



**MONTGOMERY COUNTY DEPARTMENT OF PARKS**  
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

**MEMORANDUM**

**DATE:** April 23, 2012  
**TO:** David Tobin, Public Affairs & Community Partnerships Division  
**VIA:** Mitra Pedoem, Chief, Park Development Division *Mitra 4/25*  
Michael Ma, Park Development Division *MM*  
**FROM:** Marian Elssasser, Park Development Division *ME*  
**SUBJECT:** Design of the Capital Crescent Trail Plaza with the Coalition of the Capital Crescent Trail

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The Park Development Division (PDD) has reviewed the design concept plans submitted by the Coalition of the Capital Crescent Trail for a trailhead plaza on the Capital Crescent Trail (CCT) located north of River Road. PDD recommends the approval of the concept plan. The applicant must obtain a park construction permit before any construction activity can occur. During the park construction permit review, the following conditions must be fully addressed:

1. The project must comply with the requirements of American's with Disability Act.
2. All design refinements and details will be finalized and reviewed during park construction permit. This review will include selection and location of all plant materials, surfaces, and site furnishing: benches, trash cans, recycling bins, etc. In addition, soil remediation of the area needs to be specified and reviewed.
3. The project must provide a safe and direct crossing of the CCT.
4. During construction, the following items must be approved by the M-NCPPC staff:
  - All shop drawings and submittals must be approved by PDD.
  - All plant materials must be inspected and approved by the horticultural staff.

## DEVELOPMENT AGREEMENT

This Development Agreement (this "Agreement") is entered into as of the 16<sup>th</sup> day of October 2012, by and between The Maryland-National Capital Park and Planning Commission (the "Commission"), a body corporate and politic, and Coalition for the Capital Crescent Trail (CCCT) for the development and construction of certain improvements located on the Capital Crescent Trail in Montgomery County, Maryland (the "Trail").

### RECITALS

- A. The Commission is the manager of the Trail including the property shown in Exhibit A.
- B. The CCCT has requested to construct, at its own expense, certain improvements at the location shown on Exhibit A, specifically a Plaza for the benefit of Trail users (the "Project"), as heretofore approved by the Montgomery County Planning Board of the Commission.
- C. Subject to the timeframes and conditions set forth in this Agreement, CCCT is now preparing to confirm the feasibility of the Project co-incident with its development of final construction plans, specifications, budgets, and schedules for the Project that will be submitted to the Commission for approval of same as consistent with the requirements of this Development Agreement, and, incident to such approvals, issuance of a Park Construction Permit authorizing CCCT to proceed with construction of the Project on the Premises.

NOW, THEREFORE, in consideration of the premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Definitions.

"Building Permits" means all permits necessary to be issued by appropriate municipal or state authorities for construction of the improvements to be lawfully permitted, including but not limited to any required permits for building, grading, stormwater management, sediment control, electrical, fire, mechanical, sign, fence and retaining wall.

"Construction Plans" means the plans, drawings, and specifications developed by CCCT pursuant to this Agreement, and approved by the Commission through its issuance of the Park Construction Permit, to construct the Project, including any changes thereto to the extent authorized under this Agreement in view of the provisions of Section 5 ("Change Orders") hereof.

"Contract Documents" means this Agreement, the Construction Plans, the Project Schedule, the Project Budget, and the Procurement Ethics and Anti-Discrimination Procedures.

"Contractor" means any firm, corporation or other entity selected by the CCCT to serve as its prime contractor for the Project; provided, however, that if the CCCT chooses to construct the Project utilizing various contractors and suppliers managed by any individual, firm, corporation or other entity serving as a construction manager, then "Contractor" shall refer to such construction manager.

"Laws" mean any and all applicable laws, orders, ordinances, codes and regulations of any and all courts and governmental bodies, agencies and authorities having jurisdiction over the Park including, without limitation, all zoning, subdivision, building and land use laws.

"Park Construction Permit" means the permit issued by the Commission authorizing the CCCT to enter upon the Premises and build the Project on the Premises in accordance with the Construction Plans, this Agreement, and to occupy the Premises for such purposes as the commencement of construction.

"Procurement Ethics and Anti-Discrimination Procedures" means the Procurement Ethics and Anti-Discrimination Procedures set forth in Exhibit B attached.

"Project Budget" means the budget developed by the CCCT, and approved by the Commission by its issuance of the Park Construction Permit, to complete the Project, including but not limited to the costs for design of the Project, all hard and soft costs of construction, all permit fees and costs of approvals as required by Laws, contingency, site work, costs of installation, and oversight and management fees for the Project Manager.

"Project Completion" means the time when construction has been completed in accordance with the Construction Plans, all conditions of the Park Construction Permit have been met, including closure of all outstanding permits issued by any governmental authority for construction of the Project, "as-built" plans of the Project certified by the engineer of record have been submitted to the Commission, and releases of liens have been received from all Contractors who have furnished labor, materials and/or services in the construction of the Project, covering work performed, materials supplied and services rendered.

