

ATTACHMENT "A"

Memorandum of Agreement

MEMORANDUM OF AGREEMENT (MOA)

Regarding the Maryland-National Capital Purple Line

By and Between

The Maryland Transit Administration of the
Maryland Department of Transportation and
The Maryland-National Capital Park and Planning Commission
acting through
the Montgomery County Departments of Parks and Planning

THIS MEMORANDUM OF AGREEMENT (hereinafter this “MOA”) made this _____ day of _____, 2016, by and between the State of Maryland, acting by and through the Maryland Transit Administration of the Maryland Department of Transportation (“MTA”), and The Maryland-National Capital Park and Planning Commission (“Commission”), acting through the Commission’s Montgomery County Departments of Parks and Planning.

RECITALS:

Whereas, MTA proposes to construct a new 16.2-mile light rail line (depicted on Exhibit A) extending from Bethesda in Montgomery County to New Carrollton in Prince George’s County known as the Maryland-National Capital Purple Line (“Purple Line” or “Project”); and

Whereas, the Commission is empowered by the Titles 17 and 20 of the Land Use Article of the Annotated Code of Maryland, to own, control, develop, maintain, and operate a public park system and conduct mandatory referral review of public projects within the Maryland-Washington Metropolitan District, which includes Montgomery County and Prince George’s County; and

Whereas, on September 8, 2010, the Commission’s Montgomery County Planning Board adopted the Purple Line Functional Plan; and

Whereas, at the request of Montgomery County, Maryland, MTA has agreed to include three additional projects to the Purple Line solicitation, namely, the new Bethesda Metro South Entrance, the Silver Spring Green Trail, and the Capital Crescent Trail; and

Whereas, subject to certain limitations agreed upon by MTA and Montgomery County, the County-funded projects are being performed according to a scope of work and budget provided by Montgomery County; and,

Whereas, on March 20, 2014, the Commission’s Montgomery County Planning Board, in its regulatory capacity, reviewed the mandatory referral for the Purple Line and County-funded

43 Projects, which the Planning Board approved with comments to MTA and to the appropriate
 44 County agencies; and,

45
 46 **Whereas**, the Board of Public Works of Maryland has determined that the Purple Line will be
 47 constructed through a Public Private Partnership agreement, pursuant to §§ 10A-101 through
 48 10A-403, and § 11-203(h) of the State Finance and Procurement Article of the Annotated Code
 49 of Maryland; and

50
 51 **Whereas**, MTA will contract with a private entity that, acting as MTA’s agent, will design,
 52 construct, finance, operate, maintain, and rehabilitate the Purple Line.

53
 54 **NOW THEREFORE**, in consideration of the payment of the sum of One Dollar (\$1.00) by each
 55 party unto the other, and other good and valuable consideration, the receipt and sufficiency of
 56 which is hereby acknowledged, MTA and the Commission agree as follows:

57
 58 **I. DEFINITIONS.** For the purposes of this MOA, the following words have the following
 59 meanings:

- 60
 61 1. **“Administrator”** means the Administrator of the Maryland Transit Administration.
- 62
 63 2. **“Authority Having Jurisdiction”** or **“AHJ”** means the local, state or federal agency with
 64 jurisdiction on a particular matter relating to the Project, Parks Projects or County-funded
 65 Project as provided for in law.
- 66
 67 3. **“Business Day”** means any weekday on which the Commission is open for business,
 68 except federal holidays or government closures.
- 69
 70 4. **“Capper Crampton Act”** means the Capper Cramton Act of May 29, 1930, 46 Stat. 482 (as
 71 amended August 8, 1946 by 60 Stat. 960), which authorizes funding for the acquisition of
 72 lands in the District of Columbia, Maryland, and Virginia for the park and parkway system
 73 of the national capital.
- 74
 75 5. **“Commission”** has the meaning set forth in the Preamble.
- 76
 77 6. **“Concessionaire”** means the private entity which enters into the P3 Agreement with MTA,
 78 and which will act as MTA’s agent to design construct, finance, operate, and maintain the
 79 Purple Line.
- 80
 81 7. **“Construction Work”** means all work that is related to construction, alteration, or repair
 82 of a building, structure, or improvement included in the Project, except work incidental
 83 to final design, such as survey and related location work, excavations of test pits, soil
 84 borings, and other investigational work necessary to determine the suitability of the
 85 property for use by MTA for the Project.

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8. **“Contract Design” or “Contract Drawing”** means those elements of the Project which are contractual obligations of the Concessionaire related to Construction Work on, or reasonably related to, Parks Property.
9. **“County”** means Montgomery County and its departments, divisions, offices, and agencies.
10. **“County Council”** means the County Council of Montgomery County.
11. **“County-Funded Projects”** means the improvements to be made, at the request of the County, at the Bethesda Metro South Entrance, the Capital Crescent Trail, and the Silver Spring Green Trail.
12. **“Day”** means a calendar day unless otherwise provided.
13. **“Delegated Inspection”** means the physical examination of Construction Work on the Project or Parks Projects by a Delegated Inspector for the purpose of reporting on the correlation between the Construction Work and the approved Design Work; County building permits; Submittals approved by Montgomery Parks; and applicable laws, regulations and construction codes, thereby allowing Montgomery Parks to approve and accept such Construction Work.
14. **“Delegated Inspector”** means a person with the qualifications described in Article VI.E herein, selected by the Commission from a list of contractors provided by MTA to conduct a Delegated Inspection under the oversight of the Parks Project Manager.
15. **“Delegated Review”** means a review of Submittals conducted by a Delegated Reviewer for the purpose of commenting and reporting on Submittals to ensure compliance with Design Guidelines, applicable laws, regulations and construction codes as well as terms and conditions of the Section 4(f) Letter and as provided in this MOA and thereby allowing Montgomery Parks to approve such Submittals.
16. **“Delegated Reviewer”** means a person with the qualifications described in Article V.C.4 herein, selected by the Commission from a list of contractors provided by MTA to perform a Delegated Review.
17. **“Design”** means all work of design, engineering, or architecture for the Project.
18. **“Financial Close”** means the event provided for in the P3 Agreement whereby MTA authorizes the Concessionaire to begin work on the Project.

- 129 19. **“FTA”** means the Federal Transit Administration, a modal administration of the United
 130 States Department of Transportation.
 131
- 132 20. **“Final Design”** or **“Final Design Submittal”** means a complete set of plan sheets,
 133 specifications, shop and/or working drawings, and other pertinent information which
 134 collectively represent the Construction Work to be performed, including revisions which
 135 address comments made by the Delegated Reviewer and/or Parks Discipline Lead at the
 136 Intermediate Design Submittal, as may further be described in the Project Execution Plan.
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- 138 21. **“General Conditions”** means the commonly applicable conditions required by the
 139 Commission when third-party construction is performed on Parks Property.
 140
- 141 22. **“Interagency Working Group”** means a multi-agency working group for the Project
 142 convened by MTA, composed of the Commission and other necessary AHJs, to be formed
 143 following the selection of the Concessionaire, to further define, clarify, and bring
 144 resolutions to the final design and constructions issues of the Project, including
 145 implementation of the Planning Board’s Mandatory Referral Recommendations, the
 146 Section 4(f) Letters, consistency with approved and proposed master and sector plans, as
 147 well as the storm water management requirements.
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- 149 23. **“Intermediate Design”** or **“Intermediate Design Submittal”** means complete set of plan
 150 sheets, including design details, cut sheets, outline specifications, and materials samples,
 151 where applicable. The Intermediate Design Submittal generally includes, as applicable:
 152 utility design and coordination requirements, tree preservation plans, demolition plans,
 153 traffic control plans, scaled layout of all structures and major site elements, site grading
 154 and drainage, stormwater management, sediment and erosion control plans and details,
 155 structural designs, or modifications as necessary, and site details, as may be further
 156 described in the Project Execution Plan.
 157
- 158 24. **“Mandatory Referral Recommendations”** means the Planning Board’s recommendations
 159 set forth in its April 1, 2014 letter to MTA, which is attached to and incorporated into this
 160 MOA as Exhibit I (eye).
 161
- 162 25. **“MDOT”** means the Maryland Department of Transportation.
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- 164 26. **“Montgomery Parks”** means the Commission’s Montgomery County Department of
 165 Parks.
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- 167 27. **“Montgomery Planning”** means the Commission’s Montgomery County Department of
 168 Planning.
 169
- 170 28. **“MTA”** has the meaning set forth in the Preamble.
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- 172 29. **“MTA Contractors”** means the Concessionaire and all of its contractors, as well as any
173 other contractors engaged by MTA to perform work under this MOA, including the
174 Delegated Reviewer and Delegated Inspector.
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- 176 30. **“MTA Project Manager”** means a senior representative of MTA, designated to act as
177 MTA’s primary point of contact for the Project with Montgomery Parks and Montgomery
178 Planning.
179
- 180 31. **“Notice to Proceed”** means authorization by MTA to the Concessionaire to commence
181 performance of the Project.
182
- 183 32. **“P3 Agreement”** means the private public partnership documents which establish the
184 rights and obligations of MTA and Concessionaire for the duration of the term, including
185 rights and obligations to design, build, finance, operate, and maintain the Project assets
186 and the terms of the compensation of the Concessionaire, and contractual remedies for
187 non-performance. The P3 Agreement includes a series of appendices where specific and
188 more detailed terms are further defined such as funding and financing terms, payment
189 terms, responsibilities for major permits, federal requirements, insurance coverage, and
190 termination terms. The term “Owner” as used in the P3 Agreement and cited or applied
191 in this MOA shall be understood to refer to Montgomery Parks rather than MTA.
192
- 193 33. **“Park Construction Permit”** means a permit issued by Montgomery Parks allowing
194 Construction Work to proceed in accordance with Montgomery Parks’ approval of a
195 Final Design Submittal.
196
- 197 34. **“Park Facility”** means an urban, neighborhood, local, regional or stream valley park under
198 the jurisdiction of the Commission impacted by the Project, including those listed in
199 Article IX herein.
200
- 201 35. **“Parks Construction Standards and Specifications”** means those Montgomery Parks’
202 specifications and standards in effect as of Financial Close.
203
- 204 36. **“Parks Discipline Lead”** means that person designated by the Parks Project Manager to
205 review and approve Submittals in a particular technical discipline.
206
- 207 37. **“Parks Director”** means the director of the Commission’s Montgomery County Parks
208 Department.
209
- 210 38. **“Parks Projects”** means any MTA- or Concessionaire-performed work for the Project that
211 is on or reasonably related to, Parks Property.
212
- 213 39. **“Parks Project Manager”** means a senior representative of Montgomery Parks designated
214 by the Parks Director, to act as the Commission’s primary point of contact for the Parks

215 Project and any other Project issues concerning Parks Facilities. The Parks Project
 216 Manager shall also coordinate any input from Montgomery Planning with respect to the
 217 Project during the Design Work and Construction Work, including the Project's
 218 consistency with approved master and sector plans.

219
 220 40. **"Parks Property"** means any parkland owned or controlled by the Commission, or
 221 maintained by the Commission pursuant to that certain Memorandum of Understanding
 222 made by the Commission and the County dated May 24, 1972.

223
 224 41. **"Planning Board"** means the Montgomery County Planning Board in its regulatory and
 225 land owning capacity.

226
 227 42. **"POS Parkland Conversion"** means the process to approve replacement property to fulfill
 228 the requirements of Program Open Space as approved by the Maryland Department of
 229 Natural Resources.

230
 231 43. **"Program Open Space"** means the Maryland Department of Natural Resources (DNR)
 232 Open Space Program, authorized pursuant to Title 5, Subtitle 9 of the Natural Resources
 233 Article of the Maryland Code, annotated, which administers funds for the purchase and
 234 development of recreation areas and open space for public use.

235
 236 44. **"Project"** or **"Purple Line"** has the meaning set forth in the Recital.

237
 238 45. **"Project Execution Plan"** or **"PEP"** means those operating procedures necessary to
 239 implement the MOA on Parks Property. The PEP shall be made as a Submittal to
 240 Montgomery Parks and shall be agreed upon in writing and executed by the
 241 Concessionaire, the Parks Director or his/her duly authorized designee and the MTA
 242 Project Manager, and appended to this MOA without necessity of amendment.

243
 244 46. **"Record of Decision"** means the record of FTA's decision pursuant to the National
 245 Environmental Policy Act approving the environmental impact statement for the Project
 246 as published in the *Federal Register* on March 31, 2014 at 79 FR 18113.

247
 248 47. **"Replacement Parkland"** means that land acquired by MTA or conveyed to the
 249 Commission pursuant to the Section 4(f) Letters and a letter of agreement issued by the
 250 County to the Commission regarding certain exchange property near the New Hampshire
 251 Estates Neighborhood Park.

