

Council Agenda Report

Date: August 10, 2020
Prepared by: George W. Hyde, PE, City Engineer
Submitted by: Patrick Comiskey, City Manager
SUBJECT: FY 2021 DNR Waterway Improvement Fund Grant

Recommendation: That Council

- A. Approve Resolution No. 20-010 approving the grant agreement for a \$250,000 grant from the Dept. of Natural Resources Waterway Improvement Fund; and
- B. Amend the FY 2021 marina fund budget to include the grant

Discussion:

The City was awarded a grant from the Maryland Department of Natural Resources (DNR) Waterway Improvement Fund for fiscal year 2021. The \$250,000 grant is to be used for various items at the marina and Long Wharf including the following: 1) Modifications to existing finger piers on unused 60' and 50' boat slips to accommodate smaller boats; 2) Engineering study of the excessive wave action within the marina; 3) Engineering design and permitting for Piers E, F and H (the older original piers); 4) Replacement of piling caps; 5) Asphalt paving repairs in the parking lot.

It is expected that the work funded through this grant will be completed prior to June 30, 2021.

Fiscal Impact:

This grant requires no match and will fund 100% of the anticipated work.

Approved by: Patrick Comiskey, City Manager

RESOLUTION NO. 20-016

A RESOLUTION OF THE COMMISSIONERS OF CAMBRIDGE, MARYLAND TO APPROVE THE APPLICATION AND RECEIPT OF FINANCING FOR A WATERWAY IMPROVEMENT PROJECT, AS MORE FULLY SET FORTH IN THE GRANT AGREEMENT WITH THE DEPARTMENT OF NATURAL RESOURCES ("DNR") UNDER GRANT NO. LG-0933N-21, TO BE FINANCED EITHER DIRECTLY FROM DNR OR THROUGH OTHER DEPARTMENTS OR AGENCIES OF THE STATE OF MARYLAND.

WHEREAS, DNR, either through Waterway Improvement Fund or through other DNR programs, or in cooperation with other State departments or agencies, provides grant funding for the purpose of assisting in waterway improvements by expanding and enhancing access to public boating opportunities and improving boating safety pursuant to Md. Code Ann., Natural Resources § 8-707 (the "WIF"); and

WHEREAS, the City of Cambridge (the "City") has applied for grant funding from the WIF for certain improvements to the City of Cambridge Municipal Marina (the "Marina"), including but not limited to engineering and construction costs associated with reducing wave action, slips and pier repairs and modifications, and parking lot improvements (the "Project"); and

WHEREAS, DNR has determined to award grant funding from the WIF to the City for the Project in the amount of Two Hundred Fifty Thousand and 00/100 Dollars (\$250,000.00) under the terms and conditions set forth in the Waterway Improvement Fund Grant Agreement (the "Agreement") attached hereto and incorporated herein by reference as if fully set forth; and

WHEREAS, the Project will provide a material benefit to the City and its residents; and

WHEREAS, the Commissioners of Cambridge are desirous of approving the application and receipt of grant funding from the WIF for the Project as set forth in the Grant Agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE COMMISSIONERS OF CAMBRIDGE, that the Commissioners of Cambridge hereby endorse the Project and approve the receipt of grant funding from the WIF in the amount of Two Hundred Fifty Thousand Dollars (\$250,000.00) to be used for the purposes of funding the Project.

AND BE IT FURTHER RESOLVED THAT the Mayor is hereby authorized to execute the Grant Agreement and any other documents and take any action necessary to carry out the intent of this Resolution.

AND BE IT FURTHER RESOLVED THAT, upon adoption, copies of this Resolution shall be sent to the Department of Natural Resources along with the executed Grant Agreement.

AND BE IT FURTHER RESOLVED THAT, in executing this Resolution, the Mayor hereby certifies that this Resolution is true and correct and duly adopted by the Commissioners of Cambridge.

