

RESOLUTION NO. 1624  
AS AMENDED ON JANUARY 28, 2008

A RESOLUTION OF THE COUNCIL OF THE CITY OF SALISBURY, MARYLAND AUTHORIZING THE MAYOR OF SALISBURY TO SIGN A MEMORANDUM OF UNDERSTANDING WITH THE MARYLAND STATE HIGHWAY ADMINISTRATION FOR THE CONSTRUCTION OF THE WAVERLY DRIVE STORM DRAIN SYSTEM

WHEREAS, the City Council recognizes the need for a new storm drain to relieve flooding in the areas of Salisbury Business Route 13, South Boulevard, Monticello Avenue, Powell Avenue, Hanover Street, Lloyd Street and Waverly Drive; and

WHEREAS, the Maryland State Highway Administration (SHA) has need to route a new storm drain along Lloyd Street, Hanover Street, South Boulevard and Waverly Drive to relieve flooding on Maryland State Route 13 (South Salisbury Boulevard) and is willing to provide construction inspection services and reimburse the City up to \$3,500,000.00 of the construction cost for a storm drain; and

WHEREAS, Salisbury Public Works has designed a relief storm drain that will reduce the frequency of flooding on the aforementioned City rights-of-ways and on Maryland State Route 13 (City Contract No. 6-07-SD) and has received bids on the contract.

NOW, THEREFORE, BE IT RESOLVED that the Salisbury City Council authorizes the Mayor to sign a the attached Memorandum of Understanding whereby the City agrees to award contract 6-07-SD to construct a storm drain under the terms of the Memorandum of Understanding which includes a condition that any cost overages beyond the reimbursable \$3,500,000.00 from SHA will be provided by the City.

THE ABOVE RESOLUTION was introduced and duly passed at a meeting of the Council of the City of Salisbury, Maryland held on the 28<sup>th</sup> day of January, 2008 and is to become effective immediately upon adoption.

ATTEST:

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Brenda J. Colegrove  
CITY CLERK

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Louise Smith  
PRESIDENT, City Council

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Barrie P. Tilghman  
MAYOR, City of Salisbury

## MEMORANDUM OF UNDERSTANDING

Salisbury Drainage Improvements  
from S. prong of Wicomico River to US 13B

by and between

City of Salisbury  
and  
Maryland State Highway Administration

**THIS MEMORANDUM OF UNDERSTANDING**, executed in duplicate, made effective this \_\_\_\_\_ day of \_\_\_\_\_ 2008 by and between the City of Salisbury, a political subdivision of the State of Maryland, hereinafter called the “**CITY**”, and the Maryland State Highway Administration of the Maryland Department of Transportation, acting for and on behalf of the State of Maryland, hereinafter called “**SHA**”.

**WHEREAS**, the existing storm drain system along US 13B, an SHA road, in the vicinity of South Boulevard and Lloyd Street does not provide adequate drainage along US 13B (“**US13B SYSTEM**”); and

**WHEREAS**, the SHA operated US13B SYSTEM ties into an existing CITY owned storm drain system (“**CITY SYSTEM**”); and

**WHEREAS**, the parties desire to alleviate flooding conditions (“**FLOODING**”) on US13B (US 13 Business) at its intersections with Lloyd Street and South Boulevard; and

**WHEREAS**, the FLOODING on US 13B also affects local streets owned by the CITY; and

**WHEREAS**, the parties agree that the US13B SYSTEM and the CITY SYSTEM are both inadequate to provide proper drainage in order to prevent the FLOODING; and

**WHEREAS**, the parties have agreed to share in the cost to design and construct a new storm drain system (“**REPLACEMENT SYSTEM**”) which will enhance the function and capacity of both the SHA operated US13B SYSTEM and the CITY SYSTEM; and

**WHEREAS**, the CITY has completed all activities necessary to design the REPLACEMENT SYSTEM; and

**WHEREAS**, the CITY has agreed to construct the REPLACEMENT SYSTEM, under a CITY construction contract; and

**WHEREAS**, the CITY has received publicly advertised bids and is recommending award of contract to the low bidder subject to availability of funds; and

