

**MEMORANDUM OF UNDERSTANDING**  
**On Use of Critical Area Fee-in-Lieu Monies**

**THIS MEMORANDUM OF UNDERSTANDING (MOU)** is entered into this \_\_\_\_ day of \_\_\_\_\_, 2020, by and between the **CITY OF ANNAPOLIS, a municipal corporation of the State of Maryland, on behalf of its DEPARTMENT OF PLANNING AND ZONING AND OFFICE OF ENVIRONMENTAL POLICY** (collectively, “the City”) and the **CRITICAL AREA COMMISSION FOR THE CHESAPEAKE AND ATLANTIC COASTAL BAYS** (the “Commission”) (the City and the Commission collectively, “the Parties,” and either “a Party”).

WHEREAS, under the Natural Resources Article § 8-1808 of the Maryland Annotated Code, the City was required to develop and implement a Critical Area Protection Program (the “Program”), subject to review and approval by the Commission; and

WHEREAS, under Natural Resources Article § 8-1809(c) and COMAR 27.01.01.03, notwithstanding any provision in a law or ordinance, or the lack of a provision in a local law or ordinance, all of the requirements of the law and Criteria shall apply to, and be applied by, a local jurisdiction as minimum standards for a local program sufficient to meet the goals of the Critical Area program; and

WHEREAS, under the Code of Maryland Regulations (“COMAR”) § 27.01.02, project approvals in the Critical Area must satisfy development standards in the form of forest and developed woodland mitigation and Buffer mitigation requirements on the development site; and

WHEREAS, the City is required to demonstrate compliance with those development standards when they cannot be met on-site, including through the collection of a fee-in-lieu by the City in order to implement forest and developed woodland planting as described in COMAR §27.01.02.04.C(4)(d), Buffer planting as described in COMAR §27.01.09.01-5.B(4)(a), or any other authorized water quality and habitat enhancement projects if approved by the Commission as described in COMAR §27.01.09.01-5.B(4)(b); and

WHEREAS, the City currently collects fees in lieu funds as part of its Program, and as allowed by the above-referenced provisions of COMAR, pursuant to the Code of the City of Annapolis (“City Code”) Section 17.09.070.C and Chapter 21.54; and

WHEREAS, mitigation plans within the City, including fees paid in lieu of mitigation planting, are approved by the City Department of Planning and Zoning, and final permit requirements, including any required mitigation planting, are approved and issued by that same City department; and

WHEREAS, as allowed by both COMAR §27.01.02.04.C(4)(d) and COMAR §27.01.09.01-5, the City desires to enter into an agreement with the Commission to establish specific types of water quality and habitat enhancement projects that the City can fund with fee in lieu monies beyond the traditional forest and developed woodland tree planting and Buffer planting.

NOW THEREFORE, the Parties are entering into this MOU to set forth their respective duties and responsibilities regarding those water quality and habitat enhancement projects that the City is authorized to fund with fee in lieu monies collected as part of its Program.

## **I. TERM**

This MOU shall take effect as of the date written above, provided it has been signed by both Parties hereto, and shall continue in effect, unless otherwise terminated or revised in accordance with the terms and conditions of this MOU (the “Term”).

## **II. TERMINATION**

a. Either Party may terminate this MOU with written notice provided ninety (90) calendar days in advance to the other Party. If this MOU is terminated, the City agrees to continue to monitor and maintain any existing Projects (as defined below) that were approved during the Term of this MOU in accordance with the terms and condition herein.

