

## Memorandum of Understanding

**THIS MEMORANDUM OF UNDERSTANDING (MOU)** made this \_\_\_ day of \_\_\_\_\_ 2021 is between THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION, 6611 Kenilworth Avenue, Riverdale, Maryland 20737, a public body corporate and of the State of Maryland, hereinafter called the “Commission,” and the MONTGOMERY COUNTRYSIDE ALLIANCE, a Montgomery County non-profit organization, hereinafter called “MCA”, and \_\_\_\_\_ (“Owner”) collectively the “Parties”.

### RECITALS

**WHEREAS**, the Commission, under its requirements to create new forest as a result of developers paying a fee in-lieu instead of finding and planting forest offsite to meet their forest planting requirements, desires to partner with MCA, to share resources for the creation of \_\_\_ acre of new forest on the property owned by \_\_\_\_\_ at \_\_\_\_\_, (“Subject Property”) which will be secured by a Category I Forest Conservation Easement.

**WHEREAS**, this opportunity to create new forest on private land is an innovative program for the “enhancement of environmental resources through the creation of more forest in Montgomery County” and contributes to the Commission’s program to send money collected from private developers for the creation of new forests.

**WHEREAS**, the Commission and MCA are able to provide their expertise, knowledge, and land for a common goal of creating new forests that filter groundwater, reduce surface runoff, help alleviate flooding and supply necessary habitat for wildlife as identified in Section 22A of the County code. In addition, forests sequester carbon, cleanse the air, reduce energy needs, and reduce heat island effects in urban areas.

**NOW THEREFORE**, in consideration of the mutual promises and agreements herein contained and other good and valuable consideration the Commission, MCA and Owner agree as follows:

**WHEREAS**, The Parties will collaborate to identify and provide locations of non-forested lands for forest planting, as required through developers paying a fee in-lieu of planting forests. The purpose of this MOU is to identify the responsibilities of the Commission, MCA and Owner regarding this collaboration.

**WHEREAS**, the term of this MOU shall be from the date of this MOU to \_\_\_\_\_ to complete the planting of forest on the Subject Property of the Owner and agreed to by the Parties. The Term may be extended by mutual agreement of the Parties.

**1. MCA Responsibilities.** MCA agrees to:

- a. Identify the forest planting location.
- b. Obtain permission from the Owner to plant forest on the Subject Property.
- c. Obtain the trees necessary to plant at a rate equal to 200 trees per acre at the ¾ to 1-inch caliper size, or 100 trees per acre with trees 1½ to 2-inch caliper size.
- d. All trees must be native to the Montgomery County Piedmont Area grown in containers, or balled and burlapped, and a minimum of 5 feet tall.
- e. Ensure a diversity of plant species with a minimum of 5 different species.
- f. Prepare the planting site prior to planting either through the cutting of grasses or by controlling non-native and invasive plants.
- g. Plant the trees according to ANSI A300 standards.
- h. Provide appropriate deer protection for each planted tree and shrub using No. 14 gauge wire fabric attached to one or more hardwood stakes, creating a 1-foot diameter around the tree.
- i. Plant trees in offset rows to provide for mowing of undesirable vegetation after planting.
- j. Maintain the planting areas for competing vegetation and invasive plant material, and provide water during times of drought for minimum of 2 years after planting has been accepted by the Commission's forest conservation inspectors.
- k. Maintain a clear 10 foot setback from any roadway frontage.
- l. Provide any additional planting at the end of the 2-year maintenance period to achieve a survivability requirement of 75 percent of the number of trees originally planted.
- m. Coordinate planting either by hiring professionals or with volunteers.
- n. Planted areas must be permanently protected by a Category I Conservation Easement, where the permanent protection of the trees has primacy over any other easement.
- o. The areas planted under this MOU cannot be used as a forest conservation bank nor can they be used as an offsite planting or retention area for any property nor can they be used for credit area for any future regulated activity on the Subject Property.

**4. Commission Responsibilities.** The Commission, through its Montgomery County Planning Department agrees to:

- a. Provide \_\_\_\_\_ (\$\_\_\_\_\_) to MCA to help pay for the expenses associated with the forest planting on the Subject Property.
- b. Support the outreach and marketing of the planting through items such as our webpage, social media posts, posters and flyers.
- c. Inspect the plantings after installation and after the 2-year maintenance period.

**5. Owner Responsibilities.** The Owner agrees to:

- a. Work in good faith with MCA to determine mutually acceptable locations on the Subject Property for forest plantings.
- b. Enter into a Category I Conservation Easement with the Commission for the planted areas within 60 days of planting of the forest.

