funds to accomplish Enhanced Nutrient Removal (ENR) from Maryland wastewater treatment plants having a capacity greater than 0.5 million gallons per day. The MDE requested Salisbury Public Works, via OBG, to incorporate an ENR Alternative wastewater treatment process and update the estimated capital costs and grant eligible costs for the referenced project, on behalf of the City. ENR entails discharge limits of 3 mg/l Total Nitrogen (TN) and 0.3mg/l Total Phosphorous (TP) as an annual average. Bill 320 includes a "where practical" clause regarding the 3mg/l TN and 0.3 mg/l TP annual average discharge concentrations. The

ENR portion is reportedly 100% grant-funded up to the design capacity 8.5 MGD, after execution of an ENR Agreement between the City and MDE.

The scope for ENR work is based on negotiating a discharge limit of 3.5 mg/l TN with MDE; because, the WWTP, under the current design for the WWTP Upgrade, will have the capability to achieve 3.5 mg/l TN with an increase in anticipated operation and maintenance costs.

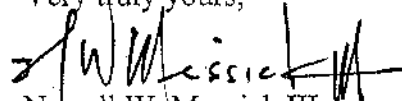
Additionally, the current design for the WWTP ENR Upgrade includes wastewater treatment accommodations to accomplish a discharge limit of 0.3 mg/l TP. MDE has asked for an updated cost-share responsibility determination for this TP accommodation, also.

To date, any ENR work that has been accomplished on behalf of the City, as previously approved for execution by the City and MDE, has been funded via 50% State BNR Grant and 50% MD Water Quality Revolving Loan (MDWQRL). Once the City and MDE execute the ENR Agreement, MDE will adjust the ENR payments, made by the City under the MDWQRL, and reimburse the loan portion paid by the City. Attached is a resolution for City Council consideration at the February 14, 2005 City Council Meeting.

As of February 4, 2005, Salisbury Public Works has not yet received a revised and acceptable version of the City/MDE ENR Agreement. Attached, for your information, is a marked-up copy of an acceptable version of the City/MDE ENR Agreement and transmittal letter, which was sent, on January 19, 2005, to MDE for review and preparation of a final document for signatures. A signed ENR Agreement is needed to obtain the MDE-issued construction permit for the referenced WWTP Expansion and BNR/ENR Upgrade project. The construction permit is needed prior to or as we go to bidding the construction contract for the referenced project, in order to comply with the City's NPDES permit, finalized in September 2004, which calls for construction of the referenced project to begin no later than August 2005. Please proceed with authorizing the Mayor to sign and execute, on behalf of the City, the final version of an acceptable ENR Agreement, upon the City's receipt of same from the MDE.

Unless you or the Mayor has further questions, please forward this memorandum to the City Council. For any additional questions you may have, I can be reached at 410/548-3170 or by email at cmessick@ci.salisbury.md.us.

Very truly yours,



Newell W. Messick III
Deputy Director

XC w/encls: Paul Wilber, City Solicitor
John Jacobs, Director of Public Works

K: /Projects/Resolutions/City-MDE ENR Resolution Memo.doc

File Copy

City of Salisbury



JOHN F. JACOBS III, P.E.
DIRECTOR

NEWELL W. MESSICK III, P.E.
DEPUTY DIRECTOR

MARYLAND

DEPARTMENT OF PUBLIC WORKS

GOVERNMENT OFFICE BLDG.
125 N. DIVISION STREET
SALISBURY, MARYLAND 21801-4940

Tel.: (410) 548-3170
Fax: (410) 548-3107

January 18, 2005

Walid M. Saffouri, P.E., Chief
Project Management Division, Region II
Water Quality Infrastructure Program
Maryland Department of the Environment
1800 Washington Boulevard
Baltimore, Maryland 21230

Re: NR 01.23/C-240427-06 (.23)L/C-241005-01
Salisbury WWTP ENR Upgrade & Expansion

FAXED
1-19-05
R. Pudmericky
B. Meinert
P. Calamita
D. Duotolo
W. Saffouri

Dear Mr. Saffouri:

With reference to your November 10, 2004 letter regarding the proposed ENR Agreement and Conditions of Financial Assistance Award, attached is a marked-up copy of the ENR Agreement containing revisions, provided by the City's environmental attorney and consulting engineer, for your review and preparation of a final document for signatures. The City of Salisbury is in the process of finalizing the project schedule. The final version of the project schedule will be forwarded to you within the next couple of days. Please forward, for signatures, a new ENR Agreement, incorporating the attached revisions, to be received by the City of Salisbury no later than February 4, 2005, in order to facilitate authorization and signing of the agreement during the February 14, 2005 City Council Meeting, in accordance with the forthcoming project schedule and following procedure for City Council agenda items:

- Finalize City Council agenda items - Wednesday, February 2, 2005
- Finalize documentation of City Council agenda items - Monday, February 7, 2004
- Present agenda items at City Council Meeting - Monday, February 14, 2005

The above timetable and forthcoming project schedule have been established in an effort to comply with the City's NPDES Permit, finalized in September 2004, which calls for Phase 1 construction to begin no later than August 2005. Thank you for your continued cooperation on this and past requests.

Very truly yours,
CITY OF SALISBURY

Newell W. Messick III
Deputy Director

XCw/encls: Robert Pudmericky
Bill Meinert
Paul Calamita
Carol Turner

Donn Duotolo
John Jacobs

K: /Projects/Project Order # 5227(03)/1-18-05 ENR Agrmt Saffouri.doc

MARYLAND DEPARTMENT OF THE ENVIRONMENT

AND

CITY OF SALISBURY

GRANT AGREEMENT FOR ENHANCED NUTRIENT REMOVAL

To help achieve Maryland's nutrient loading goals for the Chesapeake Bay, the Maryland Department of the Environment (the "Department") is providing financial assistance to undertake additional nutrient removal at wastewater treatment plants (WWTPs) that contribute nutrient loading to the Chesapeake Bay.

To provide for such additional nutrient removal, the Department is implementing a strategy known as Enhanced Nutrient Removal (ENR). In accordance with the Bay Restoration Fund Act, the Maryland Water Quality Financing Administration, a unit of the Maryland Department of the Environment (the "Administration") shall provide financial assistance to upgrade wastewater treatment facilities in order to achieve ENR.

The ENR Strategy and the Bay Restoration Fund Act set forth annual average nutrient goals of WWTP effluent quality of Total Nitrogen (TN) at 3 mg/l as "N" and Total Phosphorus (TP) at 0.3 mg/l as "P", where feasible, for all major WWTPs with a design capacity of 0.5 million gallons per day (mgd) or greater. Other wastewater treatment plants may be selected by the Department for upgrade on case-by-case basis and based on the cost effectiveness of the upgrade and other factors.

THEREFORE, in consideration of the foregoing and the mutual promises and covenants contained herein, the Maryland Department of the Environment, the Maryland Water Quality Financing Administration, and the City of Salisbury hereby AGREE this _____ day of _____, 20__ that:

Subject to the Department providing 100% Funding of eligible project costs,
OBLIGATIONS OF THE CITY OF SALISBURY

I.1 The City of Salisbury shall proceed with the planning, design, construction and upgrade of the of the Salisbury WWTP to achieve ENR and to meet annual average nutrient goals of plant effluent quality on Total Nitrogen at 3 mg/l and on Total Phosphorous at 0.3 mg/l as provided in the Bay Restoration Act and the ENR Strategy.

I.2 The City of Salisbury agrees to comply with the Conditions of Financial Assistance Award (Appendix A) for the design, construction and upgrade of the WWTP to achieve ENR in accordance with the approved project budget and any engineering study approved by the Department.

IF these levels are not attainable, the City of Salisbury will work with the Department to determine the lowest practicable annual average goals for total nitrogen and phosphorous based upon the facility's performance.

I.3 The City of Salisbury shall develop the project schedule and shall obtain the Department's approval of the project schedule prior to ~~November 25, 2004.~~ February 18, 2005

I.4 The City of Salisbury shall provide the Department an Engineer's estimate of project costs attributable to ENR prior to bidding for construction contracts or seeking proposals for a design-build contract.

I.5 The City of Salisbury, prior to awarding the construction contract or design-build contract, shall obtain procurement approval from the Department.

I.6 The City of Salisbury shall operate the enhanced nutrient removal facility in a manner that optimizes the nutrient removal capability of the facility in order to achieve enhanced nutrient removal performance levels.

I.7 The City of Salisbury shall apply the proceeds of this Grant to finance Eligible Project Costs only.

~~I.8 The City of Salisbury, in utilizing the proceeds of this Grant, shall be subject to the provisions of any applicable bond resolution.~~

OBLIGATIONS OF THE DEPARTMENT

II.1 The Department and the Administration covenants and agree to use their best efforts to obtain adequate State funding for the eligible project costs through legislative appropriations, and issuance of revenue bonds, subject to approval from the Maryland Board of Public Works.