**WHEREAS**, SHA has agreed to provide full time construction inspection and material testing (“**Construction Engineering Services**”) during the construction of the REPLACEMENT SYSTEM; and

**WHEREAS**, SHA agreed to fund all construction costs of the REPLACEMENT SYSTEM, including the Construction Inspection Services that is performed for the REPLACEMENT SYSTEM; and

**WHEREAS**, SHA has established funds under contract number \_WI3285174\_ to reimburse the CITY for SHA's share of the REPLACEMENT SYSTEM up to a maximum funding amount of \$3,500,000 ("**SHA FUNDING**"); and

**WHEREAS**, the parties agree that all activities to construct the REPLACEMENT SYSTEM will occur on rights of way owned or controlled by the CITY or SHA; and

**WHEREAS**, the CITY has agreed to fund any ancillary work ("**ANCILLARY WORK**") not required of, and outside the limits of disturbance as defined on the approved construction drawings, for the REPLACEMENT SYSTEM; and

**WHEREAS**, SHA and the CITY agree that the REPLACEMENT SYSTEM will benefit both parties of this MEMORANDUM OF UNDERSTANDING and will promote the safety, health and general welfare of the citizens of the State and the CITY.

**NOW, THEREFORE, THIS MEMORANDUM OF UNDERSTANDING WITNESSETH:** that for and in consideration of the mutual promises contained herein, and other good and valuable considerations, the receipt and adequacy whereof is hereby acknowledged, be it understood that SHA and the CITY do hereby agree as follows:

**I. DESCRIPTION**

- A. The REPLACEMENT SYSTEM shall generally consist of the replacement of a portion of the US13B SYSTEM and the CITY SYSTEM in order to increase stormwater capacity. The REPLACEMENT SYSTEM will consist of, but is not limited to, the installation of 15" RCCP, 18" RCCP, 30" RCCP, 36" RCCP, 42"RCCP, 48" RCCP, 72" RCCP, various depth manholes, inlets and sediment and erosion control.
- B. The ANCILLARY WORK shall consist of any work performed on CITY or private utilities, outside the limits of disturbance as defined on the approved construction drawings, for the REPLACEMENT SYSTEM that are required due to, but not limited to, failures, incompatibilities, and conflicts; and that are not required by the construction of the REPLACEMENT SYSTEM.
- C. CITY Responsibility
  1. The CITY shall design, obtain necessary permits and approvals, advertise for construction, and construct the REPLACEMENT SYSTEM.
  2. The CITY shall fund all cost to design the REPLACEMENT SYSTEM.
  3. The CITY shall fund all cost to construct any ANCILLARY WORK.
  4. The CITY shall fund that portion of the cost to construct the REPLACEMENT SYSTEM over and above the SHA funding limit.

D. SHA Responsibility

1. SHA shall reimburse the CITY, up to the SHA FUNDING, for all costs related to the construction of the REPLACEMENT SYSTEM.
2. SHA shall fund all costs to provide Construction Engineering Services required for the construction of the REPLACEMENT SYSTEM.

**I. REPLACEMENT SYSTEM DESIGN PHASE**

A. CITY Responsibility:

1. The CITY has completed all tasks necessary to design the REPLACEMENT SYTEM to SHA standards when in SHA right-of-way and CITY standards when in CITY right-of-way, based on physical location.
2. The REPLACEMENT SYSTEM has accommodated connections from the US13B SYSTEM, or SHA improvements thereof, at the locations which SHA deems necessary.
3. The REPLACEMENT SYSTEM has been designed such that the function and capacity of US13B SYSTEM is enhanced to a level equivalent to or surpassing the CITY SYSTEM.

