

MEMORANDUM

April 28, 2011

TO: Planning, Housing, and Economic Development (PHED) Committee

FROM: Marlene Michaelson,  Senior Legislative Analyst

SUBJECT: Maryland-National Capital Park and Planning Commission Amendments to the
FY11-FY16 Capital Improvements Program

Those expected for this worksession:

Françoise Carrier, Chairman, Montgomery County Planning Board
Mary Bradford, Director, Department of Parks
Mike Riley, Deputy Director of Administration, Department of Parks
Gene Giddens, Deputy Director of Operations, Department of Parks
MaryEllen Venzke, Chief, Management Services Division/Parks
Shuchi Vera, CIP Manager, Department of Parks

This memorandum addresses one follow-up item from the previous Planning, Housing, and Economic Development (PHED) Committee discussions of the Maryland-National Capital Park and Planning Commission (M-NCPPC) amendments to the FY11-FY16 Capital Improvements Program (CIP) and presents two new amendments not previously discussed by the Committee.

Current Revenue Reductions

The Planning Board has proposed \$250,000 in current revenue reductions to assorted projects as a means of offsetting some of the operating budget reductions recommended by the County Executive. The Committee reviewed and approved these reductions at an earlier meeting. Since conflicting information was provided about the specific list of reductions, Staff believes the Committee should confirm the reductions described below, which Staff believes are consistent with previous Committee discussions.

The following chart summarizes all Current Revenue reductions to the M-NCPPC CIP proposed this year:

FY12 CURRENT REVENUE REDUCTIONS IN THE M-NCPPC FY11-16 CIP

Project Description Form (PDF)	Total FY12 Expenditures in the Adopted FY11-16 CIP	FY12 Current Revenue Expenditures in the Adopted FY11-16 CIP	FY12 County Executive Recommended Current Revenue Cuts		FY12 Total Expendtrs after Reductions	Part-Staff Recommendation for Further Cuts
			1st Round (Jan)	2nd Round (March)		
Acquisition Non-Local (Salaries Only)	135	135	0	0	135	0
Facility Planning Non-Local	300	300	25	0	275	0
Legacy Open Space (One-time Costs Only)	250	250	100	50	100	25
PLAR Non-Local Minor Renovations	1,261	1,200	125	100	1036	75
Pollution Prevention	625	300	0	0	625	50
Restoration of Historic Structures	350	250	25	0	325	50
Roof Replacement Non-Local	263	63	0	0	263	0
Small Grants/Donations (Matching Funds Only)	100	50	25	0	75	25
Trails Natural Surface	200	150	0	0	200	25
TOTALS	3,484	2,698	300	150	3,034	250
			450			

Pollution Prevention and Repairs to Ponds and Lakes (PDF #078701)

M-NCPPC has requested an amendment to the FY11-16 Capital Improvements Program (CIP) and a supplemental appropriation to the FY11 Capital Budget for improvements to two stormwater management facilities. This will result in a \$1.62 million increase to the Pollution Prevention and Repairs to Ponds & Lakes Project Description Form (PDF) to be funded by the State. **The public hearing and action are scheduled for May 10, 2011.**

The National Pollutant Discharge Elimination System (NPDES) permit program requires the Commission to adopt certain pollution prevention measures to mitigate stormwater runoff that originates on parkland. They are requesting \$1.620 million, **to be funded through State ICC funding.** Further information about the request appears on © 1 to 2. A proposed project description form (PDF) is attached on © 5 to 6.

The purpose of the improvements is to enhance the quality of stormwater discharge flowing into Rock Creek. These improvements are identified as part of the mitigation efforts to compensate for environmental impacts and to improve and restore natural environmental resources degraded as a result of the development of the Inter-County Connector (ICC). Both SHA and the Commission agree that these improvements will benefit both parties to the agreement and promote the health, safety, and general welfare of the citizens of Montgomery County and the State.

Pursuant to an agreement made between the State Highway Administration (SHA) and the Commission on February 15, 2011 (© 7 to 20), SHA will provide funding to the Commission for improvements to two existing stormwater management facilities, known as RC-73 and RC-74, located on Commission property. The Commission will take responsibility for the oversight and construction of these two projects and SHA will provide funding for two staff to manage the projects, along with other ICC Environmental Stewardship and Compensatory Mitigation projects.

Pending any new information at the public hearing, Staff believes the Council should support this amendment.

North Four Corners Local Park

The last set of amendments to the CIP introduced on April 12 included an amendment to the North Four Corners Local Park PDF proposed by Councilmembers Navarro and Elrich (see © 21). The public hearing for this amendment is scheduled for May 3. The amendment would delay the design and construction of the park by one year. In the approved CIP, design was to have begun in FY12.

This project was considered by the Council during its review of the FY07-12 and FY09-14 CIPs. A project to renovate the existing park and field and add a second field was submitted by M-NCPPC as part of the FY07-FY12 CIP. The Council asked M-NCPPC to consider alternatives and delay the project for the next CIP. M-NCPPC once again submitted a request for a two field park as part of the FY09-FY14 CIP. After extensive discussion over a multi-year period, the Council decided to develop the park with only one soccer field located closer to University Blvd. and to change the existing soccer field adjacent to the neighborhood to a passive recreation area with open space, paths, and seating areas.