II.2 Subject to the availability of funds, the Department shall provide ~~100%~~ 100% of the eligible cost of design, construction, and upgrade of the WWTP to achieve ENR.

II.3 In accordance with Section 9-342.1 (i)(2) of the Environment Article, the Department will exercise discretion to the fullest extent possible to grant a waiver to the City of Salisbury for discharge permit violations that may occur as a result of ENR construction under a program and schedule approved by the Department.

GENERAL CONDITIONS

III.1 The State financial assistance provided for under this agreement is subject to availability of State funds, availability of revenue bond funds, and is contingent upon approval by the Maryland Board of Public Works.

III.2 The State financial assistance provided for under this agreement is limited to eligible project costs that would be attributable to upgrading a wastewater facility from Biological Nutrient Removal to ENR as determined by the Department in its ~~sole~~ reasonable discretion.

SIGNATURES ON NEXT PAGE

II.4 If the nutrient goals in Section I.1 are not attainable, the Department will work with the City of Salisbury to determine the lowest annual average goals for total nitrogen and phosphorous.

ATTEST:

MARYLAND DEPARTMENT OF THE ENVIRONMENT

WITNESS

Robert M. Summers, Director
Water Management Administration

DATE

MARYLAND WATER QUALITY FINANCING ADMINISTRATION

WITNESS

Jag Khuman
Director

DATE

ATTEST:

CITY OF SALISBURY

WITNESS

Barrie P. Tilghman, Mayor
City of Salisbury

DATE

MARYLAND DEPARTMENT OF THE ENVIRONMENT

1800 Washington Boulevard • Baltimore MD 21230
(410) 537-3000 • 1-800-633-6101 • <http://www.mde.state.md.us>

CONDITIONS OF FINANCIAL ASSISTANCE AWARD

Project Name: Salisbury WWTP ENR Upgrade & Expansion

Project Number: NR 01.23 / C-241005-01

Upon the receipt of financial assistance from the Maryland Department of the Environment (the "Department"), the following conditions are understood and accepted by the applicant as conditions binding upon the recipient organization.

1. The recipient agrees to utilize the State funds for the project described in the Application for Financial Assistance and as approved by the State Board of Public Works.
2. The recipient agrees to make a good faith effort to secure sufficient funds to cover all project costs not financed by State funds.
3. The recipient agrees to adhere to the schedule submitted in its Application for Financial Assistance and take all appropriate actions to ensure that this schedule is maintained. In the event that the project is delayed for reasons beyond the control of the recipient, this schedule may be revised with the approval of the Department. The Department's policy requires that projects be initiated, constructed, and placed into operation in a timely manner.
4. The recipient agrees to submit to the Department for review all Architectural/Engineering (A/E) service contracts prior to execution if state financial assistance is to cover the costs.
5. The recipient agrees to select A/E consulting firm(s) for planning, design, construction management/inspection and/or grant management in accordance with pertinent Local, State and Federal laws and regulations.
6. The recipient agrees that it will only award a contract to an A/E consulting firm upon proof of professional liability insurance in an amount reasonable and customary for the services being performed.
7. The recipient agrees not to advertise for bids for construction contracts prior to obtaining written approval of the plans and specifications from the Department.
8. The recipient agrees to provide the Department; (if requested) an updated project construction cost estimate prior to advertising for bids for construction.
9. For construction contracts greater than \$100,000, the recipient agrees to procure contractors using formal bidding procedures by advertising the request for bids in publications having appropriate widespread circulation. For contracts less than \$100,000, the recipient has the option to use the small purchase procurement procedures or the formal bidding procedures. For additional information, please contact the Department.
10. The recipient agrees to select the contractor for construction of the project in accordance with applicable Local, State, and Federal laws and **not award a construction contract until:**
 - a. the contractor has posted a Performance Bond and a Payment Bond for 100% of the contract price (generally applicable to contracts over \$100,000 or as determined by the Department);
 - b. the contractor has signed the assurances provided in the "State Insert" included with the contract documents;
 - c. the recipient can certify that adequate A/E inspection and supervision will be provided at the construction site to ensure project construction conforms with the approved plans and specifications; and
 - d. a written approval to award the contract has been received from the Department.
11. Prior to construction start, the recipient agrees to secure all necessary permits, rights-of-way and easements, and undertake any reasonable action resulting from the environmental, design, permitting or state clearinghouse reviews.
12. The recipient agrees to follow best construction management and inspection practices to construct the project in accordance with plans and specifications approved by the Department.
13. Unless waived by the Department, the recipient agrees to post a project sign in the manner and format prescribed by the Department prior to initiating construction.
14. The recipient agrees to obtain prior written approval from the Department for all change orders that significantly alter the project. Change orders that do not significantly alter the project do not require prior approval; however, they must be submitted to the Department within 30 calendar days of execution if financial assistance is to cover change order costs.
15. The recipient agrees to permit and assist State employees to monitor the project construction during normal working hours.
16. The recipient agrees to allocate sufficient funds and operate and maintain the facilities, in accordance with applicable sections of Title 9 of the Environment Article, for the purposes for which it was constructed.
17. The recipient agrees to provide any reasonable information concerning the project in a manner and form prescribed by the Department.
18. The recipient agrees to seek all payments, loans or otherwise, on a reimbursement basis only, unless otherwise authorized by the Department.
19. The recipient agrees to maintain adequate accounting records for a period of three years following the Department's administrative closeout of the project and make them available to the Department for inspection and audit when requested. The recipient's accounting records will at a minimum provide the following:
 - a. provision that the recipient must provide a detailed budget (breakdown of category and cost) including any advances on costs to be incurred;
 - b. A provision requiring the recipient to provide a schedule of spending (related to the budget detail);
 - c. A provision requiring a deliverable schedule from the recipient (linked to the spending schedule);
 - d. A provision requiring a periodic financial summary (defining expended funds in association with the budgeted categories and schedule of spending);
 - e. A provision requiring the contractor to maintain all records relating to the grant until the grant has been audited or three years from the