**II. CONSTRUCTION PHASE**

A. CITY Responsibility

1. The CITY: (i) has advertised the REPLACEMENT SYSTEM for construction bids; (ii) shall award and administer the construction contract; and (iii) shall construct the REPLACEMENT SYSTEM as shown on the final REPLACEMENT SYSTEM plans.
2. The CITY shall, prior to issuance of the Notice to Proceed to its construction contractor, schedule a meeting with SHA's District Office personnel to establish in writing and agree upon criteria and chain-of-command for Construction Engineering Services and project administration.
3. The CITY shall notify all utilities affected by the construction of the RELOCATION in order to arrange, coordinate, and supervise their relocation prior to the REPLACEMENT SYSTEM being advertised for bids wherever possible.

B. SHA Responsibility

1. In the event SHA desires to make changes to the REPLACEMENT SYSTEM subsequent to final plan approval and/or during construction, it shall promptly submit a request in writing to the CITY, including the requested revisions and their respective costs. The CITY shall incorporate such revision, and SHA agrees that additional costs incurred by the CITY

to design and implement the revisions requested by SHA shall be the SHA's sole responsibility.

2. SHA has received notification of the apparent qualified low bid and the bid analysis from the CITY. By signing this MOU SHA agrees with the CITY's assessment and awarding of the REPLACEMENT SYSTEM project to the apparent qualified low bidder.
3. SHA shall provide Construction Engineering Services during construction of the REPLACEMENT SYSTEM. The SHA inspector(s) shall consult with the CITY and mutually agree on decisions that affect the construction of the REPLACEMENT SYSTEM.
4. SHA shall, prior to issuance of the Notice to Proceed for construction of the REPLACEMENT, meet with CITY personnel to establish in writing and agree upon criteria and chain-of-command for Construction Engineering Services and project administration.
5. SHA shall grant and permit the CITY and its contractors' access to, on, over and across all SHA property as necessary to construct the REPLACEMENT SYSTEM.

### **III. DESIGN PHASE FUNDING**

#### **A. CITY Responsibility**

1. The CITY shall fund all costs to design the REPLACEMENT SYSTEM.
2. The CITY shall be responsible to obtain all permits required to construct the REPLACEMENT SYSTEM.

#### **B. SHA Responsibility**

1. SHA shall be responsible for all costs incurred by SHA in reviewing and commenting on the design of the REPLACEMENT SYSTEM and providing same to the CITY.

### **IV. CONSTRUCTION PHASE FUNDING**

#### **A. CITY Responsibility**

1. The CITY shall be responsible for all costs to advertise, award and administer the REPLACEMENT SYSTEM for construction.
2. The CITY shall be responsible to fund all costs for any ANCILLARY WORK.
3. The CITY may use SHA money to fund all or a portion of the costs for utility relocations and/or adjustments necessitated by the construction of the REPLACEMENT SYSTEM.

4. Once the REPLACEMENT SYSTEM contract has been awarded, changes to the REPLACEMENT SYSTEM construction, resulting in costs above the SHA funding limit, shall be funded by the CITY.
5. Concurrent with providing each approved invoice to SHA for work performed, the CITY shall provide detailed CONTRACTOR invoice's to SHA for all actual documented costs incurred by the CITY for the construction of the REPLACEMENT SYSTEM up to the amount of SHA FUNDING. Each copy of approved invoice payments shall include detailed documentation to evidence actual costs incurred.
6. In the event that actual costs incurred by the CITY to accomplish the REPLACEMENT SYSTEM exceed the SHA FUNDING, the CITY agrees to seek an increase in its current maximum budgeted amount from all sources available.
  - a. Notwithstanding the above, should the CITY not be able to obtain additional funding, and the unfinished REPLACEMENT SYSTEM will affect the safety and well being of the traveling public with respect to US 13B, SHA may, at it's sole discretion, elect to complete the REPLACEMENT SYSTEM and make a deduction from the CITY's share of Highway User Revenue for all costs that exceed the SHA FUNDING and that are incurred by SHA to complete the REPLACEMENT SYSTEM.
7. In the event that revisions to the REPLACEMENT SYSTEM are required due to conditions encountered during construction, or the CITY desires to make revisions to the REPLACEMENT SYSTEM during construction, the CITY shall promptly submit a request in writing to SHA, including the requested revisions and their estimated costs, for SHA concurrence.