"Project Manager" means the person or firm retained by the CCCT responsible for overseeing the design, construction and installation of the Project, who or which shall be either a principal owner or officer of the CCCT, or a construction manager experienced in project management for commercial or recreational construction projects.

"Project Schedule" means the schedule developed by the CCCT, and approved by the Commission through its issuance of the Park Construction Permit, for commencing and completing the Project, which includes dates for periodic inspections by the Commission.

"Punch List" means the list of construction and clean-up items left to be performed following Substantial Completion, in order for the Project to be completed in accordance with the Construction Plans. The Punch List will be developed by the Commission and the CCCT as a result of the Commission's inspection of the Project in accordance with Section 7 herein.

"Substantial Completion" means that the Project has been constructed and completed in a good and workmanlike manner, in accordance with applicable requirements of Law and in accordance with the Construction Plans.

2. Feasibility Period; Construction Commencement.

(a) The CCCT shall have a period to confirm the feasibility of the Project (the "Feasibility Period") commencing upon the date of execution of this Agreement and extending for the later of (i) one hundred eighty (180) calendar days thereafter, or (ii) thirty (30) calendar days after the date the Commission issues the Park Construction Permit. During the first one-hundred twenty (120) calendar days of the Feasibility Period, the CCCT shall develop and submit for approval by the Commission, its proposed Construction Plans, Project Budget and Project Schedule. In connection therewith, the CCCT and its designees may conduct detailed site evaluations and other studies necessary or appropriate in its discretion to assess feasibility.

(b) The CCCT may commence construction of the Project on the Premises after (i) all permits and approvals, including the Park Construction Permit and Building Permits necessary to begin construction have been obtained, (ii) the Feasibility Period has expired or has been terminated, and (iii) limits of disturbance is marked in the field and approved by the Commission.

3. CCCT Obligations.

(a) The CCCT shall design, construct and equip the Project subject to the terms of this Agreement, and shall engage the services of construction managers, contractors, subcontractors, professionals, consultants and/or suppliers for the purposes of: (1) planning the design and construction of the Project, (2) creating and preparing the drawings, plans and specifications in accordance with the Commission's current design standards and specifications; (3) obtaining any necessary permits required by law to construct the Project (including, but not limited to Building Permits), (4) constructing the Project, as provided herein. The CCCT shall design and construct the Project with contracts, subcontracts and agreements which do not require Commission approval, provided however, such contracts, subcontracts and agreements shall be subject to the Procurement Ethics and Anti-Discrimination

Procedures; and, (5) conducting progress and monitoring meetings up to two (2) times per month with representatives of the Commission during the course of construction until Substantial Completion.

(b) The parties agree that the Construction Plans shall be in accordance with Exhibit A-2, and that the CCCT shall develop the Construction Plans in consultation with staff of the Commission but that CCCT shall not be required to construct, build or install any equipment or facilities that exceed any corresponding specific requirements for the Project set forth in construction plans. The design and construction of the Project shall be done in accordance with the Contract Documents and in accordance with all applicable approval and permitting processes, including those required by law to construct the Project and the Commission's customary process for issuance of the Park Construction Permit. The Project shall be constructed in a first class manner with regard to construction methods and materials. As a condition of its application for a Park Construction Permit, the CCCT shall, prepare and submit for approval by the Commission the Construction Plans, the Project Schedule and the Project Budget. The Commission may condition the CCCT's authority to proceed with construction pursuant to the Park Construction Permit, on the CCCT providing written certification of funds availability to the Commission in accordance with Section 3(e) herein.

(c) The CCCT shall retain a Project Manager, who will (i) oversee and coordinate all aspects construction of the Project, (ii) be responsible for monitoring the Contractors' day-to-day work (including but not limited to those issues related to public safety and trash disposal), (iii) when the Project is Substantially Complete, certify to the Commission that the Project has been constructed and completed in accordance with the Construction Plans, (iv) close all outstanding permits issued by any governmental authority for construction of the Project, (v) submit to the Commission "as-built" plans of the Project certified by the engineer of record; (vi) conduct progress meetings described in Section 3(a)(5) above. The Project Manager will also serve as the central point of contact on all required Commission inspections and approvals.

(d) The Project Budget will provide a breakdown by line item of the anticipated costs of the construction of the Project. The Project Budget will also identify a Contingency Reserve equal to 20% of the total hard costs of the Project as shown on the Project Budget.

(e) As part of its submission for the Park Construction Permit, the CCCT shall provide written certification to the Commission, accompanied by supporting documentation evidencing that all funds as set forth in the Project Budget will be available for use by the CCCT at the time of commencement of construction. As a condition of the Commission granting to the CCCT the Park Construction Permit, the Commission's Secretary-Treasurer must approve such certification, together with the Project Budget for purposes of determining that the CCCT will have sufficient funds to complete the Project once construction is commenced. The parties recognize that advances under construction financing vehicles is customarily



conditional on compliance with certain lender conditions, such as, without limitation, inspection, lien releases and completion of draw requests. The Secretary-Treasurer may review the CCCT's financial books and records solely for the purpose of confirming the CCCT's certification and may require additional supporting documentation from the CCCT prior to making a decision. The Secretary-Treasurer's access to such books and records, for the purposes of this Agreement, is limited for the purposes stated herein, and the Commission represents that it shall not otherwise utilize or disclose the information contained therein.