## **III. SCOPE**

a. This MOU applies to fee in lieu funds and defaulted bond funds collected by the City as part of its Program for disturbance in the Critical Area Buffer and/or clearing of forest/developed woodland in the Critical Area pursuant to Section 17.09.070.C and Chapter 21.54 of the City Code (collectively, the “Fee-in-Lieu Funds”).

b. For each City development (and related permit) where tree clearing replacement for forest and developed woodlands at 1:1 is met onsite and the remaining mitigation requirements are met via Fee-in-Lieu Funds, the City may use those Fee-in-Lieu Funds collected for the innovative water quality and habitat enhancement projects specified in Section IV.a.1.

c. For each City development (and related permit) where 1:1 tree clearing replacement for forest and developed woodlands cannot be met onsite, the City will separately track those impacts and associated Fee-in-Lieu Funds to ensure that the City uses those Fee-in-Lieu Funds for direct replanting as specified in Sections IV.a.2.

d. For each City development (and related permit) where 1:1 Buffer mitigation is met onsite and the remaining mitigation requirements are met via Fee-In-Lieu Funds, the City may use those Fee-in-Lieu funds collected for the innovative water quality and habitat enhancement projects specified in Section IV.a.1.

e. For each City development (and related permit) where 1:1 Buffer mitigation cannot be met onsite, the City will separately track those impacts and associated Fee-In-Lieu funds to ensure the City uses those funds for direct replanting as specified in Section IV.a.3.

## **IV. COMMISSION-APPROVED PROJECT TYPES**

a. This MOU allows the City to expend its Fee-in-Lieu Funds for the following projects (individually, each a “Project” and collectively the “Projects”), without any further approvals required from the Commission:

1. Those innovative water quality and habitat enhancement Projects, as described in **Exhibit A** attached hereto and incorporated herein. These Projects may be supplemented and added to throughout the Term by mutual written amendment of the Parties. The City, in its sole discretion, may create third-party partnerships to help implement these Projects.
2. Those Projects consisting of planting and/or replanting of trees and woody vegetation at a 1:1 replacement for forest and developed woodlands. These Projects shall be tracked and reported separately as indicated in the template provided as **Exhibit B**, and as further described in Section V.a.4 of this MOU.
3. Those Projects consisting of planting and/or replanting of trees and woody vegetation at a 1:1 replacement for Buffer clearing. These Projects shall be tracked and reported separately as indicated in the template provided as **Exhibit B**, and as further described in Section V.a.4 of this MOU.

b. Up to twenty percent (20%) of the Fee-in-Lieu Funds may be dedicated by the City for maintenance and monitoring of the Projects, as required by Section V.a.3.

c. The City cannot use its Fee-in-Lieu Funds for any projects other than the Projects listed in **Exhibit A** or as may be amended.

d. The City may contribute to the Fee-in-Lieu Funds for any mitigation that may be required for City projects. However, the City cannot use Fee-in-Lieu Funds to accomplish compensatory mitigation for its own projects.

## V. RESPONSIBILITIES

a. City Responsibilities

1. Tracking Expenditures: The City is responsible for tracking the expenditures and account balance of all of its Fee-in-Lieu Funds, and reporting these expenditures in accordance with Section V.a.4.
2. Implementation:
  - (a) Those Projects described in Section IV.a.2. and Section IV.a.3. may only be implemented by the City or as directed by the City.
  - (b) Those Projects described in Section IV.a.1 and listed in **Exhibit A**, or otherwise approved by the Commission in writing, may be implemented by the City, a third party, or a cooperative effort of the City and a third party.

3. Long-Term Maintenance and Monitoring: The City will be responsible for securing five (5) years of maintenance and monitoring of all Projects implemented in accordance with this MOU, either through a third-party partnership or by the City itself.
4. Annual Reporting: The City will be responsible for annual reporting of its Fee-in-Lieu Fund debits and credits, to be tracked as described below, to the Commission by April 1st of each year during the Term. This annual report, a template of which is provided as **Exhibit B**, must include:
  - (a) Amount of Fee-in-Lieu Funds collected.
  - (b) Amount of Fee-in-Lieu Funds collected for those Projects described in Section IV.a.2. and Section IV.a.3.
  - (c) Specific Projects, as described in Section IV.a.1, implemented with Fee-in-Lieu Funds.
  - (d) Amount of Fee-in-Lieu Funds spent for each specific Project.
  - (e) Any third-party partner associated with implementation of each Project, and their specific role.
  - (f) Details of a maintenance/monitoring plan for each Project including estimated costs, where appropriate.
  - (g) Annual administrative expenses, including money spent on Project maintenance and monitoring.

b. Commission Responsibilities

1. The Commission hereby agrees that the Projects specified in this MOU, and specifically Section IV, are authorized in advance as permissible projects for which the City may expend its Fee-in-Lieu Funds without the need to obtain any additional approvals.
2. The Commission will assist and provide guidance to the City in the City's use of its Fee-in-Lieu Funds to meet the 1:1 tree clearing replacement goal for those Projects described in Section IV.a.2. and Section IV.a.3.
3. The Commission will assist and work with the City to create third-party partnerships with organizations willing to implement those Projects described in Section IV.a.1 with City Fee-in-Lieu Funds.