**B. SHA Responsibility**

1. SHA shall reimburse the CITY within forty-five (45) days of receipt of each periodic invoice for costs incurred by the CITY in the construction of the REPLACEMENT SYSTEM up to SHA FUNDING.
2. SHA shall fund all costs to provide the Construction Engineering Services required for the construction of the REPLACEMENT SYSTEM.
3. In the event SHA reasonably determines that an invoice does not contain the necessary detailed documentation to evidence actual costs incurred, SHA shall promptly notify the CITY of the needed invoicing information and the CITY shall provide such information within thirty (30) days following receipt of the requested information from SHA and SHA shall then reimburse the CITY within forty-five (45) days following receipt of adequate invoicing.

4. Once the REPLACEMENT SYSTEM contract has been awarded, payment for changes to the REPLACEMENT SYSTEM construction shall be as follows:
  - (a) changes which are a result of an existing, unanticipated condition shall be paid for by the CITY;
  - 9b) changes which are requested by either party, and which are not a result of an existing, unanticipated condition shall be paid for by the requesting party.
  - 9c) changes which result from an act of God shall be paid for by the CITY's construction contractor or as otherwise specified within the CITY's construction contract with its construction contractor; however, in no event shall SHA or the CITY be responsible to pay for such changes.

## V. GENERAL

- A. The total amount of SHA FUNDING for the construction of the REPLACEMENT SYSTEM is Three Million Five Hundred thousand (\$3,500,000). Actual costs may exceed this amount and shall be the sole responsibility of the CITY, except as provided in Section IV.B.4. (b) and (c) above.
- B. The CITY shall require its construction contractors for the REPLACEMENT SYSTEM to include SHA as an additional named insured on all certificates of insurance that SHA normally requires its construction contractors to provide. The CITY or its assignee shall furnish SHA certificate evidencing the insurance coverage. All insurance policies evidencing such insurance shall name the Department of Transportation, the State of Maryland, and the SHA as additional insureds and shall also contain a provision by which the insurer agrees that such policy shall not be canceled except after having provided SHA with at least thirty (30) days prior written notice of pending cancellation. Failure of the CITY or its construction contractor to maintain such insurance shall be deemed a default under this MOU and shall entitle the SHA to proceed with any and all remedies contained herein and permitted by law.
- C. The CITY shall indemnify, hold harmless and defend, the State of Maryland, SHA and the Maryland Department of Transportation, from and against any and all claims, actions, damages, liability, and expense, including, but not limited to, reasonable attorney fees in connection with the loss of life, personal injury and/or property damage related to or arising in whole or in part from the design and/or construction of any portion of the REPLACEMENT SYSTEM by the CITY and/or its assigns/contractors, that is caused wholly or in part by any act or omission of the CITY, its agents, contractors, or employees,. The CITY further releases the State of Maryland, SHA and the Maryland Department of Transportation, their respective members, officers, agents, employees and

contractors, from any and all claims or demands for damages or injuries to any person during the construction of the REPLACEMENT SYSTEM due to the CITY's responsibilities hereunder, including such things as the CITY's failure to properly maintain the construction of the REPLACEMENT SYSTEM in a safe condition.