(f) The CCCT shall furnish and plant/install all trees and shrubbery for the Project so as to meet all such plant landscaping requirements of the Commission, for the Premises and Project, including lawn turf and perennials. Such requirements shall be developed and finalized in consultation with the Commission during the Feasibility Period prior to the CCCT's submission of Construction Plans. In developing and finalizing such requirements, the parties intend that the CCCT will first develop a conceptual landscaping plan in consultation with the Commission; the CCCT will then refine the plan in further consultation with the Commission; the CCCT will design plantings associated with all storm water management facilities subject to the Commission's review and approval; and the CCCT shall thereafter be responsible for utilizing the conceptual plan so as to prepare suitable final landscape drawings based thereon after consideration of, and any necessary revisions to meet, all applicable regulatory requirements respecting the plan. The CCCT shall coordinate planting of such items with the Commission so as to minimize risk of disruption to other construction activities, maximize plant viabilities and accommodate any separate phasing of plantings for storm water management areas.

#### 4. Commission Obligations.

(a) The Commission recognizes that the CCCT has heretofore invested at its own risk substantial time, funds and other resources in the course of securing the rights granted to it under this Agreement, and that the CCCT will continue to invest resources during the Feasibility Period in developing final Construction Plans, the Project Budget and the Project Schedule, and arranging for funds availability as contemplated by Section 3(e). Accordingly, upon application by the CCCT, the Commission agrees to issue a Park Construction Permit in accordance with this Agreement and the Commission's normal processes, provided that such issuance shall be subject to (i) Commission approval of the Construction Plans as consistent with all requirements set forth in Exhibit A-2; (ii) Commission approval of the Project Schedule as a realistic schedule for completion of construction; and (iii) Commission approval of the Project Budget as a realistic budget for completion of construction.

(b) The Commission reserves the right to condition the CCCT's authority to commence construction pursuant to the Park Construction Permit on (i) the issuance of all Building Permits and other permits necessary or required in

connection with the start of construction of the Project have been validly issued and all fees, bonds and any other security required in connection therewith have been paid or posted; (ii) receipt of copies of all construction contracts with performance and payment bonds for the Contractor (provided, if the Contractor is serving as construction manager, such bonds will be provided by all contractors to the Project with contract prices in excess of \$100,000) which bonds shall name the Commission as a beneficiary together with the CCCT; (iii) the approval of the CCCT certification with respect to funds availability as set forth in Section 3(e); and (iv) the Commission's determination that all other conditions that the CCCT must meet to begin construction of the Project as required in accordance with this Agreement have been met. The Commission shall use legally and commercially reasonable efforts to assist the CCCT in satisfying the requirements and conditions set forth in Section 4(b)(i) above.

(c) The Commission shall inspect the Project pursuant to the Project Schedule for compliance with the Construction Plans and to verify that the Project has reached Substantial Completion; upon Substantial Completion, the Commission shall develop the Punch List with the CCCT. Throughout the Project, the Commission will provide commercially reasonable cooperation to assist the CCCT to achieve Project Completion.

5. Change Orders.

Once approved by the Commission, the CCCT shall not make or permit any changes in the Construction Plans, including any such changes that materially alter, diminish or add to the work to be performed or change the design of the Project, without the prior written consent of the Commission. The change must be consistent with the design intent of the Construction Plans as to function, quality, durability, and aesthetic character, and not contrary to Commission design standards. The CCCT shall submit to Commission copies of all change orders.

6. Accounting Records.

The CCCT shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management of the construction of the Project under this Agreement and the accounting and control systems for the construction of the Project shall be reasonably satisfactory to the Commission. The Commission and the Commission's accountants shall be afforded all reasonable access to, and shall be permitted to inspect and copy, at its sole cost and expense, the CCCT's records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to the construction of the Project, both during construction and for a 90 day period after Project Completion. The foregoing shall not be construed to include: communications with or between the CCCT's own members, managers and officers, its attorneys, and its tax and financial advisors.

7. Inspections; Cooperation.

The CCCT shall permit representatives of the Commission to enter upon the Premises any time during and as otherwise provided herein, to inspect the construction of the Project for conformity with the Construction Plans. The Commission shall be permitted to photograph portions of the Project. The CCCT shall at all times cooperate and employ its commercially reasonable efforts, acting diligently and in good faith, to cause the Contractor and each and every one of its subcontractors and material suppliers to cooperate with the representatives of the Commission in connection with or in aid of the performance of the Commission's functions under this Agreement.