completion of the project, whichever is earlier; and

bound by the terms of the project, if the project is constructed on private property.

- f. A provision indicating that MDE may audit any records in conjunction with a project at any time, in person, or request that a copy of the records be forwarded to MDE for verification.
- 20. The recipient agrees to comply with Title VI of the Civil Rights Act of 1964 - no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under program or activity for which the applicant received State financial assistance.
- 21. For drinking water and sewerage projects, the recipient certifies that the proposed project is consistent with and is included in an approved water and sewerage area as outlined in the County Water and Sewerage Plan adopted by the County governing body pursuant to §9-501, et seq., of the Environment Article.
- 22. For financial assistance under the "Sewerage Supplemental Assistance Program", the recipient agrees to adhere to the provisions of COMAR 26.03.08 - Water Pollution Control Fund Construction Financial Assistance Regulations.
- 23. For financial assistance under the "Nutrient Removal Cost-Share Programs", the recipient agrees to adhere to the provisions of the cost-share agreement and contribute local match for each phase of the project accordingly.
- 24. For project financial assistance under the "Water Supply Financial Assistance Program", the recipient agrees to adhere to the provisions of COMAR 26.03.09 - Water Supply Construction Financial Assistance Regulations, to provide salvage rights by the State upon default by the recipient and contribute at least 12.5% of the total eligible project cost as local match. Unless waived by the Department, all costs exceeding 5% of the original total grant/loan award or costs not authorized by the Department are the responsibility of the recipient. The Department may void the grant if construction has not commenced within 6 months of the award for construction and the recipient agrees to repay all funds with interest.
- 25. For financial assistance under the "Stormwater Pollution Control Cost-Share Program", the recipient agrees to adhere to the provisions of COMAR 26.03.06, contribute at least 25% of total eligible project cost as local match, maintain the functions of the project for 15 years in the manner necessary to obtain the intended water quality benefits, and if requested by the Department, to grant the Department a security interest in any equipment or similar item purchased with State funds.
- 26. For financial assistance under the "Small Creeks and Estuaries Restoration Cost-Share Program", recipient agrees to contribute at least 50% of the total eligible project cost as local match and maintain the functions of the project for its useful life in the manner necessary to obtain the intended water quality benefits. The total state grant is limited to a maximum of \$500,000 per project.
- 27. For Stormwater Pollution Control and Small Creeks and Estuaries Restoration Projects, the recipient shall require any successor to the land title/deed to be
- 28. For financial assistance under the Bay Restoration Fund Act and ENR Strategy, the recipient shall be required to comply with Subtitle 16 of Title 9 of the Environment Article of the Annotated Code of Maryland as applicable, any regulations promulgated thereunder, and any applicable bond resolutions.
- 29. At the completion of the construction of the project, the recipient agrees to submit, if appropriate to the project, a set of "as built" drawings certified by a professional engineer or a soil conservation district engineer.
- 30. The recipient agrees to submit a final claim for reimbursement of costs within sixty days of the Department's final inspection of the project.
- 31. The recipient agrees that the Department may deny any request for funds if the recipient fails to comply with any of the above conditions of financial assistance award.
- 32. The recipient agrees that the State Board of Public Works may terminate financial assistance upon the recommendation of the Department if the Department determines in its discretion that there is:
 - a. failure to perform without good cause; or
 - b. gross abuse or corrupt practices in the administration of the project; or
 - c. poor, non-standard, or unsafe construction procedures; or
 - d. failure to comply with any of the conditions of financial assistance award or applicable State laws, regulations, or Departmental policies; or
 - e. failure to adhere with the approved project schedule.
- 33. The recipient agrees to repay the State (with interest, based on current bond rate and assessed from the date the said funds were received), on demand, any funds received that were misapplied (i.e., not expended in accordance with the terms of these conditions of financial assistance award or applicable State laws, regulations and Departmental policies). In the event that the recipient fails to refund upon demand any misapplied funds, the State shall have the right to offset or withhold any funds in the possession of any State agency (that may be due to the recipient) in an amount equal to the misapplied funds plus interest.
- 34. The recipient agrees to return, within 30 days of a written request by the Department, any excess funds received (i.e., total funding received from several funding sources exceeds 100% of project costs). In the event that the recipient fails to refund upon demand any excess funds released by the State, the State shall have the right to offset or withhold any funds in the possession of any State agency (that may be due to the recipient) in an amount equal to the overpayment.