- D. The CITY shall indemnify, hold harmless and defend, the State of Maryland, SHA and the Maryland Department of Transportation, their respective members, officers, agents, employees, and contractors from any and all claims or demands for damages or injuries to property or to any party of any nature whatsoever attributable to the design and/or construction of the REPLACEMENT SYSTEM due to non-execution of any work by the CITY, or due to defective work or materials; which shall survive construction of the REPLACEMENT SYSTEM and shall continue throughout the life and operation of REPLACEMENT SYSTEM.
- E. To the extent permitted by Maryland law and the extent of available appropriations, SHA shall indemnify, hold harmless and defend, the CITY from and against any and all claims, actions, damages, liability, and expense, including, but not limited to, reasonable attorney fees, in connection with the loss of life, personal injury and/or property damage related to or arising solely from SHA's negligence for the Construction Engineering Services for any portion of the REPLACEMENT SYSTEM by SHA, that is caused solely t by any act or omission of SHA, its employees with regard to SHA's Construction Engineering Services. SHA further releases the CITY, its officers, agents, and employees, from any and all claims or demands for damages or injuries to any person during the construction of the REPLACEMENT SYSTEM due solely to SHA's negligent performance of the Construction Engineering Services. SHA shall have no obligation to indemnify or defend the CITY against any claim, action, suit or proceeding, at law or equity, arising from any action or failure to act by the CITY, its contractors or employees.
- F. To the extent permitted by Maryland law and the extent of available appropriations, SHA shall indemnify, hold harmless and defend, the CITY its officers, and employees from any and all claims or demands for damages or injuries to property or to any party of any nature whatsoever attributable solely to SHA's negligent performance of it's Construction Engineering Services for the REPLACEMENT SYSTEM. SHA shall have no obligation to indemnify or defend the CITY against any claim, action, suit or proceeding, at law or equity, arising from any action or failure to act by the CITY, its contractors or employees.
- G. Notwithstanding any provisions contained in this MOU, nothing contained herein may be deemed a waiver of any governmental immunity which SHA may have or to which SHA may be entitled under Maryland law or otherwise.
- H. This MOU shall inure to and be binding upon the parties hereto, their agents, successors and assigns.
- I. This MOU and the rights and liabilities of the parties hereto shall be determined in accordance with Maryland law and in Maryland courts.



J. The recitals (WHEREAS clauses) at the beginning of this MOU are incorporated herein as part of this MOU.

K. All notices and/or invoices, if to the CITY, shall be addressed to:

The Honorable Barrie P. Tilghman, Mayor  
City of Salisbury  
125 N. Division St., Rm 304  
Salisbury, MD 21801  
Phone: 410-548-3100  
Fax: 410-548-3102  
E-Mail: sbymayor@ci.salisbury.md.us

If to SHA:

Mr. Donnie Drewer, District Engineer, D-1  
State Highway Administration  
660 West Road  
Salisbury, MD 21801  
Phone: 410-677-4006  
Fax: 410-543-6598  
E-mail: ddrewer@sha.state.md.us

with a copy to:

E. Glenn Klaverweiden, Agreements Coordinator  
Regional and Intermodal Planning Division  
State Highway Administration  
707 North Calvert Street  
Mail Stop C-502  
Baltimore, Maryland 21202  
Phone: 410-545-5675  
Fax: 410-209-5025  
E-mail: gklaverweiden@sha.state.md.us

**IN WITNESS WHEREOF**, the parties hereto have caused this Memorandum of Understanding to be executed by their proper and duly authorized officers on the day and year first above written.

**WITNESS:**

**STATE HIGHWAY ADMINISTRATION**

\_\_\_\_\_

**BY:** \_\_\_\_\_ (SEAL)  
Neil J. Pedersen                      Date  
Administrator

**APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY:**

**RECOMMENDED FOR APPROVAL:**

\_\_\_\_\_  
Assistant Attorney General

\_\_\_\_\_  
Douglas R. Rose  
Deputy Administrator/Chief Engineer  
for Operations

\_\_\_\_\_  
Douglas H. Simmons  
Deputy Administrator/ Chief Engineer  
for Planning Engineering

\_\_\_\_\_  
Lisa B. Connors  
Director of Finance

**CITY OF SALISBURY, MARYLAND**

\_\_\_\_\_  
WITNESS

**BY:** \_\_\_\_\_ (SEAL)  
Barrie P. Tilghman                      Date  
Mayor

**APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY:**

**REVIEWED AND APPROVAL  
RECOMMENDED:**

\_\_\_\_\_  
City Attorney

\_\_\_\_\_  
James S. Caldwell  
Public Works Director