8. Warranties.

The CCCT shall include in all contracts agreements and require in all subcontracts the following language:

" (Name of subcontractor) agrees that all warranties that run to the CCCT shall also run to the Commission at the time of completion of this contract. As a result, \_\_\_\_\_ (Name of subcontractor) agrees to honor all warranties, and further agrees to enforce those warranties to the benefit of both the CCCT and the Commission."

9. Insurance; Indemnification.

The CCCT shall maintain, at its own expense, five business days prior to the start of construction, insurance of the types and limits to protect the Commission, the CCCT, and Contractors and subcontractors performing work under this Agreement from claims for damages from bodily injury, including death, or property damage, which may arise from the CCCT's performance under this Agreement. To the extent that it is commercially reasonable for the CCCT's contractors, rather than the CCCT, to maintain certain insurance, the CCCT shall be responsible only for causing such contractors to maintain such insurance (rather than to maintain such insurance itself).

Insurance described in the above paragraph shall name the Commission as an additional insured and all coverage described herein shall provide for at least 30 days' advance notice to the Commission of any cancellation or non-renewal of coverage. Certificates evidencing valid, current coverage for each type of insurance required shall be provided to the prior to commencement of any work under this Agreement.

10. Liens and Mortgages.

The CCCT shall not permit any liens to stand against the Park or any improvements thereon, including liens for any labor or material furnished to the CCCT in connection with any construction or work performed by or at the direction of the CCCT, or any



other costs associated with the construction of the Project. Provided that inspections are made timely the CCCT agrees that if, because of any action or omission (or alleged act or omission) of the CCCT, any mechanic's or other lien, charge, or order for payment of money or other encumbrance shall be filed in connection with any part of the Project, the CCCT shall at the CCCT's own cost and expense, cause the same to be discharged of record or bonded within thirty (30) days' notice to the CCCT of the filing thereof. The provisions of this Section 10 shall survive expiration or termination of this Agreement.

11. Default; Termination and Remedies.

(a) Any one or more of the following events shall constitute an Event of Default under this Agreement:

i) If the CCCT or the Commission fail to comply in any material aspect with any of the terms and conditions of this Agreement "CCCT Default" or "Commission Default," respectively); or

ii) If the CCCT fails to reach Substantial Completion within two hundred ten (210) days of the date on which the CCCT commences construction in accordance with this Agreement, provided that inspections are made timely.

(b) If, prior to the commencement of construction of the Project, the CCCT shall fail to fulfill in a timely and proper manner its obligations under this Agreement, or if a CCCT Default occurs prior to the commencement of construction of the Project, the Commission shall provide written notice to the CCCT of such CCCT Default, specifying the nature of such CCCT Default with particularity, the CCCT shall thereafter have a period of thirty (30) days to cure such default, and the CCCT shall not be permitted to commence construction prior to cure of the CCCT Default. If despite the CCCT's good faith efforts, such CCCT Default is not susceptible to cure within such thirty (30) day period, such cure period shall automatically be extended so as to allow sufficient time for such cure, but in no event shall such cure period exceed ninety (90) days, unless otherwise agreed by the parties. In the event such CCCT Default is not cured within the applicable cure period, the Commission shall have the right to terminate this Agreement upon written notice to the CCCT.

(c) Provided that the CCCT has diligently pursued all construction and other permits necessary or required in connection with the start of construction of the Project using its best efforts, if the CCCT is unable to secure such permits within six (6) months from permit application submission, the CCCT may terminate this Agreement upon written notice to the Commission.

(d) If a CCCT Default occurs after the commencement of construction, the Commission may serve upon the CCCT a notice of default, and if within thirty (30) days of such notice, the CCCT fails to cure the specified CCCT Default (provided, however, that if despite

the CCCT's good faith efforts such CCCT Default is not susceptible to cure within such thirty (30) day period, such cure period shall automatically be extended so as to allow sufficient time for such cure, but in no event shall such cure period exceed ninety (90) days unless otherwise agreed by the parties), then (1) the Commission may (but shall not be obligated to) make such payment or do such act as may be reasonably necessary to cure such event, and charge the amount of the expense thereof to the CCCT, which amount shall be due and payable by the CCCT, upon demand, or (2) Commission may, without terminating this Agreement, bring an action in a court of law for injunctive relief and/or monetary damages suffered as a result of such event, and (3) if a further sixty (60) day notice respecting such CCCT Default is sent to the CCCT after the date that the Commission became entitled to exercises a remedy pursuant to (1) and (2) preceding, and such CCCT Default is not cured within such 60 day period, the Commission shall have the right to terminate this Agreement upon written notice to the CCCT.