ATTEST:

THE COMMISSIONERS OF CAMBRIDGE

Patrick C. Comiskey
City Manager

BY: _____
Victoria Jackson-Stanley
Mayor

Adopted the 10th day of August, 2020
Effective the 10th day of August, 2020

STATE OF MARYLAND
DEPARTMENT OF NATURAL RESOURCES
WATERWAY IMPROVEMENT FUND GRANT AGREEMENT

GRANT #: LG-0933N-21

THIS GRANT AGREEMENT, entered into this ____ day of _____, 20____,
by and between

STATE OF MARYLAND
DEPARTMENT OF NATURAL RESOURCES
CHESAPEAKE & COASTAL SERVICE
580 Taylor Ave., Annapolis, MD 21401
hereinafter ("Department")

and

THE COMMISSIONERS OF CAMBRIDGE
410 Academy Street, Cambridge, MD 21613
hereinafter ("Grantee")
Federal ID # 52-6000780

WHEREAS, funding has been appropriated by the General Assembly to the Waterway Improvement Fund to be disbursed as grants for the purpose of assisting in waterway improvements by expanding and enhancing access to public boating opportunities and improving boating safety pursuant to MD.CODE ANN., Natural Resources II, §8-707 et seq., (2012 Replacement Volume as amended) ("the Fund"); and

WHEREAS, the purpose of these grants is to assist jurisdictions by providing project grant funds; and

WHEREAS, the Grantee has applied to the Department for grant assistance funding for the improvements at the City's Municipal Marina; and

WHEREAS, the Department has determined such grant assistance shall be provided to Grantee if Grantee agrees to the provisions contained herein;

NOW, THEREFORE, in consideration for the receipt of a Grant for the Fiscal Year 2021, in the amount of Two Hundred Fifty Thousand Dollars and Zero Cents (\$250,000.00).

The Grantee agrees to the following provisions:

1. **Term:** This Grant Agreement shall become effective on July 1, 2020 and shall expire on June 30, 2023.

2. **Scope:** The Grantee is responsible for supervision of and the technical accuracy and coordination of all work pursuant to this Grant Agreement as set forth in the attached Scope of Work. Attachment # A is hereby incorporated into this Grant Agreement and made an integral part of this Grant Agreement.

3. **Key Personnel:** The parties agree that the following named individuals are considered to be essential to the work being performed under this Grant Agreement, and that they are designated as Key Personnel who shall be made available to the fullest extent required to carry out the work under this Grant Agreement:

George W. Hyde
Phone: 410-228-1955, Email: ghyde@chooscambridge.com

The parties designate the following named individuals as Grant Agreement Representatives for the purpose of any notices required under this Grant Agreement. The parties agree that each will promptly notify the other, in case of substitution of a Grant Agreement Representative, or change in the Representative's contact information.

Sandi Pepe
Phone: 410-260-8466, E-mail: sandi.pepe@maryland.gov

George W. Hyde
Phone: 410-228-1955, Email: ghyde@chooscambridge.com

4. **Payment:** The Grantee shall submit a reimbursement request to the Department on generally a quarterly basis, for expenses authorized for the work under this Grant Agreement on the attached Request for Reimbursement form, in accordance with the payment schedule in the attached Scope of Work. The request will include invoices and a copy of paid canceled check(s) or certification that payment has been made for reimbursement of the State's share of the project. Attachment # B is hereby incorporated into this Grant Agreement and made an integral part of this Grant Agreement.

Reimbursement shall be due and payable within 30 days of receipt by the Department. The Grantee agrees that no claim or charges for damages shall be made by it for any delays or hindrances from any cause during the term of this Grant Agreement. Under no circumstances is the Department responsible for payment of any charges due to late payment of invoices.

5. **Deliverables:** The Grantee shall submit generally quarterly status/progress reports to the Department at the same time as the billing submissions required under paragraph 4 above. All deliverables will be submitted directly to the Department Contact, **Sandi Pepe**. Final deliverable work products, including the Final Reports, any geographic or mapping related efforts, and those items listed in the Scope of Work as expected final deliverables, shall be submitted to the Department Contact.