252
 253 48. **"Request for Proposals"** means the Request for Proposals to Design, Build, Finance,
 254 Operate, and Maintain the Purple Line Project through a P3 Agreement issued by MTA on
 255 or about July 28, 2014, in anticipation, in parts, with the parties executing this MOA.
 256

- 257 49. **“Requested Change”** means any change requested by Montgomery Parks to the scope
258 either of the Project or of a Parks Project which varies from, is inconsistent with, or
259 exceeds the terms and conditions set forth in the conditions of the Park Construction
260 Permit(s), the Section 4(f) Letter, and/or terms and conditions of this MOA. Changes
261 necessary to ensure compliance with local, state, or federal laws, regulations, or codes
262 or any changes requested by Montgomery Parks due to an impact on Park Property
263 resulting from MTA’s compliance with its agreement with other person(s) or entities
264 shall not be deemed a Requested Change.
265
- 266 50. **“Requested Change Exhibit”** means a document describing a Requested Change and the
267 terms and conditions under which the Requested Change shall be implemented. A
268 Requested Change Exhibit may be appended to this MOA without necessity of
269 amendment upon its execution by the Parks Director and the MTA Project Manager.
270
- 271 51. **“Revenue Service Availability”** means that event allowing the Concessionaire to begin
272 operating Purple Line service pursuant to the P3 Agreement.
273
- 274 52. **“Right of Entry”** means a Right of Entry Permit Letter signed by the Parks Director or his
275 designee, giving MTA, its agents, contractors, employees, officials, representatives, and
276 assignees, including the Concessionaire, the right to enter upon Parks Property for
277 investigational work that does not involve permanent changes to the real property of
278 the Commission, including survey and related location work, excavations of test pits
279 and/or soil borings, and other investigational work necessary to determine the
280 suitability of the property for use by MTA for the Project.
281
- 282 53. **“Section 4(f) letter”** means the document that was included as Attachment D of the
283 Record of Decision (ROD) as well as the Temporary Occupancy Exception and *De*
284 *Minimis* Impact Determination concurrence letters included in Attachment E of the ROD,
285 provided in relevant part, and attached hereto and incorporated herein as Exhibit B of
286 this MOA.
287
- 288 54. **“Stormwater Management Advisory Group”** means an advisory group convened by
289 MTA and consisting of the Department of Environmental Protection, Department of
290 Public Works, the County, the Commission, Montgomery County Public Schools, and
291 other AHJs.
292
- 293 55. **“Submittal”** means any document, including the Project Execution Plan, an Intermediate
294 Design Submittal or Final Design Submittal, work product or other electronic end-
295 product or item (excluding notices and correspondence) required for the completion of
296 Parks Projects provided to Montgomery Parks for its review, comment and/or approval.
297
- 298 56. **“Technical Provisions or “TPs”** means the document which defines the scope of work,
299 technical parameters, and processes that the Concessionaire must follow to deliver on

the obligations set forth in the P3 Agreement. In particular, the TPs lay out in detail the performance requirements to be incorporated into design, construction, operation, and maintenance activities, including the Section 4(f) Letters, outcomes of Interagency Work Groups, Parks Construction Standards and Specifications, and this MOA. The term “Owner” as used in the Technical Provisions and cited or applied in this MOA shall be understood to refer to Montgomery Parks rather than MTA.

57. **“Uneconomic Remnant”** means a portion of a larger property acquired by MTA for the Project and which has little or no utility or value to the property owner because of a partial acquisition of the larger portion of the property acquired.

58. **“Uniform Relocation Act”** means P.L. 91-646, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.

II. PROJECT DESCRIPTION

A. The Project shall generally consist of the design, construction, operation, and maintenance of a light rail transit line, such line being depicted in Exhibit A.

B. The Project also includes the County-funded Projects, and any stormwater or wetland restoration projects constructed on Parks Property, insofar as they may apply to this MOA.

C. The design and construction of all Parks Projects must comply with the terms and conditions set forth in this MOA, the Record of Decision, the Section 4(f) Letters, outcomes of the Interagency Working Group, the Park Construction Permits, Parks Standards and Specifications, approved Submittals, and the Contract Designs for the Parks Projects.

D. The Project alignment may undergo slight modifications within the flexibilities provided for in the Record of Decision and/or Technical Provisions. When such change(s) exceed the flexibilities provided for in the Record of Decision, MTA shall submit an updated application for Mandatory Referral pursuant to Title 20, Subtitle 3 of the Land Use Article of the Annotated Code of Maryland.

E. Except as otherwise provided herein, the Parties acknowledge and agree that this Project will not impair the use of Parks Property or the Commission’s ability to meet its mission to operate a system of parks facilities.

F. Project Consistency with Master and Sector Plans

- 341 1. MTA acknowledges that the Commission has adopted or is developing other master
342 and sector plans that envision and govern the development of land within the Purple
343 Line corridor.
- 344
- 345 2. MTA consents to receive and transmit to the Concessionaire non-binding
346 recommendations regarding the Project’s consistency with approved or proposed
347 master and sector plans, including recommendations that it has received from the
348 Commission at any time.
- 349
- 350 3. Any significant changes to the Project requested by the Commission resulting from
351 a proposed master plan shall be governed by Article XII of this MOA.
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353 **III. TECHNICAL REVIEW GROUPS – INTENTIONALLY DELETED**

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355 **IV. PROJECT EXECUTION PLAN**

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- 357 A. Prior to the start of any Construction Work on Parks Property, MTA shall cause the
358 Concessionaire to submit to Montgomery Parks a proposed Project Execution Plan for
359 review and approval in accordance with Article V.B.3, herein.
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- 361 B. Except by Requested Change, the Project Execution Plan may not include any elements
362 which expand the responsibilities or diminish the rights of the Concessionaire.
- 363
- 364 C. The Project Execution Plan shall include but not be limited to:
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- 366 1. Project-wide information such as:
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- 368 a. the Project baseline schedule;
- 369 b. the organizational structure of and contact information for the Concessionaire,
370 contractors and subcontractors, as appropriate;
- 371 c. the designation of and contact information for the Parks Project Manager and
372 Parks Discipline Leads;
- 373 d. emergency notification procedures and contacts for all parties;
- 374 e. a list of issues still to be considered and resolved by the Interagency Working
375 Group; and
- 376 f. general conditions normally applied to construction projects on Parks Property.
- 377
- 378 2. A preliminary site-specific work plan for each Park Facility, including
- 379
- 380 a. the relevant Contract Designs;
- 381 b. the requirements of the Section 4(f) Letters;

- 382 c. planned phasing and schedule of the Construction Work in each Park Facility,
 383 including a preliminary list of Submittals that will require Montgomery Parks
 384 approval; and
 385 d. a map showing the area(s) covered by the site specific work plan.

386

387 3. procedures related to:

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- 389 a. the form, requirements and schedule of Submittals;
 390 b. construction scheduling and coordination;
 391 c. quality assurance and quality control;
 392 d. construction management, inspection and acceptance;
 393 e. environmental compliance, monitoring and reporting; and
 394 f. public notices and communications.

395

396 **V. REVIEW AND APPROVAL OF THE PROJECT AND THE MONTGOMERY PARKS PROJECTS**

397

398 A. In General

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- 400 1. Except where the Parks Director or his/her designee has granted a waiver or
 401 exception in writing, all Construction Work at Park Facilities shall be designed in
 402 accordance with Parks Construction Standards and Specifications.
 403
 404 2. The Parties acknowledge and agree that approvals and consents from
 405 Montgomery Parks in connection with this Project do not and will not substitute
 406 for regulatory approvals required under applicable law.
 407
 408 3. Nothing in this Article V. shall relieve the Concessionaire of any obligation to
 409 perform the Construction Work in accordance with the P3 Agreement or Parks
 410 Construction Standards and Specifications, when applicable.
 411
 412 4. To facilitate the review of Submittals, the Parks Project Manager may designate
 413 one or more Parks Discipline Lead(s). A Parks Discipline Lead shall have sufficient
 414 authority to review and approve Submittals.

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416 B. Required Design Submittals and Review Procedures

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- 418 1. MTA shall cause the Concessionaire to make an Intermediate Design Submittal
 419 and Final Design Submittal for each section, work element, engineering discipline,
 420 or geographic sections of the Parks Projects as the Concessionaire may determine
 421 in accordance with good industry practice and as identified in the site-specific
 422 work plan of the Project Execution Plan.

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2. Prior to transmitting a Submittal to Montgomery Parks, MTA shall ensure that a Submittal provides complete information necessary to review the Submittal. MTA shall not transmit a Submittal to Montgomery Parks unless the Submittal complies with the Section 10.4 of Book 2, Part A of the Technical Provisions, attached as Exhibit D, insofar as they may apply.
 3. Montgomery Parks shall review Submittals to ensure they comply with Parks Construction Standards and Specifications, Contract Drawings, Technical Provisions and all applicable laws and codes, provided that:
 - a. Within fifteen (15) Business Days of receipt of a Submittal, the Parks Discipline Lead shall return the Submittal to MTA as:
 - (i) "Reviewed and Approved." MTA may permit the Concessionaire to proceed to implementation of the Submittal or further development of the Design;
 - (ii) "Reviewed and Approved with Comments." Concessionaire shall respond accordingly and incorporate any comments into subsequent Submittals; or
 - (iii) "Reviewed with Comments, Resubmit." Concessionaire shall document all comments received and the corresponding resolutions, revise the Submittal in accordance with the comment resolutions and resubmit as if a new Submittal.
 - b. Whenever an Intermediate Design Submittal has not been responded to by Montgomery Parks as required by Article V.B.3.a of this MOA, the Submittal may be advanced to Final Design by the Concessionaire.
 - c. Whenever a Final Design Submittal has not been responded to by Montgomery Parks in accordance with Article V.B.3.a, MTA shall give written notice to the Parks Project Manager that said determination has not yet been received. Said written notice shall be conspicuously marked to indicate that failure to respond shall deem a Submittal to be automatically approved.
 - d. If, within five (5) Business Days of receipt of the above-required notice, Montgomery Parks has not made a determination regarding the Submittal or has not requested additional time to review the Final Design Submittal, the Final Design Submittal shall be automatically approved as if the Parks Project Manager had issued a "Review and Approval" and a Park Construction Permit had been issued. Nothing in this MOA shall relieve the Concessionaire of its obligation to perform the Construction Work in accordance with the P3 Agreement, Technical Provisions, or a Section 4(f) Letter if an automatic approval is applied to a Submittal.

466 e. Unless otherwise agreed to by the Concessionaire, Montgomery Parks shall
 467 have five (5) additional Business Days in response to a request for additional
 468 time to review the Final Design Submittal.

469
 470 f. Upon the Parks Project Manager’s “Review and Approval” of a Final Design
 471 Submittal, Montgomery Parks shall issue a Park Construction Permit.

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 473 **C. Delegated Reviews and Reviewers**

474
 475 1. At the request of the Parks Project Manager, Montgomery Parks may utilize a MTA
 476 contractor from a list of contractors provided by MTA to serve as a Delegated
 477 Reviewer, provided such utilization does not create a conflict of interest.

478
 479 2. A Delegated Reviewer shall report directly to the Parks Project Manager and
 480 perform Delegated Review functions at a Commission office under the oversight
 481 of the Parks Project Manager. Any MTA contractor selected as a Delegated
 482 Reviewer shall only serve in an advisory role to Montgomery Parks and may not
 483 approve a Submittal on behalf of Montgomery Parks.

484
 485 3. MTA shall solely bear the sole expense of Delegated Reviews performed by MTA
 486 contractors.

487
 488 4. Unless otherwise agreed to by Commission in writing, each Delegated Reviewer
 489 shall possess at least one of the following qualifications:

- 490
 491 a. a licensed and registered Professional Engineer in the State of Maryland;
 492 b. a licensed and registered Architect or Landscape Architect in the State of
 493 Maryland; or
 494 c. certified by the authority having jurisdiction in any other discipline.

495
 496 5. MTA agrees that any errors and/or omissions by a Delegated Reviewer shall not
 497 be deemed to be an error or omission by the Commission.