12. Plans.

The CCCT shall provide shop drawings, materials lists, and full sets of the Construction Plans to the Commission incident to obtaining approvals thereof, and shall thereafter supplement the Construction Plans to reflect changes authorized consistent with Section 5 hereof. The CCCT shall cause its engineer of record and other parties creating all or any portion of the Construction Plans to vest title to the Construction Plans (together with any underlying calculations and worksheets) in The CCCT and the Commission as co-owners. The CCCT's ownership rights in the Construction Plans, including any unilateral rights with respect thereto not otherwise restricted by this Development Agreement, shall not be restricted as a result of the Commission's co-ownership of the Construction Plans. The Commission's ownership rights in the Construction Plans, when the same are to be exercised unilaterally without consent of the CCCT, shall, during the respective terms of the Development Agreement, be limited to any uses directly benefitting the Premises, the Project, the Park and/or immediately adjacent neighborhoods; and there shall be no limitation on the unilateral exercise of the Commission's ownership rights following termination of the Development Agreement.

13. Notices.

Written notice shall be deemed to have been duly served if delivered in person to the individual or a member of the firm or entity or to an officer of the corporation for which it was intended, or if delivered at or sent by registered or certified mail to the last business address known to the party giving notice.

If to the Commission:

The Maryland-National Capital  
Park and Planning Commission  
9500 Brunett Avenue  
Silver Spring, Maryland 20901  
Attention: Director of

Parks with a copy to:

The Maryland-National Capital  
Park and Planning Commission  
6611 Kenilworth Avenue  
Riverdale, Maryland 20737  
Attention: General Counsel

with a copy to:

M-NCPPC Property Management Office  
16641 Crabbs Branch Way Bldg. B  
Rockville, Maryland 20855  
Attention: Chief, Facilities Management Division

If to CCCT:

P.O. Box 30703

Bethesda, Maryland 20824

with a copy to:

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

14. Miscellaneous Provisions.

14.1 Governing Law. This Agreement shall be governed by, construed, interpreted and enforced according to the laws of the State of Maryland, and is to take effect as a sealed instrument. Any and all suits for any and every breach of this Agreement shall be instituted and maintained in a court of competent jurisdiction in Montgomery County, Maryland.

14.2 Waiver of Jury Trial. The CCCT and the Commission hereby waive all right to a jury trial in the event any term, provision or covenant of this Agreement is under dispute, including but not limited to disputes relating to possession, termination, or monetary claims.

14.3 Approvals. Unless otherwise expressly provided in this Agreement, wherever in this Agreement the approval, certification, or consent of any party is required, such approval shall not be unreasonably withheld, conditioned or delayed.

14.4 Waiver. No failure on the part of the Commission or the CCCT to enforce any covenant or provision contained in this Agreement nor any waiver of any right under this Agreement shall discharge or invalidate such covenant or provision or affect the right of the other party to enforce the same in the event of any subsequent default.

14.5 Agent of Commission. Neither the CCCT nor any of its employees are or shall be considered or shall represent themselves to be agents or employees of the Commission for any purpose. The CCCT shall perform all of its duties and obligations under this Agreement as an independent contractor.

14.6 Compliance with Rules, Regulations and Laws. The CCCT shall comply with all applicable Federal, State and Local Laws.

14.7 Transfer. Neither party to this Agreement shall assign or transfer any interest in, or duty or obligation under this Agreement without the prior written consent of both parties hereto.

14.8 Entire Agreement. This Agreement contains the entire agreement made by and between the parties hereto and may not be modified except by written agreement signed by the parties and attached hereto. All attachments, exhibits and recitals form a part of this Agreement.

14.9 Validity of Agreement. The invalidity or illegality of any provision of this Agreement shall not affect the remainder of this Agreement or any other provision of it.

14.10 Indemnity. Each party hereto shall indemnify and save harmless the other party and shall require that each Contractor, or, as applicable, representative of such party, indemnify and save harmless the other party from and against all actions, liability, claims, suits, damages cost or expense of any kind, including reasonable attorney's fees, which may be brought or made against the other party of which the other party must pay and incur by reason of or in any manner resulting from injury, loss, damage to persons or property resulting from the subcontractor or representative's negligent performance or failure to perform any of the indemnifying party's or its subcontractor's or representative's obligations under the terms of this Agreement.

14.11 Counterpart Copies. This Agreement may be executed in two or more counterpart copies, all of which counterparts shall have the same force and effect as if all parties hereto had executed a single copy of this Agreement.

This Agreement is entered into as of the day and year first written above and is executed in at least two original copies, of which one is to be delivered to the CCCT and one to the Commission.

[Signatures on the following page.]



COALITION FOR THE CAPITAL CRESCENT TRAIL

By: Patricia Barney on behalf of CCCT Board  
8/31/12

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION, a Maryland body corporate and politic.