- c. Provide maintenance of the plantings after the 2-year maintenance period consistent with what is required in a Category I Conservation Easement.

**6. Termination.** This MOU may be terminated by the Commission upon forty-five (45) days' written notice and an opportunity to comply if MCA fails to complete its responsibilities as required under this MOU, or does not continuously and in good faith carry out its responsibilities under this MOU. If MCA fails to remedy any default within the forty-five (45) day notice period, the Commission may terminate this MOU for cause. If this MOU is terminated for cause, MCA shall return any remaining funds to the Commission.

**7. Compliance with Laws.** MCA hereby represents and warrants that:

- a. It shall comply with all federal, State, and local laws, regulations, and ordinances applicable to its activities and obligations under this MOU; and

- b. It shall obtain (using the funds) all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this MOU.

**8. Insurance.** MCA shall maintain, at its sole expense, during the term of this MOU, insurance which shall protect MCA and any employees performing work under this MOU, from claims, liability, legal actions, costs, expenses and damages, which may arise from performance of services or work under this MOU. MCA shall furnish a certificate of insurance to the Commission with this signed MOU, which has the types of coverage and limits required by the Commission's Risk Management Office. The Certificate shall name the Commission as an additional insured and shall provide that the Insurer shall provide forty-five (45) days advance written notice to the Commission in the event of termination, modification or cancellation of coverage.

**9. Nondiscrimination.** MCA shall not discriminate against any person, employee, or applicant for employment because of race, creed, sex, age, color, national origin, or disability. If the MCA is determined to be in violation of Federal, State, or County nondiscrimination laws by an order, opinion or a decision of a court or an administrative body or agency, the Commission may terminate or suspend this Contract in whole or in part, and the Commission may declare the MCA ineligible for any future agreements.

**10. Indemnification.** MCA shall indemnify and save harmless the Commission, its officers, employees, agents and representatives from and against all actions, liability, claims, legal actions, damages, cost or expenses of any kind which are made against or incurred by the Commission arising from the MCA's negligence, negligent performance of or failure to perform any of its obligations under the terms of this MOU. MCA's liability under this paragraph is subject to, limited by, and contingent upon the appropriation and availability of funds, as well as the notice requirements and damages limitations stated in the Local Government Tort Claims Act, Md. Code Ann., Cts. & Jud. Proc. Sec. 5-301, et seq. (the "LGTC"); and Md. Code Ann., Cts. & Jud. Proc. §5-5A-02, (together the "County

Indemnification Statutes”), all as amended from time to time. This indemnification is not intended to create any rights or causes of action in any third parties or to increase MCA’s liability over and above the caps provided in the Indemnification Statutes, as applicable. This indemnification must not be construed to require MCA to hire counsel for the Commission, or to otherwise pay for the legal defense of the Commission for any action or claim brought against the Commission.

**11. Assignment Prohibition.** Except for assigning its rights and obligations to Montgomery County as provided under Chapter 68A of the Montgomery County Code, MCA is prohibited from assigning or transferring any rights or obligations under this MOU without the prior written consent of the Commission.

**12. Entire Agreement.** This instrument contains the entire agreement between the parties and shall not be modified except by written agreement signed by the parties and attached hereto.

**13. Severability.** If any provision of this MOU is determined to be invalid or illegal by a court or an administrative body or agency, that provision shall be severed from this MOU and shall not affect the remainder, or any other provision contained herein.

**14. Applicable Law.** This MOU shall be interpreted in accordance with the laws of the State of Maryland, and enforced in any court of competent jurisdiction in Montgomery County, Maryland.

**15. Waiver.** The failure of the Commission to enforce any part of this MOU shall not be deemed as a waiver thereof.

**16. Disputes.** Parties acknowledge and agree that they will use good faith efforts to resolve any disputes that may arise under this MOU. If such efforts do not resolve any disputes, they shall be forwarded for resolution to Montgomery County’s Chief Administrative Officer and the Commission’s Director of Montgomery Planning Department.

**[SIGNATURE PAGE TO FOLLOW]**

**IN WITNESS WHEREOF**, the parties have caused this MOU to be properly executed on the date first written above.

**MONTGOMERY COUNTRYSIDE  
ALLIANCE**

Date: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**MARYLAND-NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION**

Date: \_\_\_\_\_

By: \_\_\_\_\_

Asuntha Chiang-Smith  
Executive Director

**ATTEST:**

By: \_\_\_\_\_

Joseph C. Zimmerman  
Secretary-Treasurer

**OWNER**

Date: \_\_\_\_\_

By: \_\_\_\_\_

[Property Owner Name(s)]