498
 499 **VI. INSPECTION AND ACCEPTANCE OF CONSTRUCTION WORK ON PARKS PROPERTY**

500
 501 A. Unless otherwise directed by the Parks Project Manager, MTA shall provide quality
 502 assurance and quality control oversight of the Project and certify to the Commission
 503 that Concessionaire has complied with all commitments, technical review comments,
 504 standards and requirements. MTA shall also cause the Construction Work to be
 505 inspected in accordance with the approved Contract Designs and in accordance with
 506 the Project Execution Plan.
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- 508 B. Montgomery Parks may require such pre-construction meetings with the
 509 Concessionaire, as Montgomery Parks may deem necessary, prior to construction
 510 taking place on the affected Parks Property.
 511
- 512 C. At the request of the Parks Project Manager, Montgomery Parks may utilize a MTA
 513 contractor from a list of contractors provided by MTA to act as a Delegated Inspector,
 514 provided such utilization does not create a conflict of interest. A Delegated Inspector
 515 shall report directly to the Parks Project Manager and perform Delegated Inspections
 516 under the oversight of the Parks Project Manager. Any MTA contractor selected as a
 517 Delegated Reviewer shall only serve in an advisory role to Montgomery Parks and may
 518 not issue a Notice of Final Acceptance on behalf of Montgomery Parks.
 519
- 520 D. MTA shall solely bear the expense of Delegated Inspections performed by MTA
 521 contractors.
 522
- 523 E. Any MTA contractor selected by the Commission to perform Delegated Inspections
 524 will be licensed by the State of Maryland, insofar as such licensure may be required to
 525 perform the inspection.
 526
- 527 F. The Commission shall have the right to independently inspect all work on Parks
 528 Property, and to participate in any scheduled inspections of Construction Work
 529 performed on Parks Property or for Parks Projects. Any such independent inspection
 530 performed pursuant to this Article VI shall be at Montgomery Park's sole cost.
 531
- 532 G. Except where modified in the Project Execution Plan, the Parties hereto agree that
 533 Paragraphs 7.10.3 through 7.14 of the P3 Agreement, attached hereto and
 534 incorporated herewith as Exhibit E, shall provide the framework pursuant to which
 535 Substantial Completion and Final Acceptance shall occur.
 536
- 537 H. Montgomery Parks shall only be required to accept restoration or improvements
 538 when such restoration or improvements comply with the Park Construction Permit.
 539
- 540 I. MTA shall or shall cause the Concessionaire to:
 541
- 542 1. be responsible for site security on Parks Property where the Concessionaire has
 543 work activities necessary to be secured;
 - 544 2. take appropriate measures to prevent damage to, or destruction of, physical
 545 improvements (including vandalism and graffiti);
 546
 - 547 3. pay the cost to repair, restore, or correct any damage or destruction (including
 548 vandalism and graffiti) to Construction Work, during the Project construction and
 549 warranty phase and as defined in the P3 Agreement; and
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- 4. assure that all applicable warranties for Parks Projects or any other Construction Work occurring on or impacting Parks Property survive the Final Acceptance thereof, and shall be transferred to Montgomery Parks.
 - J. Except as to any warranties required by the P3 Agreement or maintenance obligations of a state or federal permit, or other requirements of the Park Construction Permit(s), upon Final Acceptance of Parks Projects, all maintenance of Parks Property shall be the responsibility of the Montgomery Parks. MTA shall or shall cause the Concessionaire to provide a two-year warranty for all landscaping installed by the Concessionaire on Parks Property and other warranties as MTA and the Commission may agree.
 - K. Further requirements or procedures for inspection, final completion, and acceptance of the Parks Projects shall be documented in the Project Execution Plan.
 - L. MTA agrees that any errors and/or omissions by a Delegated Inspector shall not be deemed to be an error or omission by the Commission.

570 **VII. PROVISIONS REGARDING REPLACEMENT PARKLAND REQUIRED PURSUANT TO SECTION**
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- A. All terms and conditions of any transfer of real estate interest shall be subject to the final approval of the Commission, where appropriate. The conveyance or transfer of all MTA-needed real property interests and rights of entry will occur as soon as possible after the execution of the P3 Agreement, provided that all POS Parkland Conversion requirements have been satisfied, and the total consideration therefor shall comprise the following:
 - 1. If an Uneconomic Remnant remains at the 1110 Bonifant Street property, which is not needed by MTA for maintenance access to the Project, MTA agrees to grant the Commission a right of first refusal to lease, license, or purchase, for nominal consideration, any Uneconomic Remnant that remains at 1110 Bonifant Street for the purpose of installing a bicycle parking station
 - 2. Montgomery Parks acknowledges that the ability of MTA to fulfill its Section 4(f) Letters commitment to replace parkland adjacent to the New Hampshire Estates Neighborhood Park (NHENP) is dependent on the advancement of the Long Branch Sector Plan, adopted by the Montgomery County Council on November 19, 2013; and, specifically, that the Long Branch Sector Plan requires that acquisition of land for expansion of NHENP is recommended to occur only upon the opening and operation of a new neighborhood services center in the area as shown in Exhibit F (see Page 29 of the Long Branch Sector Plan).

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3. As evidenced by a letter of agreement from the County to the Commission, dated February 5, 2016, and attached hereto as Exhibit G, the County has stated its agreement to:
 - a. transfer for Replacement Parkland, the parcel(s) known as 734 University Boulevard East, Silver Spring, Maryland (Tax Account No. 13-00975345), to MTA, subject to the County’s land disposition requirements, at the appropriate time and that such exchange shall satisfy MTA’s Section 4(f) Letters requirement, as well as the POS Parkland Conversion requirements; and
 - b. include the foregoing parcel(s) in the list of the County properties to be conveyed to MTA under the terms of the County’s MOA with MTA.
4. If the County Council does not directly convey the Replacement Parkland identified in Article VII.A.3.a to the Commission, MTA agrees that it will timely convey the foregoing parcel(s) of land to the Commission upon its receipt of the said parcel(s) from the County.
5. If the County Council declines to effect actions set forth in Article VII.A.3 above, MTA and Montgomery Parks shall negotiate regarding alternative Replacement Parkland, which shall be subject to the approval of the Planning Board, the Commission, the County Council, and Program Open Space requirements. Until any alternative Replacement Parkland is approved by the Planning Board, the Commission, the County Council, and Program Open Space requirements, the Commission shall have no obligation to convey any Parks Property required by MTA, as set forth in Exhibit M, to MTA. Nothing in this Article shall be construed to limit Construction Work on Parks Property under a valid Parks Construction Permit, provided that all POS Parkland Conversion requirements are met.
6. MTA agrees to further add to Montgomery Parks’ replacement mitigation a 0.65+/- acre parcel of unimproved property on Talbot Street in Silver Spring, Maryland, as shown on Exhibit N.

VIII. PROVISIONS REGARDING STORMWATER MANAGEMENT

- A. MTA acknowledges the importance of maintaining and improving water quality and protection of receiving waters throughout the Project area. Therefore, MTA has set a high standard for the P3 Agreement to maximize stormwater management treatment for actual impervious areas within the Project area that discharge to Parks Property.

- 636 B. MTA shall cause the Concessionaire to meet and confer with a Stormwater Management
 637 Advisory Group prior to the filing of the stormwater management concept plan with MTA.
 638 The purpose of the Stormwater Management Advisory Group shall be to collaborate with
 639 the Concessionaire in achieving the purposes in Article VIII.A., hereinabove.
 640
- 641 C. The Commission acknowledges that the treatment of all surface runoff shall be governed
 642 by Title 4, Subtitle 2 of the Environment Article of the Annotated Code of Maryland, and
 643 as implemented pursuant to regulations administered by Maryland Department of
 644 Environment.
 645
- 646 D. MTA and/or the Concessionaire shall coordinate with the Stormwater Management
 647 Advisory Group to identify potential off-site facilities which:
 648
- 649 1. Maximize the use of ESD/LID facilities;
 - 650
 - 651 2. Maximize the use of non-proprietary underground facilities within 1500' on either
 652 side of the centerline of the Purple Line guideway.
 - 653
 - 654 3. Reflect a balance in prioritizing environmental benefits when considering the cost of
 655 required maintenance of the system;
 656
 - 657 4. Retrofit and/or expand existing County-owned and/or maintained facilities in
 658 accordance with plans and right of entry agreements to be approved by the County;
 659 and/or
 660
 - 661 5. Minimize the amount of property acquisition required by MTA.
 662
- 663 E. The design, review and approval of Submittals, construction, inspection and acceptance
 664 of all stormwater management facilities located in Parks Property shall be governed by
 665 the provisions of Articles V and VI of this MOA.
 666
- 667 F. Maintenance of stormwater management facilities located on Parks Property shall be
 668 subject to the terms of the agreement between MTA and the County as set forth in the
 669 MOA between MTA and the County, and the Commission will only be responsible for non-
 670 structural maintenance of above-ground facilities.
 671
- 672 G. In addition to Montgomery Parks' inspection and acceptance of storm water
 673 management facilities constructed within Parks Property, said facilities shall be further
 674 subject to inspection and acceptance by the County.
 675

676 **IX. SPECIAL PROVISIONS REGARDING PARKS PROJECTS**

677 **A. In General**
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1. **Montgomery Parks has a vested interest in the temporary (during construction) and long-term conditions of Parks Property impacted by the Purple Line. These areas of interest include, but are not limited to:**
 - a. **Elm Street Park;**
 - b. **Rock Creek Stream Valley Park**
 - c. **Transit Plaza Easement Area at the Silver Spring Transit Center;**
 - d. **Sligo Creek Stream Valley Park/Sligo Cabin Park;**
 - e. **Long Branch Stream Valley/Local Park;**
 - f. **New Hampshire Estates Neighborhood Park;**
 - g. **Ken-Gar Palisades Local Park; and**
 - h. **Meadowbrook Maintenance Yard Annex.**

2. **The Planning Board’s review and approval of any Parks Projects shall be limited to the work to be performed in Elm Street Urban Park, Rock Creek Stream Valley Park, Transit Plaza Easement Area at the Silver Spring Transit Center, Sligo Creek Stream Valley Park/Sligo Cabin Park, Long Branch Local Park, New Hampshire Estates Neighborhood Park, Ken-Gar Palisades Local Park, and Meadowbrook Maintenance Yard Annex. It is the intent of the parties that the Planning Board’s review and approval only occur at the Intermediate Design stage.**

3. **MTA acknowledges and agrees that access to Montgomery Parks facilities will be maintained during construction to the extent practicable and all disruptions will be well-coordinated with Montgomery Parks and the public.**

4. **MTA agrees that all existing park infrastructure impacted by the Project shall be restored to a fully functional condition for long-term park usage following the Parks Project construction.**

5. **Within the immediate Project area in Long Branch Stream Valley Park, *i.e.*, the park area south of MD 320 Piney Branch Road as shown on Exhibit K (Figure 6-25 in the FEIS), Montgomery Parks will assume responsibility for restoring disturbed areas following completion of Project construction. MTA will be responsible for initial site clearing and post construction stabilization, including any temporary grass seeding and mulching required to stabilization of slopes and other construction areas. When Project-related construction is complete, Montgomery Parks will be responsible for re-establishing previously vegetated areas, including turf, shrubs, and trees, which area are shown on Exhibit O. The specific areas to be re-established, and the timing of the foregoing work, will be coordinated between MTA and Montgomery Parks and automatically appended to this MOA without further action.**

- 721 6. MTA agrees that the Parks Projects designs will incorporate appropriate measures to
 722 protect natural resources (both terrestrial and aquatic) and provide environmentally
 723 sensitive stream crossings to the degree practicable.
 724
- 725 7. MTA agrees that new infrastructure created as part of the Parks Projects shall meet
 726 current best practices, including: CPTED (Crime Prevention through Environmental
 727 Design), stormwater management, American Disabilities Act, all as amended, and
 728 should provide aesthetically appropriate appearances for park users.
 729
- 730 8. MTA shall own and be responsible for any structures or retaining walls constructed
 731 on Parks Property. MTA shall grant to the Commission a perpetual right of access
 732 and right of entry in, onto, across, under, over, or through such structures or
 733 retaining walls for any the Commission use or purpose, provided always that the
 734 Commission shall ensure such access or use by the Commission does not
 735 permanently affect or unreasonably interfere with MTA's ownership or use of the
 736 structures or retaining walls. The foregoing perpetual right of access shall survive
 737 any termination or expiration of this MOA.
 738

739 **B. Ken-Gar Palisades Local Park Wetland Mitigation**

- 740
- 741 1. Montgomery Parks shall allow MTA to enhance and expand the existing wetland
 742 complex at Ken-Gar Palisades Local Park to a combined size of approximately four (4)
 743 acres.
 744
- 745 2. MTA shall remove the existing soccer field east of the existing parking lot.
 746 Montgomery Parks, at its own expense, shall create a new 140 feet width and 215 feet
 747 length (with +10-foot run outs each side) soccer field northeast of the existing
 748 basketball courts, which soccer field layout is attached to this MOA as Exhibit L.
 749

750 **X. SAFETY AND SECURITY – NOT USED**

751

752 **XI. REAL ESTATE AND RIGHT-OF-WAY**

- 753
- 754 A. Notwithstanding the provisions of the Uniform Relocation Act and 49 CFR Subpart 24 in
 755 relevant part, the Commission hereby waives its right to an appraisal, for FTA purposes,
 756 of and just compensation for Montgomery Parks Property which will be conveyed to MTA.
 757
- 758 B. Property interests currently under the control of the Commission and required for the
 759 Project are shown in Exhibit M. The Commission will cooperate with MTA to
 760 accommodate MTA's right-of-way needs on Parks Property within the Project impact
 761 area, by granting and conveying to MTA, such property interests and/or rights of entry as
 762 MTA shall need to design, construct, operate, and maintain the Purple Line.
 763

- 764 C. To the extent that additional Parks property interests are required beyond those shown
 765 in Exhibit M, such property interests may be conveyed to MTA upon approval by the
 766 Commission.
 767
- 768 D. MTA and Commission acknowledge that conveyance of Parks Property to MTA is subject
 769 to:
 770
- 771 1. State laws and Commission regulations governing property disposal or exchange,
 772 including a finding by Commission that:
 773
 - 774 a. such property is no longer needed for Commission operations or purpose; and
 - 775 b. there is an adequate replacement for Parks Property, which shall be defined as
 776 (i) the substantial completion as defined in Article VI.G. of this MOA; and
 777 (ii) the satisfaction of Article VII herein.
 - 778 2. the provisions of the Capper-Cramton Act, where applicable;
 - 779 3. the requirements of Program Open Space; and
 - 780 4. approvals by the National Capital Planning Commission, the Maryland Department
 781 of Natural Resources, and/or the Maryland Board of Public Works, where
 782 applicable.
- 783
- 784 E. MTA shall prepare, at its costs and expenses, all applications and supporting
 785 documentation for the POS Parkland Conversion and other property conveyance
 786 approvals and provide same to Montgomery Parks. MTA shall further conduct, at its costs
 787 and expenses, all survey and parceling of the Replacement Parkland, where necessary, to
 788 meet the POS Parkland Conversion. Montgomery Parks shall have the responsibility of
 789 filing the appropriate application and supporting documentation to the authority having
 790 jurisdiction.
 791
- 792 F. Although the parties intend that formal conveyance and/or transfer of property rights
 793 identified in Exhibit M will be effectuated under separate deeds, grants of easement, or
 794 other instruments, as appropriate, the parties agree that Construction Work may occur
 795 on Parks Property subject to a Park Construction Permit.
 796
- 797 G. If determined by the Concessionaire to be necessary, the Concessionaire may request
 798 additional land on Parks Property for purposes of Construction Work, including but not
 799 limited to accommodating temporary construction offices, staging, and storage of
 800 material. The Commission shall consider all such requests, and if any such request is
 801 approved by the Commission, it will be granted by means of a Park Construction Permit
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at no cost to MTA or the Concessionaire. The Park Construction Permit for such additional land will require that the impacted area be restored to its original condition or better at the Concessionaire's sole cost and expense within six (6) months of the Concessionaire's having completed its temporary use of such additional land. MTA shall cause the Concessionaire to be bound by the foregoing provision.

