

SAMPLE MOU

**MEMORANDUM OF UNDERSTANDING
BY AND BETWEEN
THE MAYOR AND CITY COUNCIL OF BALTIMORE
AND
CITY LIFE - COMMUNITY BUILDERS, LTD.**

This Memorandum of Understanding (“MOU”) is made and entered into this ___ day of ____, 2020, by and between the Mayor and City Council of Baltimore, a municipal corporation of the State of Maryland, acting through its Department of Transportation (“City”), and City Life - Community Builders, LTD., (the “Organization”).

WHEREAS, the Organization has submitted plans and a valid petition for the installation of right of way art on E. Chase Street and N. Chester Street.

WHEREAS, the City has reviewed such plans and approves said installation subject to the conditions set forth in this MOU; and

WHEREAS, it is in the mutual interest of the parties hereto to enter into this MOU;

NOW THEREFORE, in consideration of the terms, conditions, obligations and promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged the parties hereto agree as follows:

I. PURPOSE

The purpose of this MOU is to establish a framework for the Organization to install right of way art (the “Placemaking Elements”) at specified locations at E. Chase Street and N. Chester Street., all at its sole cost (the “Project”) and subsequently for the Organization to perform ongoing maintenance of all aspects of the Project during the term of the agreement. The Placemaking Elements shall be owned solely by the City and nothing in this MOU shall confer upon the Organization any right, title or interest in the Placemaking Elements other than as expressly provided in this MOU.

II. ORGANIZATION’S OBLIGATIONS

- a. The Organization shall be responsible for the installation of the Placemaking Elements at its sole cost using an approved marking product (h.) in accordance with the art design (Exhibit A) submitted for approval. Organization shall include a sequence of installation which shall outline the Project installation timeline and procedures beginning with notification of neighbors and businesses as outlined in

the agreement, road closures, and maintenance of traffic, application, cleanup, and completing of the Project; and

- b. The Organization shall maintain, at its sole cost, all aspects of the Project during the term of the agreement. Plans submitted for approval shall also include a maintenance schedule including inspections, routine reapplication, and other maintenance procedures specified by the manufacturer. The maintenance schedule shall cover the expected life cycle of the Project as indicated in the agreement. The Organization shall be responsible for all on-going maintenance, including touch-ups and graffiti removal, as well as complete removal of the Placemaking Elements at the end of the permit period. Street maintenance (such as patching or resurfacing) or repair to City property may also require the applicant to partially repaint or repair the Project; and
- c. The Organization will obtain all permits required in order to install the Placemaking Elements. As part of the permit, the Traffic Engineer must approve a traffic management plan or temporary street closure permit for the Project installation. No street will be blocked for more than 12 hours in any 24-hour period unless specifically allowed by the Traffic Engineer. The Organization is not authorized to do any excavation in the Public Right-of-way; and
- d. If any nuisance condition is allowed to exist in the area of the Project, the City may summarily abate such nuisance. The existence of a nuisance in the area of the Project may be grounds for revocation of the permit; and
- e. The Organization will work with all affected neighbors to resolve any concerns that may arise regarding the Project. The inability to resolve such concerns may be grounds for revocation of the agreement by the City of Baltimore; and
- f. The Organization will notify all households and businesses within two standard city blocks in each direction from the intersection of the Project at least 14 days before the Project installation date; and
- g. Organization shall furnish all labor, equipment, and materials necessary for maintenance activities; and
- h. **Approved Products:** The following products are approved by the Baltimore City Department of Transportation for Placemaking Elements projects as specified:
 - i. Sherman Williams Highway Products – Hotline® Traffic Paint with SharkGrip® H&C™ Slip Resistant Additive
 - ii. PreMark® by Flint

- iii. Integrated Paving Concepts (IPC) installed by Alternative Paving Concepts
- iv. StreetBond® SB150 Pavement Coating

All approved products shall be the actual product specified above. No “or approved equal” will be allowed. The Organization shall specify the product selection with final design submission to the City of Baltimore Department of Transportation, in accordance with Section V.B below (“Conditions Precedent”). Installation shall be per manufacturer’s recommendation. No excavation in the public right-of-way is permitted.