6. **Project Management:** The design, construction, and management of the project will be by or under the supervision of the Grantee in accordance with the latest edition of the Waterway Improvement Fund Grants Manual incorporated by reference into this Grant Agreement. Plans and specifications, including all contract documents and any subsequent changes, must be completed by a Maryland Registered Professional Engineer unless approved otherwise in advance by the Department Contact. All plans, specifications and proposed changes must be submitted for review and approval by the Department Contact. All necessary Federal, State and local permits and approvals must be secured by Grantee prior to start of construction.

7. **Request for Bids:** The Grantee shall publicly advertise the project for bids or use another procurement method approved in advance by the Department Contact. Proposals will be received and compiled by the Grantee. The Department reserves the right to have a representative present at the bid opening.

a. Project contracts with a value of \$500,000 or more which the State provides 50% or more of the funding shall be advertised as prevailing wage contracts (COMAR 21.11.11).

b. The Grantee will prepare a tabulation of bids and/or other method of procurement and submit same for approval to the Department with comments and recommendations prior to the award of any contract.

8. **Publication:** The Grantee shall post signs about the project, in a prominent location, identifying the project as a "Public Facility" and shall place a permanent sign, approved by the Department, acknowledging funding by the Waterway Improvement Fund. All press releases and grant related events shall be coordinated with DNR, Center for Waterway Improvement and Infrastructure.

9. **Fee Approval:** If a fee is to be charged for use of the facility, the Grantee shall obtain prior approval from the Department.

10. **Facility Access:** All Maryland registered boaters shall have equal access to State funded boating facilities. Any project funded in whole or in part with Waterway Improvement Fund Grants must remain available and open for use by the general boating public. The Department shall approve changes in use of a project before it is removed from public access and use, such as through sale, donation, or commercial use of the facility. If approved by the Department, the Grantee must replace the project with a facility open to the general boating public with equal value at the nearest approved location at no cost to the Department. The Grantee may be required to repay the Department for the current value of the project in proportion to the total cost of the project paid by the State. The Department may require two independent appraisals to determine the amount to be reimbursed to the Waterway Improvement Fund.

11. **Maintenance and Repair:** Unless previously approved by the Department, the Grantee agrees to operate and maintain the proposed project. Future maintenance funds are not guaranteed by the Department. The Grantee agrees that it shall if necessary, unless previously approved by the Department:

- a. Provide without cost to the State of Maryland, all necessary lands, easements, rights-of-way, and dredge disposal site(s) required for the project;
- b. Hold and save the State of Maryland free from damages that may result from the construction of the project;
- c. Accomplish, without cost to the State of Maryland, alterations and relocations as required in sewer, water supply, drainage and other utility facilities and
- d. Shall assure that the facility shall be designed and constructed for persons with disabilities pursuant to the Annotated Code of Maryland and the Americans with Disability Act (ADA).

12. **Compliance with Applicable Law:** The Grantee hereby represents and warrants that:

- a. The Grantee is qualified to do business in the State of Maryland and that they will take such action as, from time to time hereafter, may be necessary to remain so qualified;
- b. The Grantee is not in arrears with respect to the payment of any monies 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 they shall not become so in arrears during the term of this Grant;
- c. The Grantee shall comply with all federal, State, and local laws, regulations, and ordinances applicable to its activities and obligations under this Grant; and
- d. The Grantee shall obtain, at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Grant.

13. **Unused Funds:** The Department reserves the right to revert any unexpended or unencumbered balance from this grant not used during the project period specified in the scope of work. Grant projects three years or older are subject to immediate reversion by the Department.

14. **Subject to Audit:** The Department retains the right to audit and inspect the records of the Grantee pertaining to this Grant for a period of 3 years after the conclusion of the Grant. Grantee shall permit any duly authorized representative of the State to inspect and audit all records and documents of Grantee relating to this Grant. Should the Department determine that Grant funds have been expended for activities outside of the Scope of this Grant Agreement; the Grantee shall reimburse the Department for funds so identified.

15. **Default:** Default is Grantee's breach of any of the applicable covenants, agreements, or certifications contained in this Grant Agreement.