- H. If the Project right of way cease to exist as a transit corridor, all property interests and any improvements thereon, conveyed by the Commission to MTA and recorded by MTA, shall revert to Commission at Commission's option. Notwithstanding such reversionary interest, and subject to Article XIII.U, MTA shall have reasonable opportunity to remove improvements including railroad tracks, signals and communications systems, and overhead catenary systems, in order to satisfy federal requirements regarding the disposition of federally-funded transit property.
- I. If the Maryland Department of Natural Resources (DNR) does not approve the proposed POS Parkland Conversion set forth in this MOA for replacement parklands, MTA and Montgomery Parks shall collaborate to determine a different approach to meeting the statutory requirements of Program Open Space.
- J. All costs associated with POS Parkland Conversion shall be borne by MTA and reimbursed to the Commission upon request.

XII. REQUESTED CHANGES TO THE PROJECT

- A. Pursuant to the terms and conditions set forth in this Article XII, Montgomery Parks may make a Requested Change.
- B. Any such Requested Change shall:
 - 1. be made in a form provided by the MTA Project Manager which, at a minimum, shall include a conceptual design or other explanatory document to the MTA Project Manager;
 - 2. lie within the limits of disturbance of the Project or Parks Projects; and
 - 3. not require further revision of any kind to the Record of Decision.
- C. Upon receipt of the request for a Requested Change, MTA shall review and evaluate the request with the Concessionaire considering criteria including, but not limited to, the following:
 - 1. technical feasibility;
 - 2. effect on Purple Line performance requirements;

-
- 850 3. effect on Purple Line operations, maintenance and handback requirements;
 851 4. effect on construction schedule;
 852 5. relationship to other contract requirements;
 853 6. net construction cost of the Requested Change;
 854 7. net operating cost of the request, if any;
 855 8. net maintenance cost of the request, if any; and
 856 9. whether the Requested Change requested conforms to the terms and conditions set
 857 forth in the Section 4(f) Letter, Mandatory Referral Recommendations, and this MOA.
 858
- 859 D. After consideration of the foregoing factors, the MTA Project Manager will respond in
 860 writing to the Parks Project Manager stating MTA's approval, disapproval, modifications,
 861 and/or terms and conditions of the request, including a statement of the capital,
 862 maintenance, and operating cost requirements to be borne by the Commission, if any, for
 863 the term of the P3 Agreement.
 864
- 865 E. If MTA approves a Requested Change,
 866
- 867 1. The MTA Project Manager shall prepare a draft Requested Change Exhibit and submit
 868 same to the Parks Project Manager. Montgomery Parks then shall have 15 Business
 869 Days from its receipt of the draft Requested Change Exhibit to accept or reject the
 870 draft Requested Change Exhibit.
 871
- 872 2. If rejected by Montgomery Parks, the MTA Project Manager shall incorporate
 873 Montgomery Parks' comments into subsequent draft and submit a revised draft
 874 Requested Change Exhibit to the Parks Project Manager, whereupon Parks Project
 875 Manager shall respond in accordance with Article XII.E.1 above.
 876
- 877 3. If accepted, Montgomery Parks shall approve the Requested Change in writing and
 878 provide same to the MTA Project Manager, who shall:
 879
- 880 a. cause to be prepared a final Requested Change Exhibit which identifies any
 881 cost and payment schedule, ownership, maintenance, or other provisions; and
 882
- 883 b. cause the Requested Change to be performed only upon execution of the
 884 Requested Change Exhibit by the Commission's Executive Director or the duly
 885 authorized designee and the MTA Administrator or his duly authorized designee.
 886 The Requested Change Exhibit shall be appended to this MOA without necessity
 887 of amendment hereof.
 888
- 889 F. The cost of any Requested Change or Betterment shall be increased by 10.25% to reflect
 890 MTA's project management costs.
 891

892 G. Notwithstanding the provisions of Article XII.E., MTA shall waive the cost of all Requested
893 Changes which are less than \$25,000 in the aggregate.
894

895 **XIII. GENERAL PROVISIONS**
896

897 A. Nothing herein shall be construed to require MTA, the Commission, or the State of
898 Maryland to obligate or expend funds or give rise to a claim for compensation by or
899 against MTA, the Commission, or the State of Maryland, except to the extent such
900 obligation is expressly set forth in this MOA. Any obligation or expenditure of funds by
901 MTA, the Commission, or the State of Maryland in furtherance of the provisions of this
902 MOA shall be consistent with existing legal authorities and subject to the availability of
903 appropriations or insurance proceeds.
904

905 B. **Dispute resolution.** Resolution of any matter in dispute that may arise under this MOA
906 shall be affected by MTA's Administrator, or his or her designee, and the Commission's
907 Executive Director or such Executive Director's designee, meeting, conferring, and
908 working cooperatively to resolve any such dispute. If the dispute remains unresolved, it
909 shall be submitted to the Commission's dispute resolution process and if applicable, to a
910 Maryland court of competent jurisdiction.
911

912 C. **Term.** The term of this MOA shall begin upon the date it has been executed by both
913 parties and shall terminate upon the first occurrence of the following:
914

- 915 1. The P3 Agreement is not executed within three (3) years of the execution date of
916 this MOA;
- 917 2. All work contemplated under this MOA has been completed in accordance with
918 the provisions of this MOA and the P3 Agreement, as applicable; or
- 919 3. Earlier termination of this MOA by mutual agreement of the parties.
920

921 D. **Changes in Law.** This MOA is subject to such modifications as may be required by
922 changes in State of Maryland or federal law, or their implementing regulations. Any such
923 required modification shall automatically be incorporated into and be part of this MOA
924 on the effective date of such change as if fully set forth herein.
925

926 E. **Compliance with the Law and Standards.** MTA shall require the Concessionaire and its
927 subcontractors performing any work on or affecting Parks Property, and any contractors
928 that MTA retain to perform Delegated Reviews or Delegated Inspections, to keep and
929 maintain all records, file all reports, and otherwise comply with all applicable federal,
930 State of Maryland and local laws (including appropriate industry codes and standards,
931 and accepted industry practices). The P3 Agreement will require the Concessionaire to
932 promptly notify the Commission in writing if it observes that the P3 documents conflict
933 with any applicable laws or standards, which would require modification of any of the
934 Construction Work. The P3 Agreement will require that, if the Concessionaire performs

935 any work contrary to such laws and standards, the Concessionaire shall promptly,
936 without cost or expense to the Commission or MTA, modify the Work to so comply, and
937 shall bear all costs, liabilities, fees, fines, penalties, and/or payments incurred by either
938 the Commission or MTA, or both, arising out of, or resulting from, such noncompliance.
939

940 **F. Subject to Appropriation.** All terms and conditions of this MOA are subject to the
941 availability of funding by state and federal appropriations. Nothing herein shall be
942 construed to require MTA, the Commission, or the State of Maryland to obligate or
943 expend funds for the performance of any work pursuant to this MOA in violation of
944 federal or state "anti-deficiency" laws, or shall give rise to a claim for compensation by
945 or against MTA, the Commission, or the State of Maryland for services performed to
946 further the provisions of this MOA, except as provided herein.
947

948 **G. Assignability.** This MOA shall inure to and be binding upon the parties hereto, their
949 respective agents, successors and assigns; however, neither party to this MOA may
950 assign its interests in this MOA without the prior written consent of the other party,
951 which consent shall not be unreasonably withheld; provided, however, that MTA may
952 assign all or any portion of its right, title and interest in this MOA with prior notice to the
953 Commission but without the Commission's consent, to any other governmental entity of
954 the State of Maryland that succeeds to the governmental powers and authority of MTA
955 by operation of law. Notwithstanding the foregoing, the Commission understands and
956 agrees that the terms and conditions of this MOA shall be understood to allow MTA to
957 assign or delegate to the Concessionaire, as may be necessary, those rights, titles, non-
958 real property interests, and obligations enjoyed or held by MTA under this MOA.
959

960 **H. Subsequent Agreements.** Subsequent agreements, if any, between the Commission and
961 the Concessionaire relating to the Project shall be agreed to, in writing, by MTA as a
962 condition precedent to their execution.
963

964 **I. Amendments.** No covenant, agreement, term, or condition set forth in this MOA shall
965 be changed, modified, altered, waived, or terminated except by a written instrument of
966 change, modification, waiver, or termination executed by the parties.
967

968 **J. Governing Law, Conflicts of Laws and Venue.** This MOA and the rights and liabilities of
969 the parties shall be governed in accordance with the laws of the State of Maryland,
970 without regard to conflicts of law principles, and any action or proceeding arising
971 hereunder shall be brought in a Maryland court of competent jurisdiction.
972

973 **K. Insurance and Indemnification.** MTA shall cause all MTA Contractors to continuously
974 carry those levels of insurance required under the P3 Agreement, as applicable, or by
975 MTA's contracts with the Delegated Reviewer and Delegated Inspector, for commercial
976 general liability, errors and omissions liability, and railroad liability to the extent
977 applicable to any work or services performed by the MTA Contractors for the purposes

978 of this MOA. MTA shall further cause all MTA Contractors to name the Commission as
979 an additional insured party insofar as any work or services performed by the MTA
980 Contractors concerns the Commission or Parks Property. MTA shall additionally cause
981 the MTA Contractors to include in their respective coverages the types of insurance and
982 limits of liability required by the Commission in the normal course of the Commission's
983 business. For the purposes of the P3 Agreement as well as MTA's contracts with the
984 Delegated Reviewers and Delegated Inspectors, MTA shall cause each of the
985 Concessionaire, Delegated Reviewer and Delegated Inspector, to recognize the
986 Commission as a third party beneficiary and an indemnified party. As such, MTA shall
987 cause each MTA Contractor to indemnify, defend, and hold the Commission harmless
988 from and against all claims, causes of action, suits, judgments, investigations, legal or
989 administrative proceedings, demands and losses, if asserted or incurred by, or awarded
990 against the Commission, arising out of, relating to, or resulting from the acts or
991 omissions, negligence, gross negligence, willful misconduct, fraud, or bad faith of any of
992 the MTA Contractors in or associated with the work performed pursuant to this MOA.
993

994 **M. Headings.** The headings to articles, sections, appendices and exhibits (if any) of this
995 MOA are for ease of reference only and shall not in any way affect its construction or
996 interpretation.
997

998 **N. References; Interpretation of Terminology.** References to "parties" in this MOA shall
999 be deemed to include references to their successors and permitted assigns. Unless the
1000 context of this MOA provides otherwise: (a) a reference to any agreement or any
1001 instrument or any provision of any of them includes any amendment, variation,
1002 restatement or replacement of such agreement, instrument or provision, as the case
1003 may be; (b) a reference to an applicable law includes all regulations, rules, subordinate
1004 legislation and other instruments issued or promulgated thereunder as in effect from
1005 time to time and all consolidations, amendments, re-enactments, extensions,
1006 restatements or replacements of such applicable law; (c) "including" means "including,
1007 but not limited to" and other forms of the verb "to include" are to be interpreted
1008 similarly; (d) references to "or" shall be deemed to be disjunctive but not necessarily
1009 exclusive (i.e., unless the context dictates otherwise, "or" shall be interpreted to mean
1010 "and/or" rather than "either/or"); (e) where a word or phrase is specifically defined,
1011 other grammatical forms of such word or phrase have corresponding meanings; and (f)
1012 all accounting terms used but not defined herein have the meanings given to them
1013 pursuant to generally accepted accounting standards consistent with industry practice.
1014

1015 **O. No Third Party Beneficiary.** Nothing in this MOA is intended to, or shall be construed
1016 to create or confer any rights, benefits or remedies upon, or create any obligations of
1017 the parties hereto toward, any person or entity other than the parties to this MOA and
1018 the Concessionaire.
1019