I certify that the information provided with the financial assistance application is true to the best of my knowledge and agree to comply with the above Conditions of Financial Assistance Award.

Signature of Recipient's Authorized Representative

Date

It is hereby resolved that

_____ is authorized to file, on

(Name and Title of Recipient's Authorized Representative)

behalf of the Recipient, an application for financial assistance from the Maryland Department of the Environment, and to execute all other documents in connection with this application.

Attested by:

Date: _____

(Name and Title)

- 8 -

RESOLUTION NO. 1196

A RESOLUTION OF THE COUNCIL OF THE CITY OF SALISBURY, MARYLAND AUTHORIZING THE MAYOR TO SIGN AND EXECUTE, ON BEHALF OF THE CITY OF SALISBURY, AN ENHANCED NUTRIENT REMOVAL AGREEMENT WITH THE MARYLAND DEPARTMENT OF THE ENVIRONMENT.

WHEREAS, the Salisbury Wastewater Treatment Plant is owned and operated by the City of Salisbury and discharges into the Lower Wicomico River, a tributary of the Chesapeake Bay; and

WHEREAS, the Salisbury City Council authorized the Mayor to sign and execute, on behalf of the City of Salisbury, Maryland, a Biological Nutrient Removal Agreement with the Maryland Department of the Environment on September 9, 2002; and,

WHEREAS, the City of Salisbury desires to further improve the water quality of the Chesapeake Bay and its tributaries by further reducing the amount of nutrients being discharged from sewage treatment plants located on the Chesapeake Bay and its tributaries; and,

WHEREAS, the Maryland Department of the Environment supports the efforts of the City of Salisbury in employing Enhanced Nutrient Removal at its Salisbury Wastewater Treatment Plant by providing State grants to aid in financing the planning, design and construction of Enhanced Nutrient Removal facilities at the existing Salisbury Wastewater Treatment Plant; and,

NOW, THEREFORE, BE IT RESOLVED that the Salisbury City Council hereby authorizes the Mayor to sign and execute, on behalf of the City of Salisbury, Maryland, an Enhanced Nutrient Removal Agreement, in a form which is acceptable to Salisbury Public Works, to assist the City of Salisbury by providing State grant funds to accomplish enhanced nutrient removal.

THE ABOVE RESOLUTION was introduced and duly passed at a meeting of the Council of the City of Salisbury, Maryland held on 14th day of February, 2005 and is to become effective immediately upon adoption.

ATTEST:

Brenda J. Colegrove
CITY CLERK

Michael P. Dunn
PRESIDENT, City Council

APPROVED BY ME THIS

_____ day of _____, 2005

Barrie P. Tilghman
MAYOR, City of Salisbury