**VI. AGENCIES HELD HARMLESS**

a. Recognizing that the City and the Commission are government entities and, as such, are subject to limitations on the indemnity that each can legally provide, the Parties agree, to the fullest extent permitted by law, and subject to existing appropriations and/or available insurance coverage, to indemnify and save harmless and defend one another and all of their employees, officials, and representatives from all suits, actions, or claims of any character, brought on account of any injuries or damage sustained by any person or property in consequence of any work under this MOU by the Parties, or any subcontractor of the Parties, or the subcontractor's employees, agents, or representatives. This is not to be deemed as a waiver of any

immunity that may exist in any action. Neither Party shall be responsible for acts of negligence or willful misconduct committed by the other Party.

b. Further, the Commission acknowledges that the City is a municipal corporation of the State of Maryland and is self-insured with respect to any and all claims concerning public liability and property damage. The City's liability coverage is limited by Maryland State Law in accordance with the provisions of Section 5-301 et seq. of the Courts and Judicial Proceedings Article of the Annotated Code of Maryland, also known as the Local Government Tort Claims Act.

## **VII. COSTS AND EXPENSES; LABOR**

a. Each Party to this MOU shall be solely responsible for any and all costs and expenses incurred in order to accomplish its responsibilities under this MOU, and each Party shall obtain all necessary approvals and/or appropriations from its governing bodies and/or executive officers in order to accomplish such responsibilities in a timely manner.

b. Each Party to this MOU shall be solely responsible for providing any and all labor that may be necessary to accomplish its responsibilities under this MOU, whether through employees, agents, contractors, volunteers and/or other third parties.

## **VIII. GENERAL PROVISIONS**

a. The recitals are hereby incorporated into and made a part of this MOU.

b. Nothing contained in this MOU shall be construed to constitute any one Party as an agent, representative and/or employee of any other Party. Nor shall anything contained in this MOU be construed in any manner to create any relationship between the City and the Commission other than expressly specified herein, and the City and the Commission shall not be considered partners or co-venturers for any purpose on account of this MOU.

c. This MOU sets forth the entire agreement between the Parties relative to the subject matter hereof. No representation, promise or condition, whether oral or written, not incorporated herein shall be binding upon either Party to this MOU. No waiver, modification or amendment to the terms of this MOU shall be effective unless made in writing and signed by the authorized representatives of both Parties. Amendments or modifications to this MOU shall also require approval by the full Commission.

d. This MOU may be executed in any number of counterparts and by the Parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute but one and the same document.

e. This MOU shall be governed and construed in accordance with the laws of the State of Maryland.

f. The Parties shall generate records in support of their responsibilities under this MOU and maintain those records for a minimum of five (5) years from the date of the generation of the records. These records shall be made available, upon reasonable written request, to any of the other Parties to this MOU.

g. Whenever the concurrence or approval of any Party is required, such concurrence or approval shall not be unreasonably withheld or delayed, and the Parties agree to cooperate with each other to accomplish the terms and conditions of this MOU.

h. Should disagreements arise as to the interpretation of the provisions of this MOU, or amendments and/or revisions thereto, that cannot be resolved at the operating level, the area(s) of disagreements will be stated in writing by each Party and presented to the other Party for consideration. If agreement on interpretation is not reached within thirty (30) calendar days from such written statement(s), the Parties shall forward the written presentation of the disagreement to a higher official in each agency for appropriate resolution.