- 1020 P. **Merger.** This MOA constitutes the entire and exclusive agreement between the parties
 1021 relating to the specific matters covered herein. All prior or contemporaneous verbal or
 1022 written agreements, understandings, representations or practices relative to the
 1023 foregoing are hereby superseded, revoked and rendered ineffective for any purpose. No
 1024 verbal agreement or implied covenant shall be held to vary the terms hereof, any
 1025 statute, law or custom to the contrary notwithstanding.
 1026
- 1027 Q. **Counterparts.** This MOA may be executed in two or more counterparts, each of which
 1028 shall be deemed an original, but all of which together shall constitute one and the same
 1029 instrument. The delivery of an executed counterpart of this MOA by electronic (“email”)
 1030 delivery in portable document format (“*.pdf”) shall be deemed to be valid delivery
 1031 thereof.
 1032
- 1033 R. **Severability.** If any provision or any part of a provision of this MOA shall be finally
 1034 determined to be superseded, invalid, illegal, or otherwise unenforceable pursuant to
 1035 any applicable Law, such determination shall not impair or otherwise affect the validity,
 1036 legality, or enforceability of the remaining provision or parts of the provision of this
 1037 MOA, which shall remain in full force and effect as if the unenforceable provision or part
 1038 were deleted.
 1039
- 1040 S. **No Anti-Construction.** This MOA shall not be construed more strictly against one party
 1041 than the other by virtue of the fact that each party, and their respective counsel, have
 1042 had a full and fair opportunity to negotiate and review the terms hereof and to
 1043 contribute to its substance and form.
 1044
- 1045 T. **Payment of Funds.** All funds due from one party to the other under this Agreement
 1046 shall be made by Electronic Fund Transfer.
 1047
- 1048 U. **MTA Responsibility for Termination.** If this Agreement is to be terminated prior to
 1049 Revenue Service Availability, MTA shall notify the Commission in writing of said
 1050 termination, and thereafter, MTA shall:
 1051
- 1052 1. Reimburse the Commission for 100 percent of the costs of any work that the
 1053 Commission has incurred (any other provision herein to the contrary
 1054 notwithstanding) and satisfactorily performed prior to the date of the Commission’s
 1055 receipt of said written notice of termination;
 1056
 - 1057 2. Restore to its original condition any Parks Property disturbed by the Construction
 1058 Work; and
 1059
 - 1060 3. Convey back to the Commission all of the property interests (whether via deeds,
 1061 easements, rights of way, or licenses, etc.) obtained from the Commission, by deeds
 1062 or termination of any such property interests so conveyed within thirty (30) days of

the said written notice of termination, *provided always*, that the Commission shall reimburse MTA of any payments received for conveying any such property interests, minus any expenses incurred by the Commission.

V. **Survival Provision.** Any provision of this MOA which contemplates performance or observance of rights and obligations agreed upon herein, subsequent to any termination or expiration of this MOA, shall survive termination or expiration of this MOA and the P3 Agreement.

W. **Regulatory Approvals.** MTA acknowledges and agrees that the approvals and consents required from the Commission in connection with the Project as set forth in this MOA do not, and will not, substitute for regulatory approvals required under applicable law.

X. **MTA Representation, Warranty, Covenant.** MTA represents, warrants, and covenants to Commission as follows:

1. MTA has included, and shall include, all promises, agreements, and obligations set forth in this MOA, and all exhibits, schedules, and attachments thereto, as stated to be performed by the Concessionaire, in its Request For Proposals, as amended, and the P3 Agreement, as amended; and shall further provide a copy of such Request for Proposals and P3 Agreement to Commission immediately upon issuance or execution.
2. MTA has not, and will not, grant or assign to the Concessionaire any leasehold, license, or other real property interest concerning the Parks Property.
3. MTA has included, or shall include, in the P3 Agreement, that the Concessionaire is primarily and independently responsible for its obligations thereunder, regardless of any of MTA's or Commission's inspections or assessments.
4. MTA has included, or shall include, in the P3 Agreement, that the Concessionaire's insurance requirement thereunder includes obtaining and maintaining the types of insurance coverage and amounts as mandated by the Commission's Risk Management Division for the Commission Property, as well as naming the Commission as additional insured.
5. MTA has included, or shall include in the P3 Agreement, that the Concessionaire shall indemnify, defend, protect, and hold harmless the Commission against any claims or losses resulting or accruing from Concessionaire's responsibilities and liabilities related to the Parks Property under or arising from the P3 Agreement, including Concessionaire's breach of the P3 Agreement, omission, negligence, willful misconduct, or breach of applicable law or contract.

1106 **Z. Precedence.** The terms of this MOA shall take precedence in the event of any conflict
 1107 among documentation of agreements as regarding the Parks Projects and Parks
 1108 Property.

1109
 1110 **AA. Waiver.** The failure of a party to enforce any part of this MOA shall not be deemed as a
 1111 waiver thereof. A party’s failure to exercise, or any delay in exercising, any right or
 1112 remedy under this MOA or by law shall not constitute a waiver of that or any other right
 1113 or remedy, nor shall it preclude or restrict any further exercise of that or any other right
 1114 or remedy.

1115
 1116 **BB. Jury Waiver.** Each party waives its right to a jury in any litigation in connection with this
 1117 MOA or the property or transactions contemplated herein. Each party acknowledges
 1118 that this waiver has been freely given after consultation by it with competent counsel.

1119
 1120 **XIV. NOTICES AND COMMUNICATIONS**

1121
 1122 **A.** Except with regard to confidential documents or portions thereof described therein, no
 1123 later than twenty-four (24) hours after MTA has issued to the Concessionaire any
 1124 document which may have impact upon the Commission or notification as referenced
 1125 herein, MTA shall provide a copy of and written notice of same to the Parks Project
 1126 Manager.

1127
 1128 **B.** The Commission acknowledges that certain documents related to the Project may
 1129 contain sensitive business or solicitation information protected by the Maryland Public
 1130 Information Act. The Commission and its agents agree to maintain such confidentiality
 1131 and consult with MTA prior to releasing any documents marked as confidential or
 1132 otherwise protected. As may be deemed necessary by MTA, all agents of the
 1133 Commission shall sign a confidentiality statement in order to be granted access to
 1134 confidential documents.

1135
 1136 **C.** No later than five (5) business days after the date of this MOA, MTA and Montgomery
 1137 Parks shall identify their respective Project Managers and shall provide each other with
 1138 such identification as person’s direct dial telephone number(s), cell phone number(s),
 1139 email address(es), and mailing address.

1140
 1141 **D.** No later than thirty (30) days after the date of this MOA, MTA and Montgomery Parks
 1142 also shall develop and exchange a roster of staff management level contacts and Parks
 1143 Discipline Leads, complete with their appropriate contact information. Notifications of
 1144 the replacement and/or substitution of the Montgomery Parks or MTA Project Manager
 1145 and replacements, substitutions, or supplementations to the roster of management
 1146 level contacts or Parks Discipline Leads shall be made immediately after such
 1147 replacements, substitutions, or additional staff is implemented.

1148

1149 E. Formal notices and communications required under the terms of this MOA shall be
1150 made or sent to the following by certified mail, return receipt requested. All other
1151 notices and forms of communication shall be sent by first class mail, postage prepaid;
1152 facsimile transmission; or email.

1153

1154 To MTA:

1155

1156 Purple Line Project Manager

1157 6 St. Paul Street

1158 Baltimore, Maryland 21201

1159

1160 With a copy to:

1161

1162 Principal Counsel

1163 Maryland Transit Administration

1164 6 Saint Paul Street – 12th Floor

1165 Baltimore, Maryland 21202

1166

1167

1168 To Montgomery Parks:

1169

1170 Montgomery Parks Purple Line Project Manager

1171 9500 Brunett Avenue

1172 Silver Spring, Maryland 20910

1173

1174 With copy to:

1175

1176 Office of General Counsel

1177 M-NCPPC

1178 6611 Kenilworth Avenue, Suite 200

1179 Riverdale, Maryland 20737

1180

1181 To the Concessionaire:

1182 {Reserved}

1183

1184

1185 IN WITNESS WHEREOF, the parties hereto have caused this MEMORANDUM OF AGREEMENT to
1186 be executed by their proper and duly authorized officers, on the day and year first above
1187 written.

1188

1189 ATTEST:

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

1190

1191

1192

1193 By: _____

By: _____

1194 Joseph Zimmerman
1195 Secretary-Treasurer

Patricia Colihan Barney Date
Executive Director

1196

1197 Approved as to form and legal
1198 sufficiency for The Maryland-National
1199 Capital Park and Planning Commission

1200

1201

1202

1203 _____
Office of General Counsel

1204

1205

**MARYLAND TRANSIT ADMINISTRATION OF THE
MARYLAND DEPARTMENT OF TRANSPORTATION**

1206 WITNESS

1207

1208

1209 _____

By: _____

1210

Paul Comfort
Administrator

1211

1212

1213 Sources of funds verified and monies appropriated
1214 for the purposes provided herein, and accordingly,
1215 recommended for approval

1216

1217

1218

1219 _____
Robert P. Schleigh
1220 Project Controls Officer

1221

1222 Recommended for approval

1223

1224

1225 _____

1226 **William A. Parks**
1227 **Purple Line Project Director**
1228
1229 **Approved as to form and legal**
1230 **sufficiency for MTA**

1231
1232
1233

1234 **James Wyatt**
1235 **Assistant Attorney General**

1236
1237
1238

LIST OF EXHIBITS:

- 1239
- 1240
- 1241 "A" – Depiction of Purple Line
- 1242 "B" – Section 4(f) Letters
- 1243 "C" – Not Used
- 1244 "D" – MTA Technical Provisions Book 2, Part A, Section 10.4
- 1245 "E" – Substantial/Final Completion, P3 Agreement, Paragraphs 7.10.3 – 7.14
- 1246 "F" – Long Branch Sector Plan Page 29
- 1247 "G" – Montgomery County Letter of Agreement Dated February 5, 2016
- 1248 "H" – Not Used
- 1249 "I" – Montgomery County Planning Board Mandatory Referral Recommendations
- 1250 "J" – Not Used
- 1251 "K" – MD 320 Piney Branch Road
- 1252 "L" – KenGar Soccer Field Layout
- 1253 "M" – MTA Required Parks Properties
- 1254 "N" – Meadowbrook Annex Replacement Area (i.e., Talbot Street)
- 1255 "O" – Long Branch Stream Valley Park Commission Vegetation Work Area
- 1256

Exhibit A:

Purple Line Project Map

Exhibit 1.1 Project Location Plan

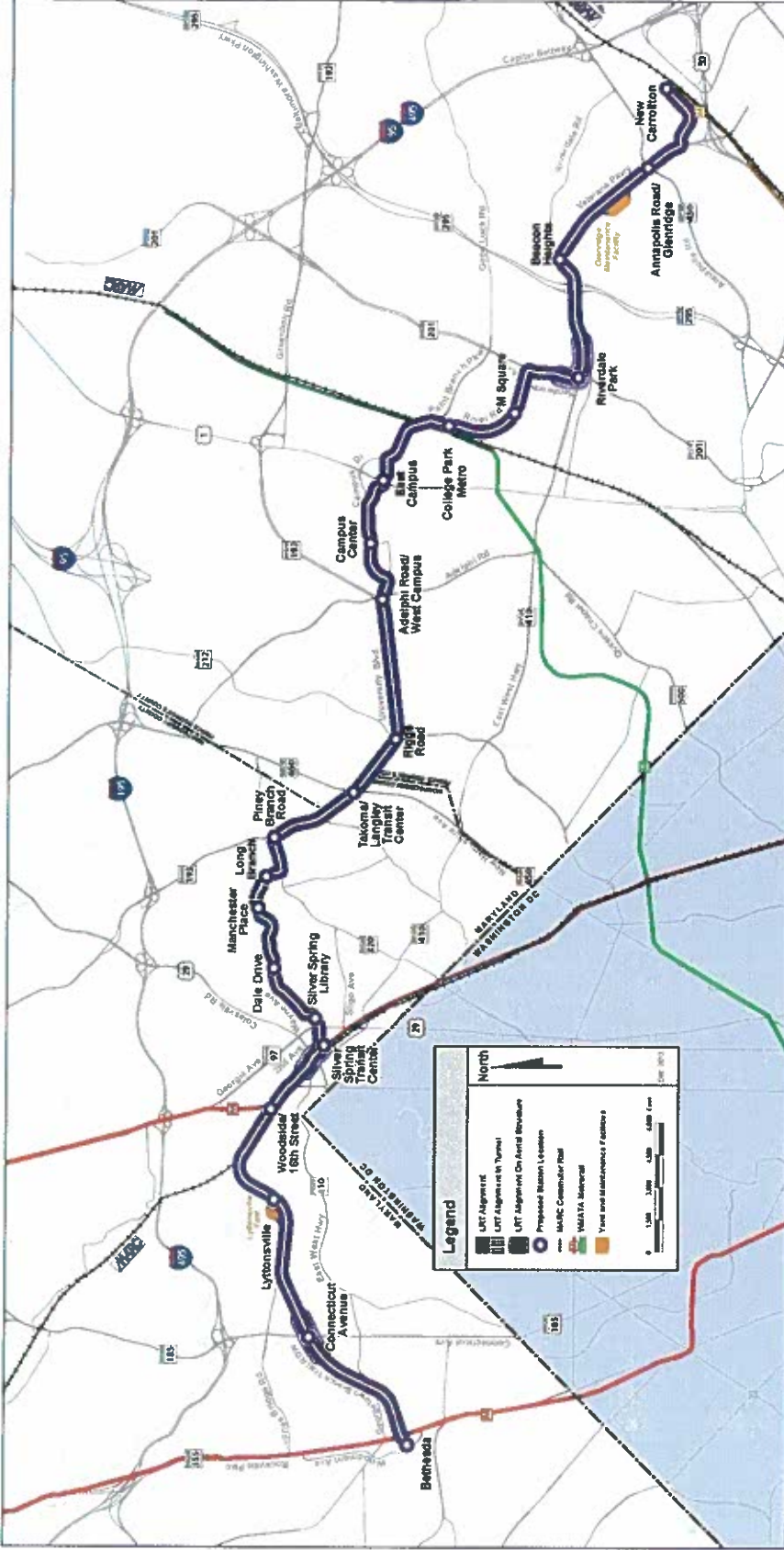


Exhibit B:

Section 4(f) Letters

A stylized map of the Purple Line route, shown as a grey line with small circles at various points along its path, extending from the top left towards the bottom right of the page.