ATTEST

Joseph Zimmerman

Joseph Zimmerman  
Secretary-Treasurer

By:

Patricia Colihan Barney

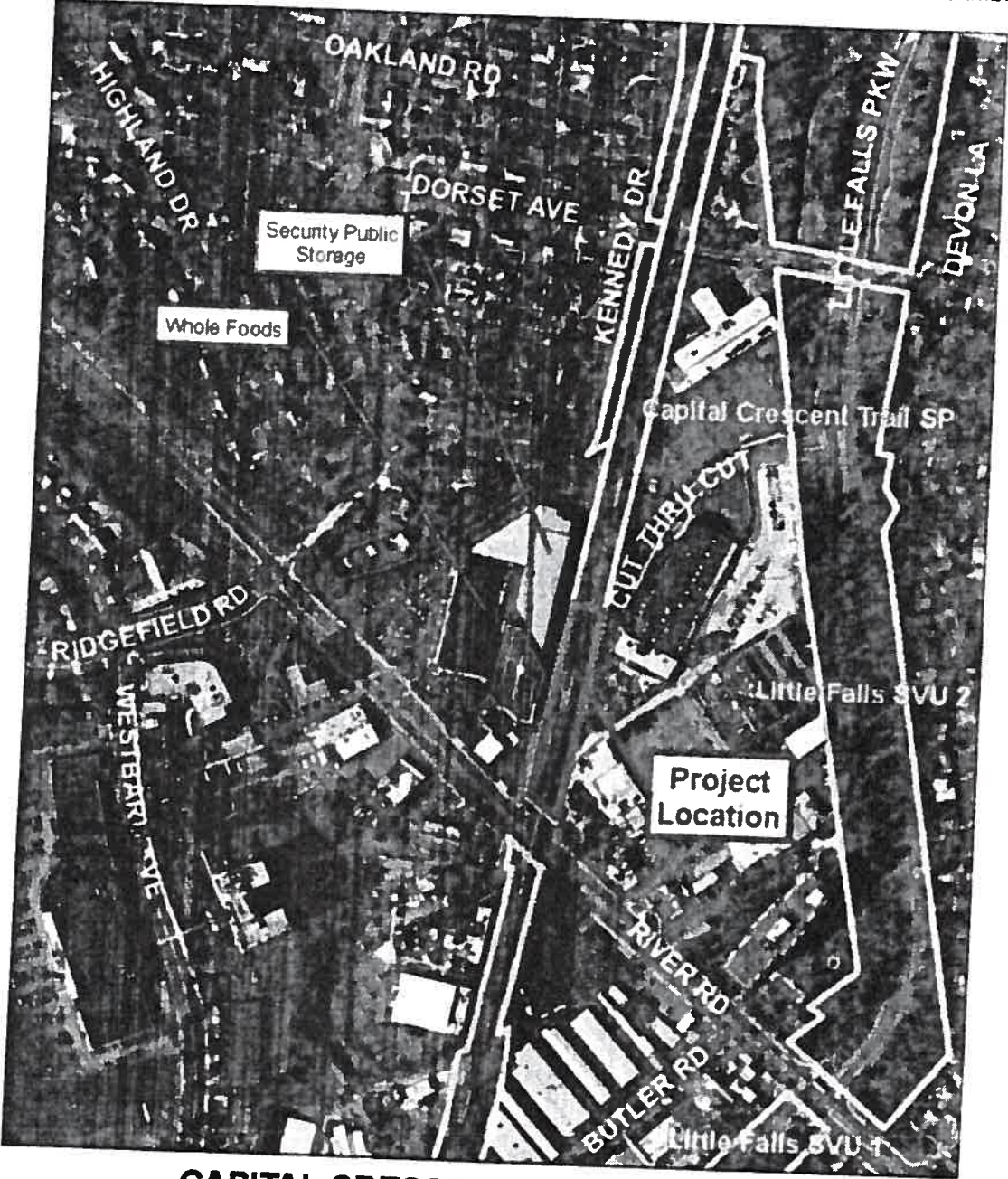
Patricia Colihan Barney  
Executive Director

APPROVED AS TO LEGAL SUFFICIENCY

[Signature]  
M-NCPPC Legal Department

Date 10/2/12

FUNDS CERTIFIED AVAILABLE  
BY W/IA REX 10/5/12  
Secretary - Treasurer



### CAPITAL CRESCENT TRAIL - PLAZA

Map compiled by PDD Staff  
 from data from S-AC 77C  
 GIS - as of 08/01/2011  
 Planning purposes only

2011 Photo

April 2012



SCALE: 1" = 300'