This project received more attention and detailed review than any other M-NCPPC CIP project in both the FY07-FY12 and FY09-FY14 CIP reviews. The Council received several petitions and hundreds of letters about this project. Ultimately, the Council approved the project during its review of the FY09-14 CIP, based on the following:

- The North Four Corners **Master Plan** recommended the acquisition of land adjacent to the North Four Corners Park to expand the park and provide **additional active recreational resources** and provide park access from University Boulevard. The park was increased in size in 1998 from 7.9 acres to 13.9 acres. The intent was to provide a second field.
- The Silver Spring/Takoma Park area is expected to have an **11-field** deficit by 2020.
- The Department of Parks explored all other options in the area and found that there are no other existing fields that could be expanded or converted and no other undeveloped sites that are suitable for a field that could serve this area.
- Local parks are intended to have a combination of programmed and informal recreation opportunities, and virtually all include one or more fields: 46% have one field; 43% have 2 fields; 11% have 3 fields; 2% have no fields due to very unique conditions not found at North Fours Corners Local Park.
- Moving the field and parking closer to University Boulevard decreases impact on the adjacent community.
- If the project is not funded in the CIP, the existing park with all of its problems (including having the field adjacent to the neighborhood without sufficient parking) would remain unchanged.

ENV &
ENERGY



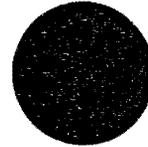
MONTGOMERY COUNTY PLANNING BOARD

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

OFFICE OF THE CHAIRMAN

April 12, 2011

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The Honorable Valerie Ervin, President
Montgomery County Council
100 Maryland Avenue
Rockville, Maryland 20850

Subject: Amendment of the FY11-16 Capital Improvements Program, and Supplemental Appropriation to the FY11 Capital Budget for the Maryland-National Capital Park and Planning Commission, to add \$1,620,000 to Pollution Prevention and Repairs to Ponds & Lakes, PDF #078701

Dear Ms. Ervin:

The Montgomery County Planning Board requests an amendment of and supplemental appropriation to the Pollution Prevention and Repairs to Ponds & Lakes PDF. This PDF funds continuing efforts to enhance environmental conditions throughout the County's park system. The National Pollutant Discharge Elimination System (NPDES) permit program requires the Commission to adopt certain pollution prevention measures to mitigate stormwater runoff that originates on parkland.

Pursuant to an agreement made between the State Highway Administration (SHA) and the Commission on February 15, 2011 (see attached), SHA will provide funding to the Commission for improvements to two existing stormwater management facilities, known as RC-73 and RC-74 located on Commission property.

The purpose of the improvements is to enhance the quality of stormwater discharge flowing into Rock Creek. These improvements are identified as part of the mitigation efforts to compensate for environmental impacts and to improve and restore natural environmental resources degraded as a result of the development of the Inter-County Connector (ICC). Both SHA and the Commission agree that these improvements will benefit both parties to the agreement and promote the health, safety, and general welfare of the citizens of Montgomery County and the State.

By virtue of the Commission taking responsibility for the oversight and construction of these two projects, SHA is providing funding for two staff to manage these two projects along with other ICC Environmental Stewardship and Compensatory Mitigation projects.

The Honorable Valerie Ervin
April 12, 2011
Page Two

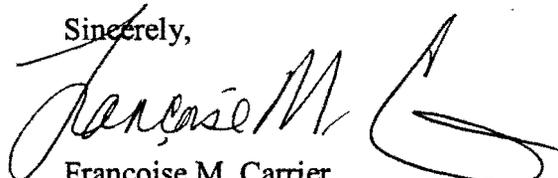
The agreement states that SHA will provide funding to the Commission for the following:

1. Reimburse the Commission's costs in reviewing and coordinating with SHA and the design team to complete the design phase of the improvements to the ICC projects, not to exceed \$150,000. The estimated Commission cost for this design review and coordination with the State is \$100,000 for FY11.
2. Reimburse the actual cost of the construction contract for the improvements in addition to any associated change orders. Based on the 65 percent design plans completed so far, the construction contract is estimated at \$1,235,000. The final design approval and permitting is anticipated to be completed by July 2011, with construction projected to start in early FY12.
3. Reimburse the Commission's costs for the construction management and construction inspection, estimated at 23 percent of the contract amount or \$150,000, whichever is greater. Based on the above estimated construction costs, this amount is estimated to be \$285,000 in FY12 and FY13.

The estimated total cost for these two projects, based on the 65% design plans, is \$1,620,000. If the total cost of the project ends up being less than this estimated cost, the Commission will request a dis-appropriation of the difference; if the total cost of the project ends up being greater than the estimated cost, the Commission will return to the Council for a supplemental appropriation for the additional funds that SHA will contribute to the project.

We appreciate Council's review and introduction of this amendment and supplemental, and hope for approval as soon as possible. Enclosed for your consideration is a draft resolution for the amendment and supplemental appropriation as well as copies of the adopted and proposed PDFs, and the signed agreement between M-NCPPC and SHA. We look forward to discussing this request with the PHED Committee at a future work session.

Sincerely,



Françoise M. Carrier
Chair

Also distributed to Isiah Leggett, County Executive
Enclosures: Resolution and PDFs
Agreement

N:\CIP\Supplementals and Amendments\FY11\PollutionPrevention\Transmittal MCPB to MCC CE.docx

Resolution No.: _____
Introduced: April 26, 2011
Adopted: _____

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND**

By: Council President at the Request of the County Executive

SUBJECT: Amendment to the Maryland-National Capital Park and Planning Commission's FY11-16 Capital Improvements Program, and Supplemental Appropriation to the FY11 Capital Budget, for Pollution Prevention and Repairs to Ponds & Lakes, PDF #078701

