**DONATION AGREEMENT**

**AMONG THE**

**MAYOR AND CITY COUNCIL OF BALTIMORE**

**AND**

**DONOR’S LEGAL NAME**

**THIS DONATION AGREEMENT** (this “Agreement”) made on the Effective Date (defined below), by and among the **MAYOR AND CITY COUNCIL OF BALTIMORE**, a municipal corporation of the State of Maryland, acting by and through PROVIDE SPECIFIC DEPARTMENT/AGENCY (the “City”), and **DONOR’S LEGAL NAME**, a non-profit corporation / corporation / limited liability company formed / registered and in good standing in the State of Maryland (“Donor”).

**RECITALS**

**WHEREAS**, the City has jurisdiction and control over the property/area known as **SPECIFY PROPERTY** (the “Property”), as shown on **Exhibit A**, attached hereto and incorporated herein;

**WHEREAS**, Donor desires to improve the Property as further provided in **Exhibit B** (the “Project”) attached hereto and incorporated herein;

**WHEREAS**, consistent with its charitable mission, Donor desires to make financial support available in furtherance of the Project;

**WHEREAS**, Donor shall have the necessary funds (the “Contribution”) to support the Project and in furtherance of the Project intends to select a contractor (“Contractor”) to perform the work within the designated area of the Property (the “Project Site”), as shown on **Exhibit A**;

**WHEREAS**, Donor desires to fund the Project through the terms and conditions of this Agreement by which Donor intends to enter into a contract with Contractor to furnish all labor, materials and/or equipment necessary to perform the scope of work of the Project as provided in **Exhibit B**;

**WHEREAS**, Donor anticipates the total cost of the Project to be approximately **PROVIDE DOLLAR AMOUNT ($ )**, and Donor agrees to donate the entire cost of the Project, whether it be more or less than the estimated total stated above, including performance of the Project as provided herein;

**WHEREAS**, the City has not participated in funding the Project nor in selecting Contractor, and Donor is not receiving any goods or services from the City in exchange for this contribution;