Record of Decision Attachment E

Agency Correspondence

The following relevant correspondence with federal and state agencies is provided in Attachment E:

- NEPA—National Capital Planning Commission
- Section 106—Maryland State Historic Preservation Officer
- Section 4(f)—M-NCPPC Montgomery County Department of Parks; M-NCPPC Prince George's County Department of Parks and Recreation; National Park Service
- Section 7—US Fish and Wildlife Service

Memoranda of meetings with agencies since the August 30, FEIS are also provided in this attachment.



U.S. Department
of Transportation
**Federal Transit
Administration**

REGION III
Delaware, District of
Columbia, Maryland,
Pennsylvania, Virginia,
West Virginia

1760 Market Street
Suite 500
Philadelphia, PA 19103-4124
215-656-7100
215-656-7260 (fax)

Ms. Mary R. Bradford, Director of Parks
Maryland-National Capital Park and Planning Commission
Montgomery County Department of Parks
9500 Brunett Avenue
Silver Spring, MD 20901

NOV 27 2013

**RE: MTA Purple Line Project: Section 4(f) Temporary Occupancy Exception
Determination for Elm Street Urban Park, Montgomery County, Maryland**

Dear Ms. Bradford:

The purpose of this letter is to seek your concurrence, as the official with jurisdiction over the Elm Street Urban Park, with the Federal Transit Administration's (FTA) intent to make a temporary occupancy exception determination for this property pursuant to Section 4(f) of the U.S. Department of Transportation Act of 1966, now codified at 49 U.S.C. 303 et seq. and implemented in 23 CFR Part 774.

The Maryland Transit Administration (MTA), in cooperation with the FTA as the lead Federal agency, has prepared a Final Environmental Impact Statement (FEIS) and Section 4(f) Evaluation for the Purple Line project (project). MTA and FTA provided public notice of the proposed project and opportunity for public comment on our intent to make a temporary occupancy exception determination for the Elm Street Urban Park during the FEIS and Section 4(f) public comment period that ended on October 21, 2013.

One comment was received pertaining to the Section 4(f) Evaluation for Elm Street Park. The commenter felt that the FEIS/Draft Section 4(f) Evaluation did not acknowledge potential effects of the project on the park. Among their concerns were: the introduction of a wide path through the park and the future redevelopment of the park (both separate planned projects by M-NCPPC); noise and visual effects; and the potential changes due to a minor master plan amendment currently under consideration by Montgomery County. The comments have been reviewed and the concerns raised were already considered in the FEIS/Draft Section 4(f) Evaluation in the design development and mitigation for the park. The fact that the comments were already considered in the FEIS/Draft 4(f) Evaluation will be clarified in the Record of Decision.

The project would be aligned directly north of Elm Street Urban Park, under the existing Air Rights Building and along the Georgetown Branch right-of-way. MTA's proposes to reconstruct the existing connection between Elm Street Park and the proposed Capital Crescent Trail, which would require temporary use of approximately 0.02 acre of land on an existing pathway within the 2.1 acre park. The land to be temporarily used includes a portion of an existing path, an undeveloped corner of a playground, and a grassy area adjacent to the path. The proposed trail

connection would be reconstructed with an Americans with Disabilities Act-compliant connection. The location and design of the trail connection have been coordinated with Montgomery County Department of Transportation and M-NCPPC Montgomery County Department of Parks. MTA will continue this coordination as the project design advances. See **Enclosure 1** for details on the mitigation commitments for this park and **Attachments A and B**, which show overviews of the project and park.

There are two features of design alongside the park that would mitigate potential visual and noise effects and increase safety for park users. A ventilation structure would be located between the park and the transitway, limiting views of the transitway and acting as a barrier for noise from the passing trains. The trail connection would climb on retained fill over the ventilation structure to a point where the connection crosses over the transitway. The only access from the park would be via the trail connection, which would be fenced to provide safe passage over the transitway.

MTA's design of the ventilation structure, retaining wall, and proposed landscaping adjacent to Elm Street Urban Park, as well as the design of the trail connection, are being coordinated with both M-NCPPC – Department of Parks and Department of Planning to ensure interim functionality of the park as well as long-term compatibility with the planned upgrade to the park

MTA expects to complete construction of the trail connection in less time than the overall project construction schedule. The proposed work is confined to a small area of the park; the disturbed area will be restored after project completion in coordination with M-NCPPC Montgomery County Department of Parks. The Purple Line project would not adversely affect or otherwise restrict the public's use of the existing park resources. No substantial impairment of the activities, features, or attributes—playgrounds, gazebo, picnic tables, benches, trails, and public art—that qualify the park for protection under Section 4(f) would occur. MTA will use a temporary construction easement; no change in ownership of the park land will occur.

Pursuant to 23 CFR 774.3(b) and based on a review of information presented in the FEIS, FTA proposes a temporary occupancy exception determination for the project, as it satisfies the five criteria for temporary occupancy set forth in 23 CFR 774.13(d). Specifically, (1) the duration of the proposed work is temporary, less than the overall project construction period, and no change in property ownership would occur; (2) the work is confined to a small area of the park and would result in minimal changes to the park; (3) no permanent adverse impacts to the park and no interference with the protected activities, features, or attributes of the park would occur; (4) the disturbed land would be fully restored to at least as good condition; and (5) the officials with jurisdiction are providing documented agreement to these findings.

At this time, FTA requests M-NCPPC concurrence with the Section 4(f) temporary occupancy exception determination for expected temporary impacts to Elm Street Urban Park as a result of the construction of the proposed trail connection from the park to the proposed Capital Crescent Trail. Pursuant to 23 CFR 774.5, if concurring, M-NCPPC must provide a written response to FTA stating that the project will not adversely affect the activities, features, or attributes that make the property eligible for Section 4(f) protection. A concurrence clause is provided at the end of this letter for this purpose. If M-NCPPC objects to or if comments raise new concerns about the proposed Section 4(f) temporary occupancy exception determination, FTA will require a formal

Ms. Mary R. Bradford
RE: MTA Purple Line Project

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Section 4(f) evaluation.

We respectfully request your reply to this matter within two weeks of receipt of this letter. We look forward to continuing our successful working relationship with you and should you have any questions or need additional information, please feel free to contact Mr. Timothy Lidiak, Community Planner, at (215) 656-7084, or Mr. Daniel Koenig, Environmental Protection Specialist, at (202) 219-3528.

Sincerely,

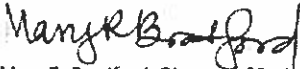


Brigid Hynes-Cherin
Regional Administrator

cc: Michael Madden, MTA
John Newton, MTA

CONCURRENCE:

We, the undersigned, concur that the existing activities, features, and attributes at the Elm Street Urban Park would not be adversely impacted by the proposed Purple Line and that the Purple Line's proposed temporary use of a portion of the park meets the criteria for a temporary occupancy exception under Section 4(f) of the USDOT Act of 1966 (49 U.S.C. 303 et seq.).



Mary R. Bradford, Director of Parks

Maryland-National Capital Park and Planning
Commission, Montgomery County Department of Parks

12/17/2013

Date

Enclosure 1

Elm Street Urban Park Coordination and Minimization and Mitigation Measures

Coordination Activities

Beginning in January 2012, MTA and M-NCPPC staff met on several occasions to discuss the proposed Purple Line and the potential impacts it would have on Elm Street Urban Park. Specific meetings were held on January 25, 2012, May 16, 2012, November 21, 2012, February 1, 2013, and February 26, 2013. In addition to discussing anticipated impacts, staff from MTA and M-NCPPC discussed ways to minimize and mitigate impacts to the Park. The minimization and mitigation measures agreed upon at these agency coordination meetings are provided below. At the time of the January 25, 2012 meeting, design refinements were still under investigation in the Bethesda area. These refinements were completed by the May 16, 2012 meeting, and at that meeting, the M-NCPPC determined that the proposed project would not adversely affect Elm Street Urban Park. Additional coordination occurred throughout the Fall of 2013 and has resulted in the mitigation measures outlined below and verbal concurrence of FTA's intent to make a temporary occupancy exemption determination. MTA and FTA will continue to coordinate with M-NCPPC to develop the mitigation in more detail throughout the design and construction phases of the project.

Mitigation and Minimization

Two features of the Purple Line design alongside the park that would mitigate potential visual and noise effects and increase safety for park users. A ventilation structure would be located between the park and the transitway, limiting views of the transitway and acting as a barrier for noise from the passing trains. The trail connection would climb on retained fill over the ventilation structure to a point where the connection crosses over the transitway. The only access from the park would be via the trail connection, which would be fenced to provide safe passage over the transitway.

MTA's design of the ventilation structure, retaining wall, and proposed landscaping adjacent to Elm Street Urban Park, as well as the design of the trail connection, are being coordinated with both M-NCPPC – Department of Parks and Department of Planning to ensure interim functionality of the park as well as long-term compatibility with the planned upgrade to the park.

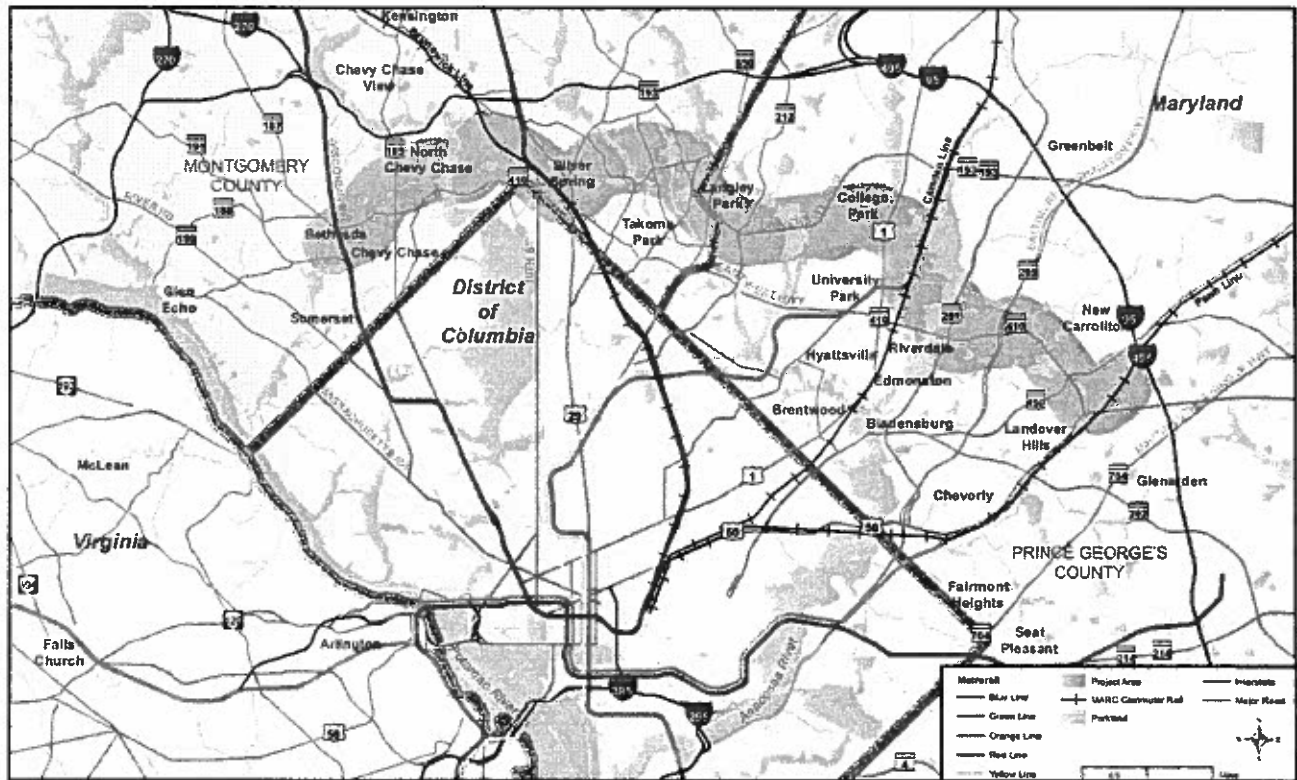
Other mitigation measures include:

- MTA will maintain access to the park during construction;
- MTA will provide a functional interim condition for the park, reviewed and approved by M-NCPPC, prior to its planned redevelopment;
- MTA will design the proposed trail connection to the proposed Capital Crescent Trail to meet ADA requirements;
- MTA will not construct stormwater management facilities within the boundaries of the Park;
- Land disturbed during construction of the proposed project would be returned to preconstruction conditions or better; and
- Land upon which a temporary construction easement is placed will be returned to M-NCPPC upon completion of the construction of the proposed trail connection.