Background

1. Article 28, section 2-118(a)(6) of the Annotated Code of Maryland permits the County Council to amend the budget of the Maryland-National Capital Park and Planning Commission (M-NCPPC) by resolution on the Council's initiative, or at the request of the Commission, after receipt of a recommendation from the County Executive, and after public hearing upon reasonable notice to the public.
2. Section 307 of the Montgomery County Charter states that a supplemental appropriation shall be recommended by the County Executive, who shall specify the source of funds to finance it. The Council shall hold a public hearing on each proposed supplemental appropriation after at least one week's notice. A supplemental appropriation that would comply with, avail the County of, or put into effect a grant or a federal, state, or county law or regulation, or one that is approved after January 1 of any fiscal year, requires an affirmative vote of five (5) Councilmembers. A supplemental appropriation for any other purpose that is approved before January 1 of any fiscal year requires an affirmative vote of six (6) Councilmembers. The Council may, in a single action, approve more than one supplemental appropriation. The Executive may disapprove or reduce a supplemental appropriation, and the Council may reapprove the appropriation, as if it were an item in the annual budget.
3. On behalf of the Maryland-National Capital Park and Planning Commission (M-NCPPC), the County Executive requests the following supplemental appropriation:

Project Name	Project No.	Cost Element	Amount	Source of Funds
Pollution Prevention and Repairs to Ponds & Lakes	078701	Planning, Design, and Supervision	\$385,000	State ICC Funding
Pollution Prevention and Repairs to Ponds & Lakes	078701	Site Improvements and Utilities	\$1,235,000	State ICC Funding
		TOTAL	\$1,620,000	

4. M-NCPPC requests that the County Council approve this supplemental appropriation to fund oversight and improvements of two existing stormwater management facilities, known as RC-73 and RC-74, as well as provide oversight of other ICC Environmental Stewardship and Compensatory Mitigation projects, located on land owned by M-NCPPC.
5. The County Executive recommends an amendment to the FY11-16 CIP, and supplemental appropriation to the FY11 Capital Budget of M-NCPPC, in the amount of \$1,620,000. The source of funds will be State ICC funding.
6. Notice of public hearing was given, and a public hearing was held on May 10, 2011.

Action

The County Council for Montgomery County, Maryland, approves the following action:

The FY11-16 CIP of the Maryland-National Capital Park and Planning Commission is amended as reflected on the attached Project Description Form, and a supplemental appropriation is approved as follows:

Project Name	Project No.	Cost Element	Amount	Source of Funds
Pollution Prevention and Repairs to Ponds & Lakes	078701	Planning, Design, and Supervision	\$385,000	State ICC Funding
Pollution Prevention and Repairs to Ponds & Lakes	078701	Site Improvements and Utilities	\$1,235,000	State ICC Funding
		TOTAL	\$1,620,000	

This is a correct copy of Council action.

Linda M. Lauer, Clerk of the Council

Approved

Pollution Prevention and Repairs to Ponds & Lakes -- No. 078701

Category
Subcategory
Administering Agency
Planning Area

M-NCPPC
Development
M-NCPPC
Countywide

Date Last Modified
Required Adequate Public Facility
Relocation Impact
Status

March 14, 2011
No
None
On-going

EXPENDITURE SCHEDULE (\$000)

Cost Element	Total	Thru FY09	Est. FY10	Total 6 Years	FY11	FY12	FY13	FY14	FY15	FY16	Beyond 6 Years
Planning, Design, and Supervision	1,104	0	204	900	150	150	150	150	150	150	0
Land	0	0	0	0	0	0	0	0	0	0	0
Site Improvements and Utilities	3,808	0	958	2,850	475	475	475	475	475	475	0
Construction	0	0	0	0	0	0	0	0	0	0	0
Other	0	0	0	0	0	0	0	0	0	0	0
Total	4,912	0	1,162	3,750	625	625	625	625	625	625	*

FUNDING SCHEDULE (\$000)

Current Revenue: General	2,962	0	1,162	1,800	300	300	300	300	300	300	0
G.O. Bonds	1,950	0	0	1,950	325	325	325	325	325	325	0
Total	4,912	0	1,162	3,750	625	625	625	625	625	625	0

OPERATING BUDGET IMPACT (\$000)

Energy				37	7	6	6	6	6	6
Program-Other				67	4	7	11	15	15	15
Program-Staff				60	7	8	10	12	12	11
Net Impact				164	18	21	27	33	33	32
WorkYears					0.1	0.1	0.2	0.2	0.2	0.2

DESCRIPTION

This PDF funds continuing efforts to update and maintain our existing facilities to meet today's standards and enhance environmental conditions throughout the park system. M-NCPPC operates 12 maintenance yards (MY) throughout Montgomery County that are regulated as "industrial sites" under NPDES because bulk materials storage and equipment maintenance have the potential to pollute surface waters. Each MY is subject to NPDES regulations, and must have a Stormwater Pollution Prevention Plans (SWPPPs) in place. SWPPPs are generally a combination of operational efforts and capital projects, such as covered structures for bulk materials and equipment, vehicle wash areas, or stormwater management facilities. In addition, M NCPPC has identified between 60 and 70 existing farm ponds, lakes, constructed wetlands, irrigation ponds, recreational ponds, nature ponds, and historic dams on park property that do not qualify for funding through Montgomery County's Water Quality Protection program. Based on the results of field inspections, projects are prioritized for design, permitting, and construction. M NCPPC is currently working with MDE to enter into a countywide NPDES Phase II to establish pollution prevention measures to mitigate stormwater runoff that originates on parkland. This new permitting requirement will involve additional efforts to identify untreated areas and develop appropriate Best Management Practices (BMPs) to control stormwater runoff and enhance water quality.

ESTIMATED SCHEDULE

In FY11 and FY12, construct vehicle wash unit sewer connections at Black Hill and S. Germantown maintenance facilities; construct new vehicle wash facility at Meadowbrook and Little Bennett; on-going inspections of farm ponds.

COST CHANGE

Cost increase due to addition of NPDES permit requirements to the scope of this project.