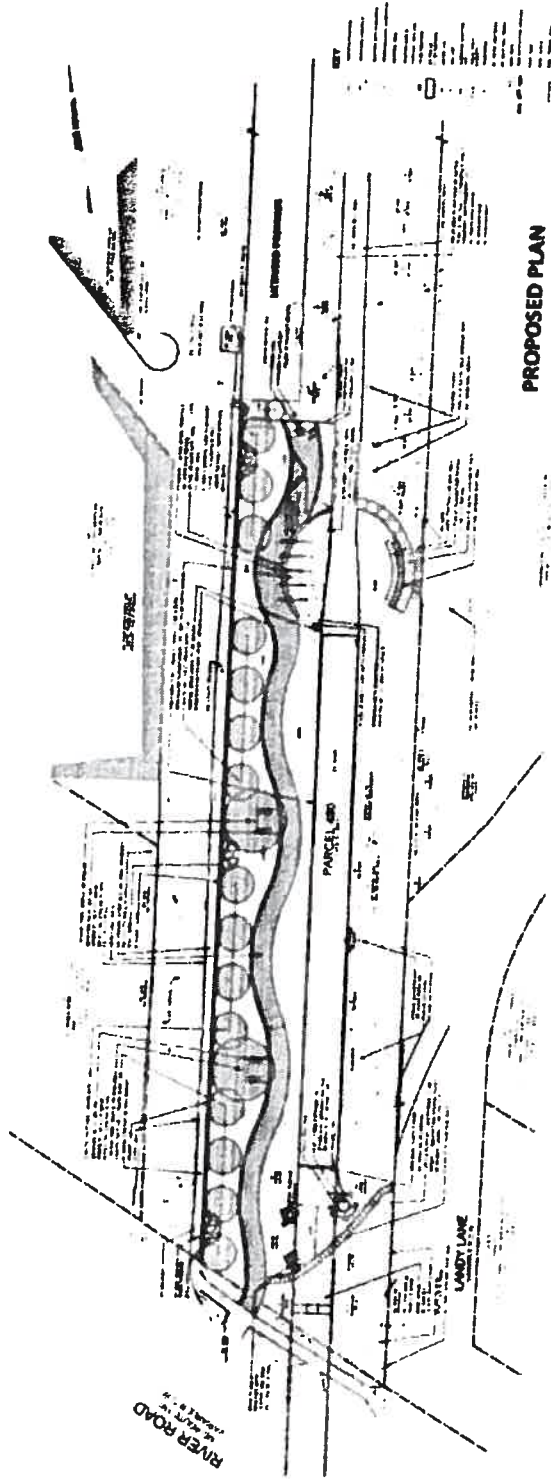


EXHIBIT B  
to  
Development Agreement between the Maryland-National Capital Park and Planning  
Commission  
and  
COALITION FOR THE  
CAPITAL CRESCENT TRAIL

PROCUREMENT ETHICS and ANTI-DISCRIMINATION PROCEDURES

The following Procurement Procedures apply to all purchases of goods and services on behalf of the Commission relating to the Project.

I. Procurement Ethics

A. Definition of Employee

1. As used in this Exhibit B, "Employee" means any officer, or full-time, part-time, seasonal or contract employee of CCCT or its assigns.

B. Conflict of Interest

1. Conflict of Interest. An Employee may not participate in any procurement involving public funds, except in the exercise of an administrative or ministerial duty which does not affect the disposition or decision with respect to it, if, to his knowledge, he, his spouse, parent, child, brother or sister has an interest therein or if any of the following is a party thereto:

- a. any business entity in which he has a direct financial interest of which he may reasonably be expected to know;
- b. any business entity of which he is an officer, director, trustee, partner, or employee, or in which he knows any of the above listed relatives has such interest;
- c. any business entity with which he or, to his knowledge, any of the above listed relatives is negotiating or has any arrangement concerning prospective employment;
- d. any business entity which is a party to an existing contract with the official or Employee, or which the official or Employee knows is a party to a contract with any of the above named relatives, if the contract could reasonably be expected to result in a conflict between the private interests of the official or Employee and his official duties;

- e. any entity, either engaged in a transaction with the CCCT or subject to regulation by the CCCT, in which a direct financial interest is owned by another entity in which the official or Employee has a direct financial interest, if he may be reasonably expected to know of both direct financial interest;
- f. any business entity which the official or Employee knows is his creditor or obligee, or that of any of the above named relatives, with respect to a thing of economic value and which, by reason thereof, is in a position to affect directly and substantially the interest of the official or Employee or any of the above named relatives.

2. Participation in procurement.

- a. In general, an individual who assists a Commission unit in the drafting of specifications, an Invitation for Bids, or a Request for Proposals for a procurement, or a firm that employs that individual, may not:
  - (i) submit a bid or proposal for that procurement; or
  - (ii) assist or represent another person, directly or indirectly, who is submitting a bid or proposal for that procurement.
- b. Assisting in the drafting of specifications, an Invitation for Bids, or a Request for Proposals for a procurement does not include:
  - (i) providing descriptive literature such as catalogue sheets, brochures, technical data sheets, or standard specification "samples", whether requested by an Employee or provided on an unsolicited basis;
  - (ii) submitting written comments on a specification prepared by an Employee or on a solicitation for a bid or proposal when comments are solicited from two or more persons as part of a request for information or a pre-bid or pre-proposal process;
  - (iii) providing specifications for a sole source procurement made in accordance with the rules for use of waivers; or
  - (iv) providing architectural and engineering services for programming, master planning, or other project planning services.

C. Use of Confidential Information



1. Any Employee or former Employee must not use confidential information of the Commission acquired by reason of the Employee's position and not available to the public, for actual or anticipated personal gain, or for the actual or anticipated personal gain of any other person.