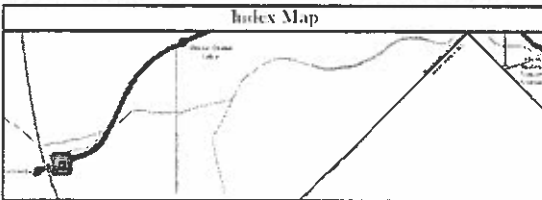
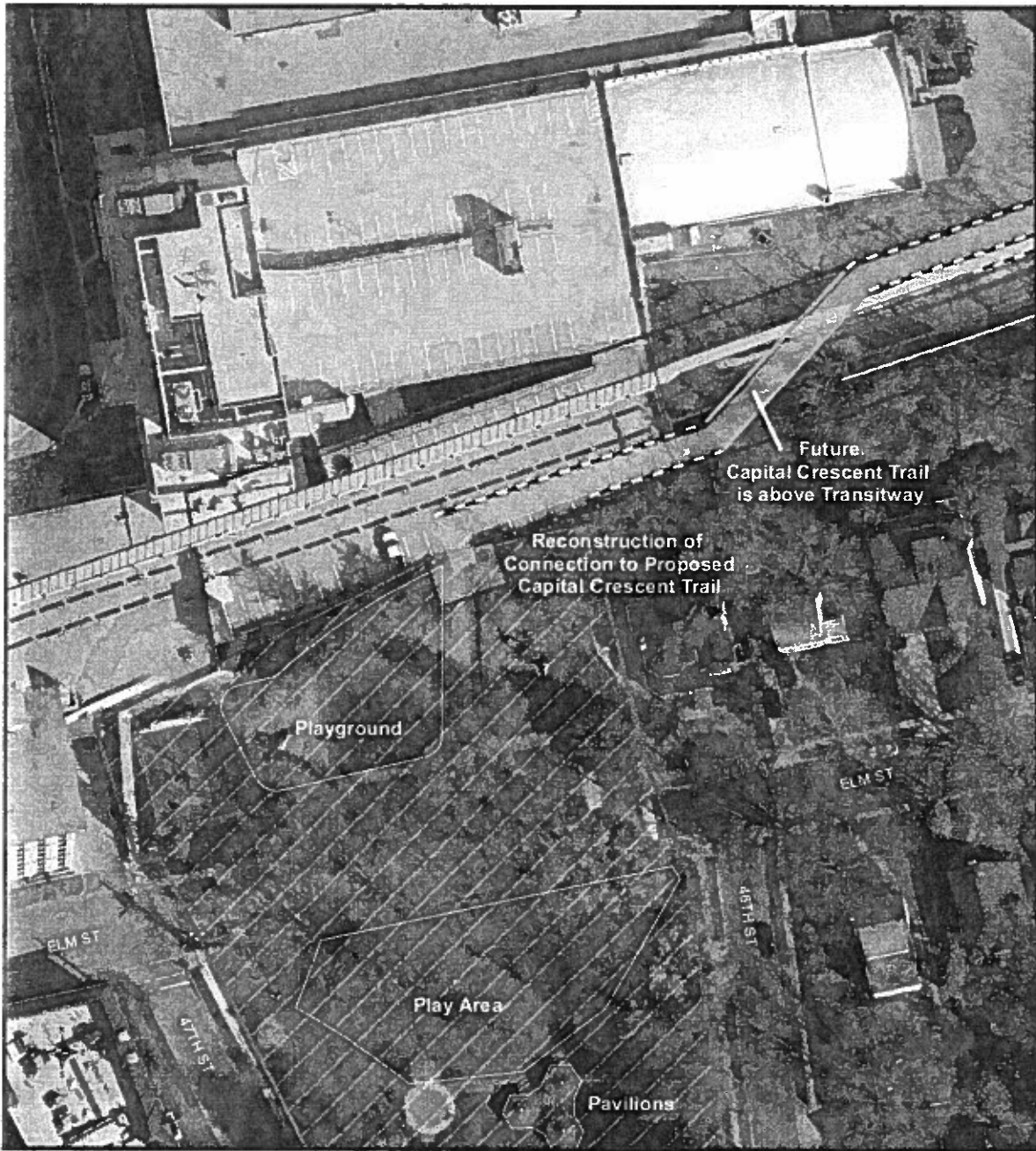
Attachment A: Purple Line Project Alignment and Section 4(f) Resources Overview Map

Attachment B: Detailed Map of Proposed Park Impacts

ATTACHMENT A



ATTACHMENT B



Construction Impact 0.02 acres	Future Capital Crescent Trail
Proposed Sidewalk	Limits Of Disturbance
Proposed Sidewalk in Tunnel	Preferred Alternative - Transitway
Proposed Retaining Wall	Preferred Alternative - Transitway in Tunnel
Proposed Noise Wall	Parkland
Proposed Pedestrian Overpass	
Proposed Fence In Tunnel	

0 25 50 100 Feet



Elm Street Urban Park

Source: Maryland-National Capital Park and Planning Commission, Montgomery County Department of Parks, Maryland Transit Administration



U.S. Department
of Transportation
**Federal Transit
Administration**

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Columbia, Maryland,
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215-656-7260 (fax)

Ms. Mary R. Bradford, Director of Parks
Maryland-National Capital Park and Planning Commission
Montgomery County Department of Parks
9500 Brunett Avenue
Silver Spring, MD 20901

**RE: MTA Purple Line Project: Section 4(f) Temporary Occupancy Exception
Determination for Rock Creek Stream Valley Park and Rock Creek National
Recreational Trail, Montgomery County, Maryland**

Dear Ms. Bradford:

The purpose of this letter is to seek your concurrence, as the official with jurisdiction over the Rock Creek Stream Valley Park and Rock Creek National Recreational Trail, with the Federal Transit Administration's (FTA) temporary occupancy exception determination for this property pursuant to Section 4(f) of the U.S. Department of Transportation Act of 1966, now codified at 49 U.S.C. 303 et seq. and implemented in 23 CFR Part 774.

The Maryland Transit Administration (MTA), in cooperation with the FTA as the lead Federal agency, has prepared a Final Environmental Impact Statement (FEIS) and Section 4(f) Evaluation for the Purple Line project (project). MTA and FTA provided public notice of the proposed project and opportunity for public comment on our intent to make a temporary occupancy exception determination for the Rock Creek Stream Valley Park and Rock Creek National Recreational Trail during the FEIS and Section 4(f) Evaluation public comment period that ended on October 21, 2013. Two comments were received during the public comment period on FTA's intent to make a temporary occupancy exemption determination for Rock Creek Stream Valley Park and Rock Creek National Recreational Trail. One commenter expressed general concern for potential impacts to the park and the other commenter expressed concerns that overall park impacts were not acknowledged in the Draft Section 4(f) Evaluation. The comments have been reviewed and the concerns raised were considered in the FEIS/Draft Section 4(f) Evaluation in the design development and proposed mitigation for the park. The fact that the comments were already considered in the FEIS/Draft 4(f) Evaluation will be clarified in the Record of Decision.

The project would cross Rock Creek Stream Valley Park, completely within Montgomery County Department of Transportation right-of-way. MTA proposes to replace the existing bridge over Rock Creek with two new bridges (one for the transitway and one for the Capital Crescent Trail) within the county right-of-way through the park. This work would improve connections to the Rock Creek National Recreational Trail, as the Capital Crescent Trail bridge would lead to a new ramp connection from the Capital Crescent Trail to the existing Rock Creek National Recreational

Ms. Mary R. Bradford
RE: MTA Purple Line Project

2

Trail. See **Enclosure 1** for details on the mitigation commitments for this park and **Attachments A and B**, which show overviews of the project and park.

For short periods of time during construction, MTA would temporarily detour the portion of Rock Creek National Recreational Trail in the immediate vicinity of the bridges. The detour route would begin to the north of the proposed project area and use Susanna Lane to Jones Mill Road, south to East-West Highway, then east to Meadowbrook Lane, where the Rock Creek National Recreational Trail would be accessed to the south of the proposed project area. While Rock Creek National Recreational Trail would be temporarily detoured during the construction of the bridges, the trail would remain open. MTA expects the temporary trail detour to occur for less time than the overall Purple Line construction schedule. The portion of the trail to be detoured is small compared to the overall length of the trail (19 miles) and the size of the park (3,960 acres). The original trail alignment across the county right-of-way will be restored. The project would not adversely affect or otherwise restrict the public's use of the existing Rock Creek National Recreational Trail, and it would not adversely affect the activities, features, or attributes—trails, lakes, historic plantation, athletic fields, playgrounds and picnic areas—of the park. No change in ownership of the park land will occur.

Extensive coordination has occurred between the MTA, M-NCPPC, Montgomery County Department of Transportation, as well as the National Capital Planning Commission (NCPC), regarding the design and construction of the Rock Creek bridges and the trail connection to the Rock Creek National Recreational Trail. The proposed Capital Crescent Trail bridge would be at a lower elevation than the proposed transitway bridge to provide views from the new trail bridge north and south into the park. Retaining walls will be used to reduce impacts and maximize planting areas. MTA will develop design and landscaping plans in consultation with M-NCPPC. Coordination has and will continue as the project advances. Through this coordination, MTA developed several minimization and mitigation measures.

Pursuant to 23 CFR 774.3(b) and based on review of the information contained in the FEIS. FTA proposes a temporary occupancy exception determination for the trail detour, as it satisfies the five criteria for temporary occupancy set forth in 23 CFR 774.13(d). Specifically, (1) the duration of the proposed work is temporary, less than the overall project construction period, and no change in property ownership would occur; (2) the work is confined to a small area of the park and would result in minimal changes to the park; (3) no permanent adverse impacts to the park and no interference with the protected activities, features, or attributes of the park would occur; (4) the disturbed land would be fully restored to at least as good condition; and (5) the officials with jurisdiction are providing documented agreement to these findings.

FTA has determined that the project would not adversely affect or otherwise restrict the public's use of the existing resources; will not adversely affect the features, attributes, or activities that make Rock Creek Stream Valley Park and Rock Creek National Recreational Trail eligible for Section 4(f) protection as a park. Pursuant to 23 CFR 774.5, M-NCPPC- Montgomery County Department of Parks must concur in writing to FTA stating that the project will not adversely affect the activities, features, or attributes that make the property eligible for Section 4(f) protection as a park. A concurrence clause is provided at the end of this letter for this purpose. If M-NCPPC objects to or if comments raise new concerns about the proposed Section 4(f) temporary occupancy


Ms. Mary R. Bradford
RE: MTA Purple Line Project

3

exception determination, FTA will require a formal Section 4(f) evaluation.

We respectfully request your reply to this matter within two weeks of receipt of this letter. We look forward to continuing our successful working relationship with you and should you have any questions or need additional information, please feel free to contact Mr. Timothy Lidiak, Community Planner, at (215) 656-7084, or Mr. Daniel Koenig, Environmental Protection Specialist, at (202) 219-3528.

Sincerely,


Bfigid Hynes-Cherin
Regional Administrator

cc: Michael Madden, MTA
John Newton, MTA
Mike Weil, NCPC

CONCURRENCE:

We, the undersigned, concur that the existing facilities, activities, and purposes at the Rock Creek Stream Valley Park and Rock Creek National Recreational Trail would not be adversely impacted by the proposed Purple Line and that the Purple Line's proposed temporary use of the park meets the criteria for a temporary occupancy exception under Section 4(f) of the USDOT Act of 1966 (49 U.S.C. 303 et seq.).


Maryland-National Capital Park and Planning
Commission, Montgomery County Department of Parks

1/31/2014
Date

Enclosure 1

Rock Creek Stream Valley Park and Rock Creek Recreational Trail Minimization and Mitigation Measures

Coordination Activities

Extensive coordination has occurred between the MTA, M-NCPPC, Montgomery County Department of Transportation, as well as the National Capital Planning Commission (NCPC), regarding the design and construction of the Rock Creek bridges and the trail connection to the Rock Creek National Recreational Trail. The proposed Capital Crescent Trail bridge would be at a lower elevation than the proposed transitway bridge to provide views from the new trail bridge north and south into the park. Retaining walls will be used to reduce impacts and maximize planting areas. MTA will develop design and landscaping plans in consultation with M-NCPPC. Through this coordination, MTA developed several minimization and mitigation measures. Coordination will continue as the project advances.