i. The Parties acknowledge and agree that the **Exhibits** to this MOU are a result of a joint effort by the Parties. Because these **Exhibits** may evolve with gained experience during implementation of the MOU, the Parties agree that the **Exhibits** may be amended periodically with the written consent of both Parties, in accordance with Section VIII.d. The Commission Chairman will update the Commission of any amendments or modifications to the **Exhibits** at the next meeting following the agreed-upon amendments or modifications.

j. The Parties shall review this MOU at least once every five (5) years to determine whether it should be revised or terminated.

k. Any notice required to be delivered shall be deemed to have been received when the notice has been sent by certified mail, return receipt, overnight carrier, or hand delivered with signed receipt to the following address and individual or such other address and/or such other individual as a party may identify in writing to the other party:

To the City:  
Director, Office of Environmental Policy  
145 Gorman Street, 2nd floor  
Annapolis, MD 21401

Director, Department of Planning and Zoning  
145 Gorman Street, 3rd floor  
Annapolis, MD 21401

With a Copy to:  
City Attorney  
160 Duke of Gloucester Street  
Annapolis, MD 21401

To the Commission:  
Executive Director  
Critical Area Commission  
1804 West Street, Suite 100  
Annapolis, MD 21401

1. Signatures provided by electronic means including, by way of example and not of limitation, facsimile, Adobe, PDF, and sent by electronic mail or by an electronic signature program, shall be deemed to be original signatures.

IN WITNESS WHEREOF, the City and the Commission have executed this MOU as of the date first written above.

Witness for Commission:

CRITICAL AREA COMMISSION

\_\_\_\_\_

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

Charles Deegan, Chairman Critical Area Commission

Approved as to Form and Legal Sufficiency:

\_\_\_\_\_  
Emily Vainieri, Assistant Attorney General

ATTEST:

CITY OF ANNAPOLIS

\_\_\_\_\_  
Regina C. Watkins-Eldridge, MMC,  
City Clerk

By: \_\_\_\_\_  
Gavin Buckley, Mayor (Seal)

APPROVED FOR SUFFICIENT APPROPRIATIONS  
AND AVAILABILITY OF FUNDS:

\_\_\_\_\_  
Joanna D. Dickinson, Director  
Finance Department  
Source of Funds: \_\_\_\_\_

APPROVED FOR FORM AND LEGAL SUFFICIENCY:

\_\_\_\_\_  
Office of Law  
D. Michael Lyles, City Attorney

**EXHIBIT A**  
**APPROVED FEE-IN-LIEU FUND PROJECT TYPES**

As specified in Section IV.a.1 of the MOU, the City may use its Fee-in-Lieu Funds to perform the following Projects. These Projects may be located outside of the Critical Area unless otherwise specified below. All Projects must provide for water quality and habitat enhancement, and will be guided by the City's Watershed Implementation Plan (WIP) and Comprehensive Plan.

- Planting in the Critical Area.
- Shoreline and/or slope stabilization.
- Invasive species management.
- Grants for tree planting on private property within the Critical Area.
- Grants for stormwater management best management practices (BMPs) on City and/or private property.
- Grants for stream and wetland restoration projects on City and/or private property approved in coordination with Critical Area Commission staff.
- Living shorelines, habitat enhancement, and/or a planting component of a trail redesign and/or installation.
- Boundary surveys, wetland delineations, tree surveys, and/or other costs related to habitat and water quality enhancement.
- Costs associated with acquiring conservation easements.
- Land acquisition for water quality and habitat enhancement.
- Educational programs related to water quality and habitat enhancement.



**EXHIBIT B  
TRACKING SPREADSHEET TEMPLATE**

<b>Project Name (Development or Mitigation)</b>	<b>1:1 FIL Collected (\$)</b>	<b>Above 1:1 FIL Collected (\$)</b>	<b>FIL Spent (\$)</b>	<b>FIL Spent on Administrative Costs (\$)*</b>	<b>Third-Party Partner (if any) and Their Role</b>

**\*Includes maintenance and monitoring costs for Projects.**

**ATTACHMENTS:**

Maintenance and Monitoring Plans for each Project