JUSTIFICATION

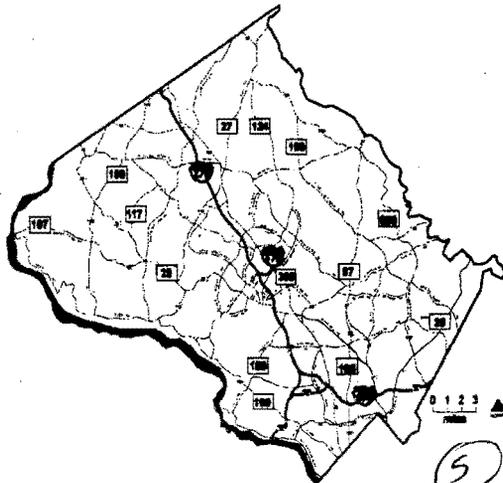
The NPDES "General Discharge Permit for Stormwater Associated with Industrial Facilities, Permit No. 02 SW" issued by the Maryland Department of the Environment (MDE), requires implementation of the SWPPPs at each maintenance yard. The MDE Dam Safety Program requires regular aesthetic maintenance, tri-annual inspection, and periodic rehabilitation of all pond facilities to maintain their function and structural integrity.

FISCAL NOTE

In FY10, \$142,000 (General Obligation Bonds) was transferred in from Lake Needwood Dam Remediation PDF 078710

OTHER DISCLOSURES

- M-NCPPC asserts that this project conforms to the requirements of relevant local plans, as required by the Maryland Economic Growth, Resource Protection and Planning Act.
- * Expenditures will continue indefinitely.

APPROPRIATION AND EXPENDITURE DATA	COORDINATION												
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td>Date First Appropriation</td> <td>FY07</td> <td>(\$000)</td> </tr> <tr> <td>First Cost Estimate</td> <td>FY07</td> <td>3,000</td> </tr> <tr> <td>Current Scope</td> <td>FY07</td> <td>3,000</td> </tr> <tr> <td>Last FY's Cost Estimate</td> <td></td> <td>3,429</td> </tr> </table>	Date First Appropriation	FY07	(\$000)	First Cost Estimate	FY07	3,000	Current Scope	FY07	3,000	Last FY's Cost Estimate		3,429	<p>Montgomery County Department of Permitting Services (MCDPS) Montgomery County Department of Environmental Protection (MCDEP) Maryland Department of the Environment Washington Suburban Sanitary Commission (WSSC) Maryland State Highway Administration (SHA)</p> 
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First Cost Estimate	FY07	3,000											
Current Scope	FY07	3,000											
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Partial Closeout Thru	FY08	571											
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Total Partial Closeout		980											

AGREEMENT

AX3765J60 – Contract RC-C

By and Between
 The State Highway Administration of the
 Maryland Department of Transportation and
 The Maryland-National Capital Park and Planning Commission

THIS AGREEMENT (this "AGREEMENT") made this 15th day of February 2010 by and between the State Highway Administration of the Maryland Department of Transportation, acting for and on behalf of the State of Maryland (hereinafter, "SHA"), and the Maryland-National Capital Park and Planning Commission, a body corporate and politic (hereinafter, "M-NCPPC").

WHEREAS, SHA has begun constructing MD 200 - the Intercounty Connector (hereinafter, the "ICC") approved by the Federal Highway Administration (hereinafter, the "FHWA") in its Record of Decision dated May 29, 2006; and

WHEREAS, the ICC has been designed and approved, inter alia, to compensate for environmental impacts and to improve and restore natural environments degraded due to the impacts of past development, including those set forth herein as part of the Environmental Stewardship efforts of the ICC (hereinafter, the "PROGRAM"); and

WHEREAS, M-NCPPC holds title in fee simple to two parcels of land by virtue of 1. a Deed dated December 8, 1981 and recorded May 4, 1982, among the Land Records of Montgomery County, Maryland, in Liber 5862, folio 86, from Metro Joint Venture unto Maryland-National Capital Park and Planning Commission, and 2. a Deed dated March 29, 1982 and recorded May 4, 1982, among the aforesaid Land Records in Liber 5862, folio 89, from Derwood Station Joint Venture unto Maryland-National Capital Park and Planning Commission (hereinafter, the "PROPERTY"); and

WHEREAS, as part of the PROGRAM, M-NCPPC proposes to retrofit the stormwater management facilities located on the PROPERTY; and

WHEREAS, M-NCPPC has included the PROPERTY as a project (the "PROJECT") in M-NCPPC's FY11-FY16 Capital Improvement Plan (CIP). See **Pollution Prevention and Repairs to Ponds & Lakes**, Project Description Form (PDF) No. 078701 together with all amendments thereto and revisions thereof, attached hereto as Exhibit A; and

WHEREAS, the source of the funds available for funding and reimbursement to M-NCPPC is the Transportation Trust Fund established for the Maryland Department of Transportation, Md. Transp. Code Ann. § 3-216; and

WHEREAS, SHA and M-NCPPC agree that the PROJECT will benefit both parties to this AGREEMENT and promote the health, safety, and general welfare of the citizens of Montgomery County and the State.

NOW THEREFORE, WITNESSETH: that for and in consideration of the mutual premises, the payment of the sum of One Dollar (\$1.00) by each party unto the other, and other good and valuable consideration, the receipt and sufficiency whereof is hereby acknowledged, SHA and M-NCPPC do hereby agree as follows:

I. PROJECT DESCRIPTION

The PROJECT generally shall comprise the design by SHA and the construction by M-NCPPC of improvements to two (2) existing stormwater management facilities, known as RC-73, and RC-74, located on the PROPERTY. The purpose of the improvements is to enhance the quality of stormwater discharge flowing from the facilities into Rock Creek.