16. Remedies Upon Default:

- a. Upon the occurrence of any default, the Department may require the defaulting party to:
- (i) repay the Grant, in whole or in part;
 - (ii) recoup the amount of the Grant already paid from funds due the Grantee from any other current or future State grant or loan or any other funds, otherwise due and owing Grantee;
 - (iii) withhold further payments under this Grant Agreement; or
 - (iv) terminate this Grant Agreement.
- b. In addition to the rights and remedies obtained in this Grant Agreement, the State may at any time proceed to protect and enforce all rights available to it. All rights and remedies survive the termination of this Grant Agreement.

17. Termination:

- a. The Department may terminate this Grant Agreement for any reason in accordance with this clause in whole, or from time to time in part, whenever the Department shall determine that such termination is in the best interest of the Department. The Department will pay all reasonable costs associated with this Grant Agreement that the Grantee has incurred up to the date of termination and all reasonable costs associated with termination of the Grant Agreement. However, the Grantee shall not be reimbursed for any anticipatory profits or other costs that have not been earned up to the date of termination.
- b. The Parties may mutually agree to terminate this Grant Agreement without cause. Termination of the Grant Agreement will not release the party(ies) from any prior commitments, obligations, or transactions, occurring prior to the effective date of termination or any non-cancellable obligations that may extend beyond the termination dates.

18. Disposition of Property: The Grantee may not sell, lease, exchange, give away, or otherwise transfer or dispose of any interest in the real or personal property acquired by Grantee with Grant funds except as provided in #10 and as approved by the Department. This includes transfer or disposition to a successor on the merger, dissolution, or other termination of the existence of the Grantee. The Grantee shall give the Department written notice at least sixty (60) calendar days before any proposed transfer or disposition. If the Department permits transfer or disposition, Grantee may be required to repay the State that percentage of the proceeds allocable to the Grant that was used to acquire the property as determined by the Department in its sole discretion.

19. Appropriations: If the Federal and/or State government fail to appropriate funds or if funds are not otherwise made available for continued performance for any period of this Grant Agreement, this Grant Agreement must be cancelled automatically as of the beginning of the

period for which funds were not appropriated or otherwise made available. The Grantee may not recover anticipatory profits or costs incurred after termination.

20. **Insurance.** For any item of real or personal property acquired by Grantee with Grant funds that has an original fair market value of Five Thousand Dollars (\$5,000) or more, the Grantee shall, at its own expense, and for the reasonable useful life of that item, obtain and maintain all risk or fire and extended coverage insurance or such similar insurance coverage as may be appropriate for the full value of the item, or in amounts as may be commercially reasonable under the circumstances from time to time. Each such policy shall:

- a. name the State as an additional loss payee thereunder;
- b. by its terms, be considered primary and non-contributory with respect to any other insurance (if any) provided by the State;
- c. by its terms, be cancelable only on at least thirty (30) days prior written notice to the Grantee; and
- d. be issued by a reputable insurer authorized to issue such policy in Maryland.

The Grantee shall, on request, provide the Department with satisfactory evidence of its compliance with this requirement. Proceeds of insurance required by this paragraph may be applied as the Department, in its sole discretion, shall determine, toward replacement of the real or personal property or toward the partial or total repayment of the Grant to the State. Provided the Grantee has adequate financial resources, as determined in the sole discretion of the Department, the Grantee may self-insure the property.

21. **Indemnification.** The Grantee shall be responsible for, and shall defend, indemnify, and hold harmless the State of Maryland, its officers, agents, and employees, whether or not the State be deemed contributory negligent, from all suits, actions, liability, or claim of liability (including reasonable attorney's fees) arising out of:

- a. Grantee's involvement in the Project, including its construction;
- b. Grantee's use, occupancy, conduct, operation, or management of the Project;
- c. any negligent, intentionally tortuous, or other act or omission of the Grantee or any of its agents, contractors, servants, employees, subtenants, licensees, or invitees in connection with the Project; and

d. any injury to or death of any person or damage to any property occurring in, on, or as a direct or indirect result of Grantees involvement in the Project or any of the Grantees activities in connection therewith.