**WHEREAS**, Contractor shall perform the scope of work, as provided in **Exhibit B**;

**WHEREAS**, upon completion of the Project, the improvements become the sole property of the City; and

**NOW, THEREFORE, WITNESSETH, THAT** for and in consideration of the promises, mutual covenants, obligations, benefits, and undertakings herein set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **TERM:**
   1. The term of this Agreement shall begin upon the date this Agreement is approved by the Board of Estimates of Baltimore City / on the date the last party signs this Agreement (the “Effective Date”) and shall end upon Final Acceptance of the Project by the City, unless earlier terminated pursuant to the terms hereof. Final Acceptance is defined as the acceptance of the Project by the City after Donor and the City have verified that the equipment and systems are fully operational, all warranty work is complete and Contractor has fulfilled its contract obligations.
2. **FUNDING OF THE PROJECT:** 
   1. Until Donor has received adequate funding for the Project detailed on **Exhibit B**, no work shall commence on the Project.
3. **SCOPE OF WORK:** 
   1. Contract with Contractor. Donor agrees to enter into a contract with Contractor for the performance and completion of the work as outlined in **Exhibit B**. Donor shall make payment to Contractor upon Donor’s receipt and approval of invoice(s) and accompanying certification(s) of completion of the work. Unless otherwise agreed to in writing by Donor and the City, Contractor shall not provide services under this Agreement in excess of the amount of the Contribution. Following the completion of the Project, Contractor will warrant and guarantee to the City its work as described in the plans for the Project for a period of one (1) year after the date of completion and acceptance of the Project. Contractor shall perform its obligations as stated in this Agreement.
   2. Performance. Donor agrees the Project will be performed in a good and workmanlike manner and in accordance with the applicable requirements of the City of Baltimore, Department of Public Works, Specifications for Material, Highways, Bridges, Utilities and Incidental Structures, Issue of 2006, as amended, and the City of Baltimore, Department of Public Works, Book of Standards, as amended (collectively, the “Specifications”). Donor shall ensure Contractor provides the detailed services specified on **Exhibit B** on the Property.
   3. Plans and Notice to Proceed. Before starting any work on the Project, Donor shall submit to the City all plans for the Project. Plans for the Project should comply with the Specifications. The City will review the plans to determine compliance with the Specifications and whether it meets the needs of the City. Upon request by the City, Donor shall revise the submitted plans prior to any work on the Project commencing. Before Contractor commences work on the Project, the City shall provide a Notice to Proceed.
   4. Compliance. Donor agrees to comply, and ensure Contractor complies, with all local, state and federal laws, ordinances, rules, and regulations, including those now in effect and hereafter adopted, while on the Property and during the performance of the Project. Donor further agrees to secure and maintain any and all federal, state and local permits, licenses or warrants needed for the Project, at no cost to the City. Donor shall be responsible for contacting Miss Utility prior to the occurrence of any digging on the Property.
   5. Safety. Donor shall ensure Contractor sets up traffic/safety cones, temporary fencing around the perimeter, and takes all other reasonable precautions in order to restrict access to the Project Site. Donor agrees that all activities on the Property shall be conducted in a safe and secure manner using all precautions to protect and secure persons and property at and near the Property. Donor agrees to comply with the City’s instructions regarding parking, ingress, egress, storage of supplies, disposal of materials and other matters. Following completion of the Project, Donor shall ensure that Contractor promptly backfills and seeds any pits or borings, restores the Property to its original or better condition, excluding the improvements, immediately removes all tools, materials and equipment, and lawfully disposes of any refuse, waste, and materials offsite.
   6. No Dumping. Donor’s violation of any provision of City Health Title 7 {“Waste Control”}, Subtitle 6 {“Prohibited Disposal”}, constitutes a breach of this Agreement; and the City may determine, in its discretion, whether the violation is a material breach warranting termination of this Agreement.
   7. Warranties. Donor shall insure all warranties provided for the work or materials on the Project are registered in the name of the City and that the City receives the full benefit of the warranty protection upon completion of the Project, as well as receives physical copies of the warranty certificates within thirty (30) days following completion of the Project. Donor gives assurances that the warranties provided for the work are at least one (1) year in length. Donor shall, upon written request from the City, do (or cause to be done) all further acts, and provide all assurances as may reasonably be necessary or desirable to ensure that that the City receives the full benefit of the warranty protection upon completion of the work. If required, Donor shall arrange for all inspections of the work performed and shall pay all costs required for those inspection services during the term of this Agreement and the warranty period(s).