II. PROJECT COORDINATION

- A. SHA shall designate certain of its design consultants and other members of its General Engineering Consultant as the "DESIGN TEAM". SHA and M-NCPPC each shall assign one primary person to be responsible for all matters pertaining to the PROJECT including, but not limited to, all reporting, review, approval, and invoicing requirements of this AGREEMENT, and each such assigned person shall be responsible for maintaining responsive and timely communication with the other assigned person for the duration of this AGREEMENT. SHA's representative shall be called the "SHA PROJECT MANAGER" and M-NCPPC's representative shall be called the "M-NCPPC CONSTRUCTION MANAGER."
- B. If either party changes the assignment of its PROJECT or CONSTRUCTION MANAGER, that party shall revise Exhibit B, ASSIGNED PROJECT REPRESENTATIVE, and then shall send it to the other party within 10 days of the assignment change.
- C. During both the design and construction phases, SHA, M-NCPPC and the SHA DESIGN TEAM will work cooperatively. The SHA COORDINATOR will take

the lead during the design process; the M-NCPPC CONSTRUCTION MANAGER will take the lead during the construction phase.

- D. The PROJECT shall be reviewed and approved by Montgomery County Department of Permitting Services prior to construction, and construction documents shall be developed in M-NCPPC formats to facilitate bidding and construction by M-NCPPC.

III. PROJECT IMPLEMENTATION AND RESPONSIBILITIES

A. DESIGN PHASE

1. The design of the PROJECT shall be a collaborative process between SHA, the DESIGN TEAM, and M-NCPPC. During the Design Phase, the parties shall resolve all design issues between themselves, and shall not accept the design plans, specifications, and estimates for inclusion in the bid package without having first mutually agreed upon all elements thereof. Addenda to the bid package shall similarly first be mutually agreed upon by the parties before being disseminated to all bidders. Time is of the essence in responding to a request for, and resolving a design change during the Design Phase. A party that initiates a request for a change to the design during the period between the date on which the PROJECT was advertised and the date of bid opening, shall promptly consult with the other party and the design consultant, and, after agreement has been reached, SHA shall produce for both parties, in writing, the revision(s), including estimated costs.
2. With the exception of minor adjustments to the design and minor addenda to the bid package, the Design Phase shall conclude no later than ten working days after submittal of Plans, Specifications, & Estimates ("PS&Es").
3. SHA Responsibility
 - a. SHA shall perform all tasks necessary to design the PROJECT and, in doing so, shall prepare and provide in a timely manner to M-NCPPC all necessary design documents, including but not limited to:
 - 1) all environmental and cultural resources studies and all environmental and cultural resources documentation required for the PROJECT under applicable State and/or Federal law, including but not limited to those required for Section 106 approval;

- 2) all geotechnical investigations, survey, computations, and testing required to complete the design and obtain permits and regulatory approvals.
- 3) pursuant to M-NCPPC design criteria, design phase documents at major design milestones:
 - (a) schematic design plans at thirty-five percent (35%) completion milestone,
 - (b) an interim submission prior to filing for the Planning Board, and
 - (c) final design plans at ninety percent (90%) completion, including plans, specifications, and estimates.
- b. Within forty-five (45) days of receipt of written M-NCPPC comments on design phase submittals listed in Paragraph III.A.3, above, provide and submit to the M-NCPPC CONSTRUCTION MANAGER updated plans and written responses thereto.
- c. Provide M-NCPPC two (2) complete sets of bid documents developed pursuant to M-NCPPC advertisement and bid criteria.
- d. Prepare and provide the Engineer's Estimate to M-NCPPC.

4. M-NCPPC Responsibility

- a. M-NCPPC shall select and appoint a CONSTRUCTION MANAGER to coordinate all M-NCPPC activities that affect or relate to the design and construction of the PROJECT, and to act as the point of contact with SHA's PROJECT manager and MITIGATION CONSTRUCTION MANAGER. If the CONSTRUCTION MANAGER shall be absent or unavailable, the M-NCPPC Park Development Division Environmental Engineering Supervisor shall act as the coordinator and point of contact.
- b. M-NCPPC shall provide SHA with all available typical details, specifications, general notes, templates and title blocks in electronic format for use on this PROJECT.
- c. M-NCPPC may, at its option, provide SHA in writing with review comments of any PROJECT plans, in which case M-NCPPC shall do so within ten (10) working days following its receipt of such plans.

- d. M-NCPPC shall be responsible for all public outreach and public participation activities including, but not limited to, PROJECT updates, public hearings, notices, and the like.

5. Joint Responsibility

- a. SHA and M-NCPPC will consult on PROJECT plans and estimates of required quantities at the thirty-five percent (35%) and ninety percent (90%) stages, and M-NCPPC shall provide SHA, at each stage, with written notice that it concurs therewith. No plans shall proceed beyond a specific design stage until the parties have reached final agreement on all aspects thereof. Each party restates its understanding that time is of the essence.
- b. No later than the date of the Semi-Final Review ("SFR"), M-NCPPC shall provide SHA, either (a) in writing, or (b) by marking in the field, the location of all utilities either known to or owned by M-NCPPC, which will be affected by the construction of the PROJECT so that SHA or its contractor may arrange, coordinate, and supervise their relocations prior to the PROJECT being advertised for bid. If M-NCPPC is unable to inform SHA of the location of any utility that it owns or of which it should have knowledge, it must so inform SHA in writing. SHA or its contractor will make a reasonable effort to locate all utilities, known and unknown. Pursuant to the terms and conditions of the PROJECT contract between SHA and its contractor, SHA or its contractor will be liable for all damages occurring to any utility as a result of the construction of this PROJECT.

B. CONSTRUCTION PHASE

1. M-NCPPC shall perform all steps necessary to construct, inspect, and monitor the PROJECT, including but not limited to:
 - a. Prepare and provide to SHA any bid justifications as necessary.
 - b. Provide SHA a copy of the bid tabulations.
 - c. Convene and invite the SHA PROJECT MANAGER to major project milestone meetings during the construction phase of the PROJECT.
 - d. Prepare progress reports and provide same to the SHA PROJECT MANAGER during the construction phases of the PROJECT.