- i. Organization to repair damage due to vandalism, breakage and normal wear, unrelated to Contractor operations, as an additional service after approval from the City. Any damage caused by the Organization shall be repaired at no cost to the City. The City shall not be liable for any damage resulting from the maintenance activities of the Organization; and
- j. The City is not responsible to reinstall the Placemaking Elements if street repair, street maintenance, street construction, repair of existing utility facilities or installation of new utility facilities, or some other emergency in the right-of-way affects the installation of the Placemaking Elements; and
- k. The Organization shall, at no cost to the City, remove all aspects and/or features of the Project upon the termination or expiration of this MOU.

III. TERM OF THE MOU

This MOU shall commence immediately upon approval by the Baltimore City Board of Estimates and remain in effect for a period of two years, renewable for an additional two (2) years.

IV. CONDITIONS PRECEDENT

- A. The Organization shall obtain all required permits prior to the installation of the Placemaking Elements. As part of the permit, the Traffic Engineer must approve a traffic management plan or temporary street closure permit for the Project installation. No street will be blocked for more than 12 hours in any 24-hour period unless specifically allowed by the City.
- B. Final Design:
 - i. The execution of this MOU shall be contingent upon the approval of the final design of the Project by the City of Baltimore. The applicant must demonstrate how the Project will improve, or at least maintain, traffic safety and the safety of individuals at or in the vicinity of the intersection. The City of Baltimore, Department of Transportation has the right to reject any design outright without

cause and may reject designs for appropriateness within the City of Baltimore, pedestrian and traffic safety concerns, or other concerns based on the actual design submitted.

- ii. The applicant must provide the Traffic Engineer with a written description of the design, materials, and proposed changes to the intersection. No advertising or text of any sort will be allowed as part of the Project. Artwork shall not mimic any traffic control devices or signage used on City streets.
- iii. To the extent it may be applicable, the Organization waives any rights that it may have under the Visual Artists Rights Act of 1990, [17 U.S.C. §106A](#), as amended from time to time.

V. REPRESENTATIONS AND WARRANTIES

1. Organization is a corporation duly organized, validly existing, and in good standing under the laws of Maryland, with full power and authority to conduct its business as it is now being conducted, to own or to use the properties and assets that it purports to own or use, and to perform all its obligations under this MOU.
2. The undersigned agent, on behalf of the Organization, has the absolute and unrestricted actual authority to execute and deliver this MOU.

VI. LIABILITY AND INDEMNIFICATION

Organization shall indemnify, defend, and hold harmless the City, its elected/appointed officials, departments, employees, agents and volunteers from any and all claims, demands, suits and actions, including reasonable attorney's fees and court costs connected therewith, brought against the City, its elected/appointed officials, employees, agents, and servants arising as a result of any direct or indirect, willful, or negligent act or omission of Organization, its contractors, employees, agents, or volunteers, EXCEPT for activities caused by the sole negligent act or omission of the City, its elected/appointed officials, employees, agents, and volunteers arising out of this MOU. This indemnification provision shall survive termination of this MOU.

VII. INSURANCE REQUIREMENTS

Organization shall procure and maintain during the term of this MOU to the following required insurance coverages and require the same insurance coverages of its contractors or anyone directly or indirectly employed by any of them:

- a. Commercial General Liability Insurance at limits of not less than One Million Dollars (\$1,000,000) per occurrence for claims arising out of bodily injuries or death, and property damages. In those policies with aggregate limits, a minimum limit of Two Million Dollars (\$2,000,000) is required. Such insurance shall include contractual liability insurance, umbrella, and excess liability coverages.

- b. Workers' Compensation coverage as required by the State of Maryland, as well as any similar coverage required for this work by applicable Federal or "Other States" State Law.
- c. The Mayor and City Council of Baltimore, its elected/appointed officials, employees, and agents shall be covered, by endorsement, as additional insureds on applicable policies as respects to liability arising out of activities performed by or on behalf of the Organization in connection with this MOU.
- d. Organization's insurance shall apply separately to each insured against whom a claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability.
- e. To the extent of Organization's negligence, the Organization's insurance coverage shall be primary insurance as respects the City, its elected/appointed officials, employees, and agents. Any insurance and/or self-insurance maintained by the City, its elected/appointed officials, employees, or agents shall not contribute with Organization's insurance or benefit Organization in any way.
- f. Coverage shall not be suspended, voided, canceled, reduced in coverage or in limits, except by the reduction of the applicable aggregate limit by claims paid, until after forty-five (45) days prior written notice has been given to the CITY. There will be an exception for non-payment of premium, which is ten (10) days notice of cancellation.
- g. Insurance is to be placed with insurers with a Best's rating of no less than A: VII, or, if not rated with Best's, with minimum surpluses the equivalent of Best's surplus size VII and must be licensed/approved to do business in the State of Maryland.
- h. Organization shall furnish the City a "Certificate of Insurance" with a copy of the additional insured endorsement as verification that coverage is in force. The City reserves the right to require complete copies of insurance policies at any time.
- i. Failure to obtain insurance coverage as required or failure to furnish Certificate(s) of Insurance as required shall render this MOU null and void; provided, however, that no act or omission of the CITY shall in any way limit, modify or affect the obligations of Organization under any provision of the MOU.