D. Use of Prestige of Office

An Employee may not intentionally use the prestige of office or position with the CCCT for that Employee's private gain or that of another. The performance of usual and customary constituent services by a business entity, doing business with the CCCT or the Commission, without additional compensation, is not prohibited.

E. Gratuities and Kickbacks

1. Gratuities. It shall be unethical for any person to offer, give, or agree to give any Employee or former Employee, or for any Employee or former Employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, or preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefore.

2. Kickbacks. It shall be unethical for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.

F. Prohibition Against Contingent Fees

It shall be unethical for a person to be retained, or to retain a person, to solicit or secure a Commission or the CCCT contract upon an agreement or understanding for any fee or other compensation, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business.

II. Anti-Discrimination Procedures

A. The CCCT shall be required to take all reasonable actions to ensure that any bidder seeking to contract shall not discriminate against Minority, Female or Disabled owned firms (MFDs) in the selection of subcontractors and/or material suppliers on this project. The Commission's Anti-Discrimination Program seeks to ensure MFDs have the same opportunities to succeed or fail in pursuing contracts for this project as any other potential vendor absent the effects of discrimination. On any construction or professional service contract exceeding \$25,000 that includes substantial subcontracting opportunities, The CCCT shall follow the following procedures to ensure that the offerors have not discriminated against MFDs.

B. The CCCT is presumed to have not discriminated against MFD subcontractors if the participation of MFDs as subcontractors and/or material suppliers for this Project meets or exceeds a participation level of 18 percent. If this participation level is not achieved, the CCCT will provide the Executive Director or his/her designee documentation of good faith efforts to obtain MFD participation.

C. The CCCT will include the following language in all bid documents: By submitting a bid, a Bidder shall understand and agree to:

1. Not discriminate against minority, female and disabled-owned firms (MFDs) in the selection of subcontractors on this project.

2. Not discriminate against MFDs in their performance of work as subcontractors if bidder is awarded a contract.

3. On a quarterly basis submit to the CCCT a photocopy of the front and back of all canceled checks reflecting payment to all MFD subcontractors on the Project, along with a summary sheet reflecting the names of the contractors and total amount paid that quarter as reflected by the canceled checks.

4. Immediately notify the CCCT of any change in the status of MFD contracts.

5. Not discriminate against any employee or applicant for employment because of age, sex, race, creed, disability or national origin. If a firm is determined by a final order of an administrative agency or a court to be in violation of federal, state or county non-discrimination laws, any agreement entered into with a firm may be terminated or suspended in whole or in part.

D. The CCCT will require prime contractors to submit payment verification forms throughout the course of the contract verifying payments to all MFD subcontractors and material suppliers. The prime contractor shall be allowed to substitute, for cause, new MFD subcontractors for any MFD subcontractors that could not perform their assigned tasks. For contracts with subcontracting opportunities, prime contractors are required to provide MFDs the opportunity to submit bids as subcontractors and to award those MFDs submitting low bids the subcontracts unless there are legitimate reasons to not do so. If the CCCT determines that the prime contractor is not utilizing the MFD subcontractors specified in order to comply with the non-discrimination in subcontracting requirements, or if the prime contractor submits false documentation of its compliance with such a plan, the CCCT will notify the Executive Director immediately in order for the Commission to undertake a debarment investigation. Any violation of the Commission's Anti-Discrimination Program may result in suspension or debarment of the violator as well as other civil or administrative remedies. The CCCT will immediately notify the Commission of any change in the status of MFD contracts with the CCCT as well as forward any notification received from subcontractors regarding the change in contract status of any MFD subcontracts.

E. The subcontracting non-discrimination program shall apply not only to the initial contract award, but also to certain major change orders and amendments that serve to increase the dollar value of the initial contract.

F. A minority-owned business is an entity that engages in commercial transactions and is at least 51 percent owned and controlled by one or more individuals from the following groups: African-Americans (all persons having origins in and of the Black racial groups of Africa), Hispanics (all persons of Mexican, Puerto Rican, Cuban, Central or South America, or other Spanish culture or origin, regardless of race), Asians or Pacific Islanders (all persons having origins in any of the Far East, Southeast Asia, the Indian Subcontinent, or the background). A female-owned business is an entity that engages in commercial transactions and is at least 51 percent owned and controlled by one or more women. A disabled-owned business is an entity that engages in commercial transactions and is at least 51 percent owned and controlled by persons with physical or mental impairment that substantially limits one or more of the major life activities of the individual, as defined in the Americans with Disability Act of 1990.

G. All firms awarded contracts by the CCCT or this Project shall agree not to discriminate against any employee or applicant for employment because of age, gender, race, creed, national origin or disability. If a firm is determined by a final order of an administrative order of an administrative agency or a court to be in violation of Federal, State or County Anti-discrimination laws, any agreement entered into by the CCCT with the firm may be terminated or suspended in whole or in part by the CCCT and then from future procurement for this project.