- e. Coordinate and supervise the activities of the PROJECT contractor according to all applicable laws and M-NCPPC rules and regulations.
 - f. Submit to SHA copies of all eligible CIP PROJECT costs, including any change orders, attached to all requests for reimbursement of costs incurred up to, but not exceeding, the amount of the bid award.
 - g. Submit to SHA copies of final payments disbursed from M-NCPPC to consultants and contractors in order to demonstrate completion of M-NCPPC's construction phase PROJECT contract(s).
 - h. Document and certify in writing to SHA that all activities associated with the amount of the bid award have been completed in accordance with all applicable laws and this AGREEMENT.
 - i. Notify SHA's PROJECT MANAGER at least thirty (30) days prior to any public event scheduled for the PROJECT.
 - j. To the maximum extent permitted by law, and save for acts within the sole control of SHA, M-NCPPC hereby agrees to indemnify, defend, and save harmless the State of Maryland, SHA, MDOT, and their respective agents, consultants, employees, members, officials, officers, and representatives, their successors and assigns, from and against any and all claims, actions, damages, liability, and expenses, including reasonable attorneys' and other professional fees, in connection with any loss of life, personal injury, or damage to property, arising out of or in any way connected with or ensuing from any act or failure to act on the part of M-NCPPC, its agents, employees, consultants, contractors, members, officials, officers, or representatives.
 - k. After consultation with SHA and concurrence whenever appropriate between SHA, M-NCPPC, and the contractor chosen to construct and complete the PROJECT, M-NCPPC, for both itself and SHA, shall act as the final decisional authority for all PROJECT plans, specifications, estimates, and revisions thereto.
2. During the construction phase of the PROJECT, SHA shall:
- a. Upon receipt thereof from M-NCPPC, prepare and submit written comments on all construction phase submittals in a timely manner to M-NCPPC.

- b. Review and approve all construction phase submittals, including shop drawings, RFI, and product submittals.
- c. Inspect and certify installed structures and develop punch list of construction deficiencies.
- d. Prepare, certify and submit as-builts.
- e. Make payments to M-NCPPC as M-NCPPC fulfills its obligations pursuant to this AGREEMENT and submits to SHA satisfactory invoices for PROJECT construction costs.
- f. Process the request from M-NCPPC for final payment after receiving from M-NCPPC the completed closeout package, and reimburse M-NCPPC the final payment.

3. Joint Responsibility

- a. The CONSTRUCTION PHASE shall be a collaborative effort between SHA and M-NCPPC during which M-NCPPC shall be the lead agency for all steps necessary to construct the PROJECT, including advertisement for bidding, award, and contract establishment with the successful contractor, and the M-NCPPC CONSTRUCTION MANAGER will take the lead. The CONSTRUCTION PHASE shall include the performance and completion of any action necessary to take approved plans through procurement and the implementation of such approved plans in the building of the PROJECT. During the CONSTRUCTION PHASE, both parties and the DESIGN TEAM shall continue to coordinate and work cooperatively to address construction or design related issues quickly and efficiently. The CONSTRUCTION PHASE shall end when construction of the PROJECT has been completed, all permit requirements have been fulfilled, as-built plans have been prepared and submitted, all punch list items have been addressed and resolved, and M-NCPPC has issued notice to its contractor that it accepts the PROJECT for maintenance.
- b. A request for change order shall be transmitted immediately to the SHA PROJECT MANAGER, and the parties promptly shall consult with each other and the design consultant, and, after agreement has been reached as to the requested change, SHA shall produce for both parties, in writing, the revision(s), including the estimated costs thereof. Time is of the essence in responding to a request for, and resolving a change order.

- c. SHA shall provide all necessary supporting documentation for, and M-NCPPC shall apply for and obtain all permits required by Federal, State, or local authorities.
- d. After consultation with SHA and concurrence whenever appropriate between SHA, the DESIGN TEAM, M-NCPPC, and the PROJECT Contractor, M-NCPPC, for both itself and SHA, shall act as the final decisional authority for all PROJECT plans, specifications, estimates, and revisions thereto.

IV. PAYMENT

- A. SHA shall provide funding to M-NCPPC in an amount not to exceed \$150,000.00, as documented by M-NCPPC in one or more invoices to SHA, and approved by SHA, for M-NCPPC's costs in reviewing and coordinating with SHA and the DESIGN TEAM to complete the DESIGN PHASE.
- B. SHA shall provide funding to M-NCPPC in an amount comprised as follows:
 - 1. the amount of the bid submitted by the apparent low bidder, as reviewed by M-NCPPC and SHA, and approved for acceptance by SHA; plus
 - 2. the amount representing the agreed prices for any change orders; plus
 - 3. the cost of construction management and construction inspection, which presently is estimated to equal twenty-three (23%) of the accepted bid price, or \$150,000.00, whichever shall be greater.
- C. SHA and M-NCPPC shall collaborate on the analysis of the apparent low bid, or the next apparent low bids, as appropriate, and the preparation of any bid justification. SHA shall make the final decision as to whether the amount of the apparent low bid, or next apparent low bid, as appropriate, is financially acceptable. SHA also shall have the right to reject all bids.
- D. SHA shall reimburse M-NCPPC on a dollar-for-dollar basis for all PROJECT construction costs deemed eligible for reimbursement, namely, those direct construction costs itemized as part of the accepted bid, and approved for any change orders. SHA also shall reimburse M-NCPPC on a dollar-for-dollar basis for all construction management and construction inspection costs incurred by M-NCPPC and deemed eligible for reimbursement. SHA may deduct from each invoice the amount of any portion of those actual PROJECT costs deemed not eligible for reimbursement by law or by SHA.