Meetings were held between MTA and M-NCPPC on January 25, 2012, May 16, 2012, November 21, 2012, February 1, 2013, and February 26, 2013 regarding the Rock Creek Stream Valley Park and Rock Creek National Recreational Trail. During the initial meeting, the design of the proposed Purple Line through the park was discussed. M-NCPPC requested additional information as to the nature of potential temporary impacts, particularly with regard to the trail connection from the proposed Capital Crescent Trail to Rock Creek National Recreational Trail. Since that time, refinements have been made to the design of the trail connection that would minimize impacts to the park. At the May 16, 2012 meeting, M-NCPPC determined that the proposed project would not adversely affect Rock Creek Stream Valley Park or Rock Creek National Recreational Trail. Additional coordination occurred throughout the Fall of 2013 and FTA's intent to make a temporary occupancy exemption determination was discussed in addition to the mitigation measures outlined below. MTA and FTA will continue to coordinate with M-NCPPC to develop the mitigation in more detail throughout the design and construction phases of the project.

Mitigation and Minimization

To minimize impacts, MTA would construct all elements of the proposed project completely within Montgomery County right-of-way. The proposed detour of the Rock Creek National Recreational Trail will be temporary and for short periods of time during the construction of the proposed project through Rock Creek Stream Valley Park.

Within the county right-of-way, the Rock Creek National Recreational Trail would be raised out of the one-year floodplain on an elevated wooden boardwalk to reduce flooding and siltation that currently plague the trail. MTA coordination with M-NCPPC will be ongoing regarding the design of the raised section of trail.

Selective tree clearing would occur within the Montgomery County right-of-way adjacent to Rock Creek Stream Valley Park. Replanting and restoration of disturbed areas would occur within the Montgomery County right-of-way to the extent reasonably feasible to mitigate for tree removal. MTA would not construct stormwater management ponds or structures within Rock Creek Stream Valley Park.

MTA and the Purple Line Team has been and will continue to work extensively with NCPC, M-NCPPC, and Montgomery County to improve the aesthetics of the proposed transitway and trail bridges through Rock Creek Stream Valley Park. The bridges will be designed as signature facilities with aesthetic considerations for park users.

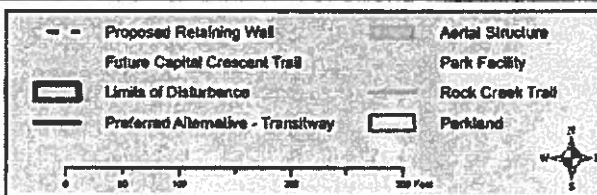
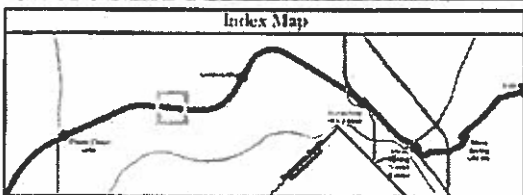
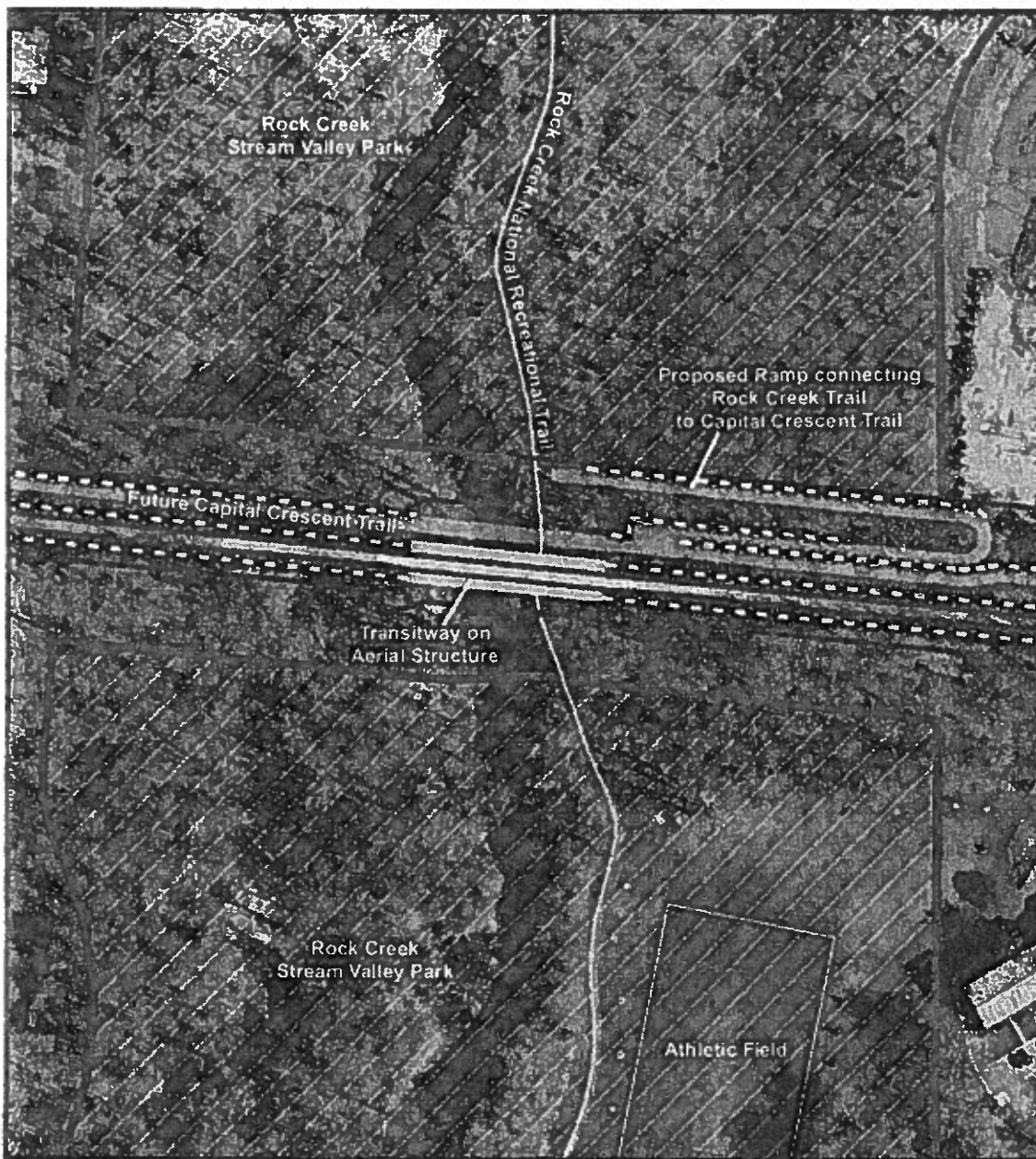
Contingent upon approval by regulatory permitting agencies, as part of the removal of the existing bridge over Rock Creek, the pier foundation within the existing stream channel would be removed 12-18 inches below existing grade. The stream will be stabilized with appropriate stream design methods that factor hydrology, hydraulics, and existing conditions both upstream and downstream of the pier and aquatic passage. The design of the pier removal and stream improvements will be further refined as the design of the project progresses.

Other mitigation includes:

- MTA will maintain access to the park and Rock Creek National Recreational Trail during construction.
- MTA will design the proposed Capital Crescent Trail and the connection to Rock Creek National Recreational Trail to meet ADA requirements.
- MTA will develop design of retaining walls and landscaping plans through the Park in consultation with M-NCPPC.
- MTA will not construct stormwater management facilities within the boundaries of the park.

Attachment A: Purple Line Project Alignment and Section 4(f) Resources Overview Map
Attachment B: Detailed Park Impact Map

ATTACHMENT B



Rock Creek Stream Valley Park and Rock Creek National Recreational Trail

Source: Maryland-National Capital Park and Planning Commission, Montgomery County Department of Parks, Maryland Historical Trust, National Register of Historic Places, Maryland Transit Administration



U.S. Department
of Transportation
Federal Transit
Administration

NOV 27 2013

REGION III
Delaware, District of
Columbia, Maryland,
Pennsylvania, Virginia,
West Virginia

1760 Market Street
Suite 500
Philadelphia, PA 19103-4124
215-656-7100
215-656-7260 (fax)

Ms. Mary R. Bradford, Director of Parks
Maryland-National Capital Park and Planning Commission
Montgomery County Department of Parks
9500 Brunett Avenue
Silver Spring, MD 20901

RE: MTA Purple Line Project: Section 4(f) De Minimis Impact Determination for Sligo Creek Stream Valley Park, Montgomery County, Maryland

Dear Ms. Bradford:

The purpose of this letter is to seek your concurrence, as the official with jurisdiction over the Sligo Creek Stream Valley Park, with Federal Transit Administration's (FTA) *de minimis* impact determination for this property pursuant to Section 4(f) of the U.S. Department of Transportation Act of 1966, now codified at 49 U.S.C. 303 et seq. and implemented in 23 CFR Part 774.

The Maryland Transit Administration (MTA), in cooperation with FTA as the lead Federal agency, has prepared a Final Environmental Impact Statement (FEIS) and Section 4(f) Evaluation for the Purple Line project (project). MTA has provided public notice of the proposed project and opportunity for public comment on our intent to make a *de minimis* impact determination for the Sligo Creek Stream Valley Park during the FEIS and Section 4(f) Evaluation public comment period that ended on October 21, 2013. No comments were received during the public comment period on FTA's intent to make a *de minimis* impact determination for Sligo Creek Stream Valley Park.

The project would cross Sligo Creek Stream Valley Park in the median of Wayne Avenue, primarily within Montgomery County Department of Transportation right-of-way. MTA would permanently use 0.24 acre of the 543-acre Sligo Creek Stream Valley Park to widen Wayne Avenue and replace the existing Wayne Avenue bridge with a wider, single span structure to accommodate the transitway and the proposed Green Trail. The decision to operate the transitway in mixed-traffic lanes on Wayne Avenue was done to minimize impacts to the community, including the use of park property. See **Enclosure 1** for details on the mitigation commitments for this park and **Attachments A and B**, which show overviews of the project and park.

MTA would temporarily use 1.68 acres of Sligo Creek Stream Valley Park to access the work area. The park land to be temporarily used is primarily grassy or wooded and undeveloped. Approximately three of 25 parking spaces in the park parking lot west of the stream would be temporarily used by MTA for access and staging. These parking spaces would be restored upon completion of project construction.

MTA is committed to designing an environmentally sensitive stream crossing when designing the Wayne Avenue bridge. The bridge will be designed to provide the least amount of environmental impact and improve the hydraulics of Sligo Creek through the proposed project area. Sligo Creek would be realigned as part of the bridge replacement. MTA would not use or affect developed recreational facilities associated with the park or affect the retaining walls along Sligo Creek Parkway; no use of the Sligo Creek National Recreational Trail is proposed.

Ms. Mary R. Bradford
RE: MTA Purple Line Project

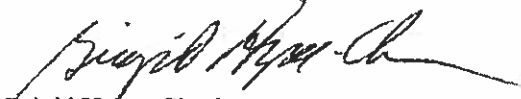
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FTA's intent to make a *de minimis* impact determination was discussed at several coordination meetings between the Purple Line Team and M-NCPPC- Montgomery County Department of Parks, beginning in January 2012. These meetings were established for coordination purposes on the project and have led to the incorporation of specific avoidance, minimization, and mitigation measures to reduce the impact to the M-NCPPC owned parks within the proposed project corridor. Coordination between MTA and M-NCPPC is ongoing and will continue; however, replacement land has been identified adjacent to the New Hampshire Estates Neighborhood Park which will serve as mitigation for the use of parkland throughout Montgomery County.

The FTA has determined that the project would not adversely affect or otherwise restrict the public's use of the park nor will it adversely affect the features, attributes, or activities - playgrounds, athletic field, picnic areas, and aesthetic features - that make the Sligo Creek Stream Valley Park eligible for Section 4(f) protection as a park. Pursuant to 23 CFR 774.5, M-NCPPC- Montgomery County Department of Parks must concur in writing to FTA stating that the project will not adversely affect the activities, features, or attributes that make the property eligible for Section 4(f) protection as a park. A concurrence clause is provided at the end of this letter for this purpose. If M-NCPPC objects to or if comments raise new concerns about the proposed Section 4(f) *de minimis* impact determination, FTA will require a formal Section 4(f) evaluation.

We respectfully request your reply to this matter within two weeks of receipt of this letter. We look forward to continuing our successful working relationship with you and should you have any questions or need additional information, please feel free to contact Mr. Timothy Lidiak, Community Planner, at (215) 656-7084, or Mr. Daniel Koenig, Environmental Protection Specialist, at (202) 219-3528.

Sincerely,



Brigid Hynes-Cherin
Regional Administrator

cc: Michael Madden, MTA
John Newton, MTA
Mike Weil, NCPC

CONCURRENCE:

We, the undersigned, concur that the existing activities, features, or attributes at Sligo Creek Stream Valley Park would not be adversely impacted by the proposed Purple Line; the right-of-way impacts of the Purple Line to the park would be minimal; permanent impacts would be minor including widening Wayne Avenue and replacing the existing Wayne Avenue bridge and making drainage improvements; temporary impacts would be minor and would be limited to providing equipment access and work area; MTA will plant trees and provide replacement parkland for land it permanently uses, convey land to the park, and replace disturbed guiderails, signs and structures it disturbs in the work area; and therefore, we agree that the Purple Line's proposed use of portions of the park meet the criteria for a *de minimis* impact determination under Section 4(f) of the USDOT Act of 1966 (49 U.S.C. 303 et seq.).



Mary R. Bradford, Director of Parks

Maryland-National Capital Park and Planning
Commission, Montgomery County Department of Parks

12/17/2013

Date