   8. Hazardous Material. At this time, the City is not aware of any asbestos, lead paint, lead coatings, and/or any other hazardous materials (the “Hazardous Material”) on the Project. Donor shall be responsible to provide all services and work necessary to identify, remove, remediate, correct and dispose of Hazardous Material and to be responsible for complying with all federal, state and local laws and regulations related to the identification, removal, remediation, correction and disposal of the Hazardous Material. If Donor identifies Hazardous Material on the Project, Donor shall obtain prior written approval from the City before proceeding with removal, remediation, correction and disposal of the Hazardous Material.
   9. Utilities. Donor shall protect and safeguard all surface and sub-service utilities, electric lines, water lines, conduits, pipes and other objects on the Property while performing the Project. Donor shall ensure Contractor immediately repairs or replaces (if necessary) utilities, water lines, conduits, pipes, or other objects on the Property damaged by Contractor’s direct or indirect action or omission.
   10. References. Prior to initiating any work under the Project, Donor shall provide references from prior completed projects by Donor and Contractor, whether or not these projects were City projects, for the City’s review. If Contractor is prequalified to do business with the City, this provision may be waived.
   11. Control Over the Property. The City reserves the right at all times to exercise full and complete control over the Property, and shall provide oversight of the schedule and the work performed by Contractor. At all times, the Director of the Provide Specific Department/Agency, or designee, shall have access to and have the right to inspect any and all activities pertaining to this Agreement.
   12. Assurances. Donor hereby represents, warrants, covenants, and agrees that:
       1. It is qualified to do business in the State of Maryland and that it will take such action as, from time to time hereafter, may be necessary to remain so qualified;
       2. Donor’s name in this Agreement is its full legal name;
       3. It has the requisite corporate power (if applicable), authority and legal capacity to enter into this Agreement and fulfill its obligations hereunder;
       4. The execution and delivery by it of this Agreement and the performance by it of its obligations hereunder have been duly authorized by all requisite action of its stockholders, partners or members, and by its board of directors or other governing body (if applicable);
       5. During the term, it will comply with all federal, state and local laws, ordinances, rules and regulations, including interim expenditure and annual report requirements, and applicable codes of ethics pertaining to or regulating the services to be performed pursuant to this Agreement, including those now in effect and hereafter adopted;
       6. There are no suits or proceedings pending or threatened, whether in law or in equity, to the best of Donor’s knowledge, which if adversely determined, would have a material adverse effect on the financial condition or business of Donor; and
       7. It has obtained, at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to perform its obligations under this Agreement.
   13. Non-Discrimination. In performance of the Project, Contractor shall not discriminate against any person because of race, creed, color, religion, political belief, sex, sexual orientation, gender, age, disability or national origin. Further, Contractor shall comply with the Commercial Non-Discrimination Policy at Article 5, Subtitle 29 of the Baltimore City Code, which is incorporated into this Agreement by reference.
   14. Conflict. In the event of any discrepancy or conflict between this Agreement and any attached or referenced exhibit, document, plan, or resolution, this Agreement shall prevail.
4. **RIGHT OF ENTRY:**
   1. The City hereby grants unto Donor, Contractor, and their employees, agents, representatives, subcontractors and suppliers a right of entry into and upon the Property for the purpose of performing the work described in **Exhibit B**. The parties agree that this right of entry does not convey a current interest in the Property or a future transfer of the Property. Additionally, the parties agree that this right of entry shall not interfere with, nor impede the community’s use of the Property.
5. **INSURANCE:**
   1. Donor shall procure, and cause Contractor to procure, insurance as required in the Specifications. The City shall be listed as an insured. Donor and Contractor shall furnish the City a "Certificate of Insurance” with a copy of the additional insured endorsement as verification that coverage is in force prior to entry by Contractor or its subcontractors on the Property. Donor expressly warrants, attests and certifies that there are no carve outs or exclusions to the policy coverage and limitations required in the Specifications, except as required by law. Additionally, Contractor shall insure that there are no carve outs or exclusions to the policy coverage and limitations required in the Specifications, except as required by law.