- E. Any costs incurred or payments made in excess of the total amount of the accepted bid plus the agreed prices for any change orders, shall not be the responsibility of SHA, but shall be the sole responsibility of M-NCPPC.
- F. SHA shall remit payment to M-NCPPC within 30 days following receipt of each invoice, provided: (i) the invoice contains, in SHA's discretion, all necessary information for processing, (ii) no charges are disputed by SHA, and (iii) payment of the invoice does not cause the accepted bid amount plus agreed change order prices to be exceeded. If any charges are disputed, SHA shall not remit payment to M-NCPPC for those items until thirty (30) days following the date on which those disputes have been resolved.
- G. If the PROJECT cannot be constructed, M-NCPPC shall return to SHA all monies previously paid by SHA to M-NCPPC for the PROJECT, immediately upon demand by SHA.
- H. Funding of the PROJECT is not a guarantee of future funding for any additional phases of the PROJECT.
- I. SHA shall remit all payment directly to M-NCPPC to the attention of the Maryland-National Capital Park and Planning Commission, Department of Finance, Executive Office Building, 6611 Kenilworth Avenue, Riverdale, Maryland 20737. The payment shall reference this AGREEMENT, and a copy of the payment remittance shall be simultaneously mailed to the M-NCPPC CONSTRUCTION MANAGER.

V. NOTICES AND COMMUNICATIONS

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

A. To SHA:

Melinda B. Peters, Director
Office of the Intercounty Connector
11710 Beltsville Drive - Suite 200
Beltsville, Maryland 20705

Phone: 301.586.9265

Email: mpeters@iccproject.com

with a copy to the Assistant Attorney General, Counsel to the Administration, at

State Highway Administration
707 North Calvert Street, C-407
Baltimore, Maryland 21202

with a copy to the SHA PROJECT MANAGER listed in Exhibit B.

B. To M-NCPPC:

Mitra Pedoeem, P.E.
Chief, Park Development Division
M-NCPPC, MC Department of Parks
9500 Brunett Avenue
Silver Spring, MD 20901

Phone: 301-580-5009
Mitra.Pedoeem@montgomeryparks.org

with a copy to

Office of the General Counsel
The Maryland-National Capital Park and Planning Commission
6611 Kenilworth Avenue, Suite 403
Riverdale, MD 20737

Phone: (301) 454-1670
Fax: (301) 454-1674

with a copy to the M-NCPPC CONSTRUCTION MANAGER listed in Exhibit B.

VI. GENERAL

- A. Funds paid and/or disbursed under this AGREEMENT shall be used only for the purposes stated in this AGREEMENT, and shall not be applied, diverted, or redirected by M-NCPPC to or for any other project or purpose.
- B. This AGREEMENT shall inure to and be binding upon the parties hereto, their respective agents, successors and assigns; however, M-NCPPC may not assign its interests in the AGREEMENT without the prior written consent of SHA, which shall not be unreasonably withheld.

- C. This AGREEMENT and the rights and liabilities of the parties hereto shall be governed in accordance with Maryland law.
- D. Because all PROJECT activities funded under this AGREEMENT are subject to audit, all documents and records, subject to audit, shall be retained and maintained in appropriate condition by SHA and M-NCPPC for a minimum of five years (5) years after the final disbursement of funds under this AGREEMENT.
- E. This MOU and the obligations of M-NCPPC hereunder shall be subject to all State Procurement requirements. In addition, any Procurement and Anti-Discrimination Procedures required pursuant to State law shall be included in contracts prepared and entered into by M-NCPPC for the execution of work related to this PROJECT
- F. The recitals ("WHEREAS") clauses set out at the beginning of this AGREEMENT are incorporated herein and made a part hereof.
- G. Notwithstanding anything in this AGREEMENT to the contrary, nothing in this AGREEMENT shall be understood or be intended to create, modify, or supersede any legal rights, authorities, requirements, or obligations of SHA or M-NCPPC.
- H. Nothing herein shall be construed to require SHA or the State of Maryland to obligate or expend funds on behalf of the provisions set forth in this AGREEMENT, or shall give rise to a claim for payment from or compensation by or against SHA or the State of Maryland for services performed to further the provisions of this AGREEMENT, except as provided herein. Any obligation or expenditure of funds by SHA or the State of Maryland in furtherance of the provisions of this AGREEMENT shall be consistent with existing legal authorities and subject to the availability of appropriations and discretionary budgetary determinations.

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

STATE HIGHWAY ADMINISTRATION

Paul Alston
WITNESS

BY: Neil J. Pedersen 2/15/11
Neil J. Pedersen Date
Administrator

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

[Signature]
Assistant Attorney General

RECOMMENDED FOR APPROVAL:

[Signature]
Lisa B. Conners
Director, Office of Finance

[Signature]
Douglas H. Simmons
Deputy Administrator / Chief Engineer for
Planning and Engineering

[Signature]
Melinda B. Peters
Director, Office of the Intercounty Connector

STATE OF MARYLAND
COUNTY OF Baltimore, TO WIT:

I hereby certify, that on this 15 day of February, 2010, before me the subscriber, a NOTARY PUBLIC of the STATE OF Maryland, in and for the County aforesaid personally appeared Neil J. Pedersen, known to me (or satisfactorily proven) to be the Administrator of the State Highway Administration of the Maryland Department of Transportation and that he, as Administrator, being authorized so to do, executed the foregoing instrument for the purposes herein contained by signing the name of the State Highway Administration by himself as such Administrator.

AS WITNESS MY HAND AND NOTARIAL SEAL, the day and year first above written.