VIII. ASSIGNMENT OF MOU

Organization shall not assign, donate, transfer, convey, or sublet this MOU, or any part thereof without prior written consent of the CITY.

IX. COMPLIANCE WITH LAWS AND REGULATIONS

Organization at all times shall observe and comply with all federal, state and local laws, regulations, ordinances, orders, and decrees applicable to these services, and shall indemnify, defend and hold harmless the CITY, and all its officers, agents and employees against any and all claims of liability arising from or based on Organization's violation of any such law, regulation, ordinance, order or decree, whether by Organization, its officer agents, employees, successors and assigns and any other person or entity associated with Organization, in the performance of the services provided under the terms of this MOU. This MOU shall be governed and construed under the laws of the State of Maryland.

X. TERMINATION FOR CAUSE

A. If through any cause, Organization fails to fulfill in a timely and proper manner its obligations under this MOU, or if Organization violates any of the terms and conditions of this MOU, the City shall thereupon have the right to terminate this MOU, after giving written notice to Organization, of its intent to terminate the MOU and specifying the grounds of termination.

B. Organization shall have thirty (30) days from receipt of notice of termination to cure the said default. If the default is cured within the stated time, the MOU shall continue, as if no default had occurred. But, if Organization has not cured the default within the said thirty (30) days, the MOU will terminate without further notice.

C. Notwithstanding the above, the Organization shall not be relieved of any liability to the City for damages sustained by the City by virtue of any breach of this MOU.

XI. TERMINATION FOR CONVENIENCE

The City may terminate this MOU for convenience by giving thirty (30) days prior written notice to the Organization of its intention to terminate.

XII. NOTICE

All notices required or permitted hereunder to be given by either party to the other shall be in writing and shall be sent via United States certified mail, return receipt requested, or hand delivered to the parties and addresses below:

FOR CITY

Steve Sharkey, Director
Department of Transportation
417 E. Fayette Street, Suite 527
Baltimore, MD 21202

With copies to:

Theo Ngongang
Deputy Director and Chief of Policy
Department of Transportation
417 E Fayette Street, 5th Floor
Baltimore, MD 21202

FOR THE ORGANIZATION

Ellen Burke
Executive Director
City Life - Community Builders, LTD.
2809 Boston Street #402
Baltimore, MD 21224
Eburke13@msn.com

XIII. RECITALS

The Recitals shall be incorporated herein and be made a part hereof.

XIV. MULTIPLE COPIES

This MOU may be executed in any number of copies and each copy shall be deemed an original.

XV. ENTIRE AGREEMENT/MODIFICATIONS

This MOU contains the entire agreement between the parties, there are no other promises, conditions, or terms than those expressly set forth in this MOU and any agreement hereafter made shall be ineffective to modify or terminate this MOU or constitute a waiver of any of the provisions hereof unless such agreement is in writing and signed by the party against whom enforcement of the modification, termination or waiver is sought.

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IN WITNESS WHEREOF, the parties hereto have executed this MOU intending it to be under seal, by their duly authorized officers and/or officials the day and year first above written.

ATTEST:

CITY LIFE - COMMUNITY BUILDERS, LTD.

Witness Title

By: _____ (SEAL)
Ellen Burke, Executive Director
City Life - Community Builders, LTD.

ATTEST:

MAYOR AND CITY COUNCIL OF BALTIMORE

Custodian of the City Seal

By: _____
Steve Sharkey, Director
Department of Transportation

APPROVED AS TO FORM AND LEGAL SUFFICIENCY THIS _____ DAY OF _____, 2020

W. Michael Mullen
Chief Solicitor

APPROVED BY THE BOARD OF ESTIMATES:

Clerk Date

Being Page 8 of an 8 page MOU by and between the MAYOR AND CITY COUNCIL OF BALTIMORE and CITY LIFE - COMMUNITY BUILDERS, LTD.