   2. Donor and Contractor shall have and maintain during the life of the Agreement such property insurance upon Contractor’s entire work at the Project Site to the completed value thereof. This insurance shall protect the City, as its interest may appear in the work and shall insure against the perils of fire and extended coverage, theft, vandalism, and malicious mischief. All risk insurance may not contain exclusions to flood, earthquake, mysterious disappearance, hail and terrorism. If the property insurance contains a co-insurance provision, Donor shall be responsible for the amount of insurance satisfying the co-insurance amount so as to make the co-insurance clause inoperable. If not covered otherwise, Donor and Contractor shall have and maintain during the life of the Agreement similar property insurance on portions of the work stored off the site or in transit when such portions of the work are to be included in any payment.
6. **PERFORMANCE AND PAYMENT BONDS:**
   1. In the event that the Project’s estimated cost exceeds One Hundred Thousand Dollars ($100,000), prior to initiating any work under the Project, the total cost of the work to be performed by Contractor shall be secured by performance and payment bonds in full amounts thereof and on forms acceptable to the City. Said performance and payment bonds shall name the City as an obligee and shall remain in effect until Final Acceptance of the Project.
7. **INDEMNIFICATION:**
   1. Donor shall and cause Contractor to indemnify, defend and hold harmless the City, its elected/appointed officials, employees, agents and representatives against and from all claims, demands, suits or actions of every nature and description, including attorneys’ fees and court costs connected therewith, brought against the City, its elected/appointed officials, employees, agents and representatives arising as a result of: (a) breach of Donor’s and/or Contractor’s representations, warranties, covenants, or agreements under this Agreement; (b) Donor’s and/or Contractor’s violation or breach of any federal, state, local, or common law, regulation, law, rule, ordinance, or code, whether presently known or unknown; and (c) any act or omission, whether willful, negligent, or otherwise, of Donor and/or Contractor in the performance of this Agreement or use of the Property, whether such claims are based upon contract, warranty, tort, strict liability or otherwise. This requirement shall be included in Donor’s and Contractor’s agreement(s) with all other contractors and subcontractors related to the Project.
   2. The City shall have the right to control the defense of all such claims, lawsuits, and other proceedings. In no event shall Donor and/or Contractor settle any such claim, lawsuit or proceeding without City’s prior written approval. In the event of any liability claim against Donor and/or Contractor, neither Donor nor Contractor shall seek to join the City, its elected/appointed officials, employees, or agents in such action or hold such responsible in any way for legal protection of Donor and/or Contractor.
   3. The obligations of this Section shall survive the expiration or earlier termination of this Agreement.
8. **TERMINATION:** 
   1. The City reserves the unconditional and absolute right to terminate this Agreement, if deemed in the best interests of the City to do so, and without liability hereunder. If this Agreement is terminated after the commencement of construction but prior to completion of the Project, all improvements then on the Project Site that are related to the Project shall be deemed property of the City, and Donor shall apply any remaining portion of the Contribution in furtherance of the Project or projects similar to those described in this Agreement.
9. **ASSIGNMENT AND MODIFICATION:**
   1. Any and all modifications, alterations, or amendments to the provisions of this Agreement must be by means of a written amendment that refers to and incorporates this Agreement, is duly executed by an authorized representative of each party, and is approved by the Board of Estimates, if necessary. No modifications, alterations, or amendments of this Agreement are valid and enforceable unless the above requirements have been satisfied.
10. **MINORITY AND WOMEN’S BUSINESS OPPORTUNITY REQUIREMENTS:**
    1. Article 5, Subtitle 28 of the Baltimore City Code (current edition) is not applicable to this Agreement.
11. **EMPLOY BALTIMORE AND LOCAL HIRING REQUIREMENTS:**
    1. The “Employ Baltimore” Executive Order issued by the Mayor of Baltimore dated June 9, 2011 and Article 5, Subtitle 27 of the Baltimore City Code (current edition) are not applicable to this Agreement.
12. **MISCELLANEOUS PROVISIONS:**
    1. Notice. All notices, requests, claims, demands and other communications required or permitted under this Agreement (collectively, “Notices”) shall be in writing and be given (i) by delivery in person, (ii) by a nationally recognized next day courier service, (iii) by registered or certified mail, postage prepaid, to the address of the party specified in this Agreement or such other address as either party may specify in writing to the following:

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| --- | --- |
| **As to the City:**  , Director  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Baltimore, Maryland \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  with a copy to: Contract Administrator | **As to Donor:**  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

All Notices shall be effective upon receipt by the party to which notice is given.

* 1. Governance. This Agreement is made in the State of Maryland and shall be governed by the laws of the State of Maryland, including the applicable statute of limitations, without regard to the conflict of law rules. The legal venue of this Agreement and any disputes arising from it shall be settled in Baltimore City, Maryland. Donor hereby irrevocably waives any objections and any right to immunity on the ground of venue or the convenience of the forum, or to the jurisdiction of such courts or from the execution of judgments resulting therefrom.
  2. No Waiver. A party’s failure to insist on compliance or enforcement of any provision of this Agreement shall not affect its validity or enforceability or constitute a waiver of future enforcement of that provision or of any other provision of this Agreement.
  3. Severability. Each provision of this Agreement shall be deemed to be a separate, severable, and independently enforceable provision. The invalidity or breach of any provision shall not cause the invalidity or breach of the remaining provisions or of this Agreement, which shall remain in full force and effect.
  4. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the respective personal and legal representatives, successors, guardians, heirs and permitted assigns of the parties hereto and all persons claiming by and through them.
  5. Agency. Nothing herein contained shall be construed to constitute any party the agent, servant or employee of the other party, except as specifically provided in this Agreement. No party has the authority to act as an agent of the other party except as specifically provided in this Agreement.
  6. Conflict of Interest. No elected official of the City, nor other officer, employee or agent of the City who exercises any functions or responsibilities in connection with this Agreement, shall have any personal interest, direct or indirect, in this Agreement. By executing this Agreement, Donor asserts that it has not engaged in any practice or entered into any past or ongoing agreement that would be considered a conflict of interest with this Agreement. Donor agrees to refrain from entering into all such practices or agreements during the term of this Agreement (and any extensions thereto) that could give rise to a conflict of interest. Furthermore, Donor asserts that it has fully disclosed to the City any and all practices and/or agreements of whatever nature or duration that could give rise to a conflict of interest and will continue to do so during the term of this Agreement and any extensions thereto.
  7. Gender. Words of gender used in this Agreement may be construed to include any gender; words in the singular may include the plural of words, and vice versa.
  8. Headings. Any heading of the paragraphs in this Agreement is inserted for convenience and reference only, and shall be disregarded in construing and/or interpreting this Agreement.
  9. Multiple Copies. This Agreement may be executed in any number of copies and each such copy shall be deemed an original.
  10. Recitals. The Recitals are hereby made a part of this Agreement.
  11. Survival. The representations, warranties, covenants, promises and agreements contained in this Agreement shall survive the execution and consummation of this Agreement, and shall continue until the applicable statute of limitations shall have barred any claims thereon.
  12. Interpretation. In the event of an ambiguity or question as to the meaning of any provision of this Agreement, or a conflict, or inconsistency between similar terms, conditions, or language between or within this Agreement and the provisions of any exhibit or schedule attached hereto or any document referred to herein, the interpretation placed thereon by the City shall be final and binding on the parties hereto, provided that any such interpretation shall not be unreasonable.
  13. Assignability/Subcontracting. Donor shall not assign, transfer, or subcontract any part of this Agreement without the prior written consent of the City, which shall not be unreasonably withheld.
  14. Further Assurances. Each party shall cooperate with the other and execute such instruments or documents and take such other actions as may reasonably be requested from time to time in order to carry out, evidence or confirm their rights or obligations or as may be reasonably necessary or helpful to give effect to this Agreement. When joint approval is required of the City and Donor, neither party may unreasonably withhold its approval.
  15. Force Majeure. Neither party will be liable for its non-performance or delayed performance if caused by a “Force Majeure” which means an event, circumstance, or act of a third party that is beyond a party’s reasonable control, such as an act of God, an act of the public enemy, an act of a government entity, strikes or other labor disturbances, hurricanes, earthquakes, fires, floods, epidemics, embargoes, war, or any other similar cause. Each party will notify the other if it becomes aware of any Force Majeure that will significantly delay performance. The notifying party will give such notice promptly (but in no event later than fifteen (15) calendar days) after it discovers the Force Majeure. If a Force Majeure occurs, the parties may modify this Agreement in accordance with the requirements herein.
  16. Entire Agreement. This Agreement constitutes the entire, full and final understanding between the parties hereto and neither party shall be bound by any representations, statements, promises or agreements not expressly set forth herein. The parties do not intend to sign this Agreement under seal to make it a specialty under Maryland law and hereby agree to impose the standard statute of limitations on this Agreement.

**[SIGNATURE PAGE FOLLOWS]**

**IN WITNESS WHEREOF**, this Agreement represents the full intent and interest of the parties hereto as evidenced by their respective signatures affixed below, as of the Effective Date.

**ATTEST** **MAYOR AND CITY COUNCIL OF BALTIMORE**

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

Custodian of the City Seal , Director

Department of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

**WITNESS** **DONOR’S LEGAL NAME**

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

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

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

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

**APPROVED AS TO FORM AND LEGAL SUFFICIENCY**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Assistant City Solicitor Date

**APPROVED BY BOARD OF ESTIMATES OF BALTIMORE CITY**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Clerk Date

**EXHIBIT A**

**Property and Project**

Property: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Project: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(See attached.)

**EXHIBIT B**

**Scope of Work**

(See attached.)