NOTARY PUBLIC [Signature]

NOTARY SEAL

My Commission expires 7/31/11

The MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

ATTEST:

Joseph Zimmerman

Joseph Zimmerman
Secretary-Treasurer

BY: Patricia Colihan Barney Date

Patricia Colihan Barney
Executive Director

STATE OF MARYLAND
COUNTY OF ANNE ARUNDEL, TO WIT:

I hereby certify, that on this 3rd day of FEBRUARY, 2010, before me the subscriber, a NOTARY PUBLIC of the STATE OF Maryland, in and for the County aforesaid personally appeared Patricia Colihan Barney, known to me (or satisfactorily proven) to be the Executive Director of the Maryland-National Capital Park and Planning Commission, and that she, in such capacity, being authorized so to do, executed the foregoing instrument for the purposes herein contained by signing the name of the Maryland-National Capital Park and Planning Commission by herself as such Executive Director.

AS WITNESS MY HAND AND NOTARIAL SEAL, the day and year first above written.

NOTARY PUBLIC [Signature]

NOTARY SEAL

My Commission expires 1/10/2014

20101201_AX3765/60_project rc-c agreement

EXHIBIT B

AX3765160 – Contract RC-C

Assigned Project Representatives

SHA – Project Engineer

Elizabeth Tane Kanner

ICC Project Management Office

11710 Beltsville Drive – Suite 200

Beltsville, MD 20705

Office: 301-586-9290

Cell:

Fax: 301-586-9222

Email: ekanner@iccproject.com

M-NCPPC –Construction Project Manager

Colter Burkes

Montgomery County Department of Parks

Park Development Division

9500 Brunett Avenue

Silver Spring, MD 20901

Office: 301-495-2469

Cell: 240-638-6588

Fax: 301-585-1921

Email: colter.burkes@montgomeryparks.org

North Four Corners Local Park -- No. 078706

Category M-NCPPC
 Subcategory Development
 Administering Agency M-NCPPC
 Planning Area Kemp Mill-Four Corners

Date Last Modified
 Required Adequate Public Facility
 Relocation Impact
 Status

December 07, 2009
 No
 None
 Planning Stage

EXPENDITURE SCHEDULE (\$000)

Cost Element	Total	Thru FY09	Est. FY10	Total 6 Years	FY11	FY12	FY13	FY14	FY15	FY16	Beyond 6 Years
Planning, Design, and Supervision	776	0	0	776	0	0	119	440	168	49	0
Land	0	0	0	0	0	0	0	0	0	0	0
Site Improvements and Utilities	4,848	0	0	4,848	0	0	0	3,635	2,218	213	0
Construction	0	0	0	0	0	0	0	0	0	0	0
Other	0	0	0	0	0	0	0	0	0	0	0
Total	5,624	0	0	5,624	0	0	119	440	168	49	0

FUNDING SCHEDULE (\$000)

Park and Planning Bonds	1,406	0	0	1,406	0	0	30	410	110	861	951	315	0
Program Open Space	4,218	0	0	4,218	0	0	89	330	330	2,852	2,947	947	0
Total	5,624	0	0	5,624	0	0	119	440	168	49	0	0	0

OPERATING BUDGET IMPACT (\$000)

Maintenance				2	0	0	0	0	0	0	2
Program-Staff				95	0	0	0	0	0	85	95
Program-Other				82	0	0	0	0	0	82	82
Net Impact				179	0	0	0	0	0	172	179
WorkYears					0.0	0.0	0.0	0.0	0.0	1.4	1.4

DESCRIPTION

This project provides for the renovation and expansion of North Four Corners Local Park located near the commercial area of Four Corners in Silver Spring. The park entrance is at 211 Southwood Drive. The approved facility plan recommends the following amenities for the new, undeveloped 6.0 acre parcel: rectangular sports field, 50 space parking area with vehicular access from University Boulevard, a Class I bikeway from University Boulevard to Southwood Avenue, paved loop walkways, a plaza with seating areas and amenities, portable toilets, fencing, landscaping, and storm water management facilities. The existing 7.9 acre park will be renovated to replace the existing field with an open landscaped space with paths, seating areas and a playground. Landscaping and other minor improvements to existing facilities are also provided in this area. The existing parking lot will be expanded in the future, if needed, as a second phase of development, and is not included in the project costs.

ESTIMATED SCHEDULE

Design will commence in FY12 with construction in FY14-15.

COST CHANGE

13 15-16

Increase due to inflation.

JUSTIFICATION

The Four Corners Master Plan, approved December 1996, recommended acquisition of the six-acre park property and expansion of this park for the purpose of providing additional active recreation facilities in the down county area. The 2005 Land Preservation, Parks and Recreation Plan (LPPRP) estimates a need for more than 10 additional soccer fields in the Silver Spring/Takoma Park Team Area. This park is one of a very few vacant areas suitable for field construction and will provide an essential new soccer field for this area. The Montgomery County Planning Board approved the park facility plan on September 22, 2005, and approved an amended plan on January 31, 2008.

OTHER DISCLOSURES

- A pedestrian impact analysis has been completed for this project.
- M-NCPPC asserts that this project conforms to the requirements of relevant local plans, as required by the Maryland Economic Growth, Resource Protection and Planning Act.

APPROPRIATION AND EXPENDITURE DATA		
Date First Appropriation	FY	(\$000)
First Cost Estimate	FY09	5,337
Current Scope		
Last FY's Cost Estimate		5,337
Appropriation Request	FY11	0
Appropriation Request Est.	FY12	0
Supplemental Appropriation Request		0
Transfer		0
Cumulative Appropriation		0
Expenditures / Encumbrances		0
Unencumbered Balance		0
Partial Closeout Thru	FY08	0
New Partial Closeout	FY09	0
Total Partial Closeout		0

COORDINATION
 Montgomery County Department of Permitting Services
 Montgomery County Department of Environmental Protection
 Maryland State Highway Administration