22. **Nondiscrimination and Equal Employment Opportunity:** The Grantee agrees:

a. Not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, marital status, national origin, ancestry, or physical or mental handicap unrelated in nature and extent so as reasonably to preclude the performance of such employment;

b. To include a provision similar to that contained in subsection (a), above, in any contract under this Grant except a contract for standard commercial supplies or raw materials; and

c. To post and to cause contractors to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause.

d. Not to discriminate against any person on the basis of race, color, creed or national origin, in the use of any property or facility acquired or developed pursuant to this Grant Agreement.

23. **Drug and Alcohol Free Workplace:** The Grantee shall comply with the State of Maryland's policy concerning a drug and alcohol free workplace, as set forth in the Governor's Executive Order 01.01.1989.18 and COMAR 21.11.08 and the Drug-Free Workplace Act of 1988, and its implementing regulations codified at 29 CFR 98, Subpart F.I. as amended.

24. **Amendment:** This Grant Agreement may be amended only in a writing executed by the parties.

25. **Assignment:** The Grantee may not assign this Grant Agreement without the prior written approval of the Department. When so approved, this Grant Agreement shall bind the Grantee's successors and assigns.

26. **Entire Agreement:** This Grant Agreement, including the Attachment(s), represents the complete and final understanding of the parties. No other understanding or representations, oral or written, regarding the subject matter of this Grant Agreement, shall be deemed to exist or to bind the parties at the time of execution.

27. **Maryland Law:** The laws of Maryland shall govern the interpretation and enforcement of this Grant Agreement.

This document may be executed in multiple counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. Signatures, including notary signatures, provided by electronic means including, by way of example and not of limitation, facsimile, Adobe, PDF, and sent by electronic mail, or via an electronic signature program, shall be deemed to be original signatures.

IN WITNESS WHEREOF, the parties have executed this Grant Agreement by causing the same to be signed on the day and year first above written.

ATTEST:

GRANTEE:

Patrick C. Cominsky, City Manager

Victoria Jackson-Stanley, Mayor

APPROVED AS TO FORM:

Charles D. MacLeod, City Attorney

**State of Maryland
Department of Natural Resources**

DEPARTMENT WITNESS

**Matthew J. Fleming, Unit Director
Chesapeake & Coastal Service**

**Approved as to form and legal sufficiency
May 2018
Office of the Attorney General, Department of Natural Resources**

GRANT #: LG-0933N-21

ATTACHMENT A

SCOPE OF WORK

PROJECT TITLE: City Marina Improvements

DESCRIPTION: Improvements to the marina include but are not limited to engineering and construction cost associated with reducing wave action and slips and pier repairs or modifications and parking lot improvements.

Examples of final deliverables for the project include photographs, as-builts, post dredge survey (if applicable), final reimbursement, etc. The final reimbursement with appropriate back-up documentation shall be submitted to the Chesapeake and Coastal Service no later than thirty days after the end date of the grant period.

To assure that projects are on task to meet milestone target dates, generally quarterly reimbursement requests and status reports will be submitted to the Department Contact in accordance with the following schedule:

TIME FRAME

DUE DATE

FY 2021

July 1, 2020 – September 30, 2020
October 1, 2020 – December 31, 2020
January 1, 2021 – March 31, 2021
April 1, 2021 – June 30, 2021

October 15, 2020
January 15, 2021
April 15, 2021
July 15, 2021

FY 2022

July 1, 2021 – September 30, 2021
October 1, 2021 – December 31, 2021
January 1, 2022 – March 31, 2022
April 1, 2022 – June 30, 2022

October 15, 2021
January 15, 2022
April 15, 2022
July 15, 2022

FY 2023

July 1, 2022 – September 30, 2022
October 1, 2022 – December 31, 2022
January 1, 2023 – March 31, 2023
April 1, 2023 – June 30, 2023

October 15, 2022
January 15, 2023
April 15, 2023
June 30, 2023