

Resolution No.:	<u>18-883</u>
Introduced:	<u>July 25, 2017</u>
Adopted:	<u>July 25, 2017</u>

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND**

Lead Sponsor: Council President at the Request of the County Executive

SUBJECT: Grant of franchise to Maryland Transit Administration to use the public right-of-way

Background

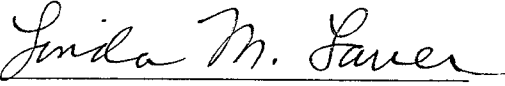
1. Sections 49-20 and 49-21 of the County Code provide that the County Council may grant a franchise for use of the public right-of-way after:
 - a) the franchise applicant publishes notice of the application once a week for three consecutive weeks in a newspaper of general circulation in the County;
 - b) the County Executive investigates the value of the franchise and the adequacy of the proposed compensation the applicant will pay to the County;
 - c) the Executive holds a hearing on the application if any taxpayer or affected property owner objects to the franchise within 10 days after the last notice of the application is published;
 - d) the Executive makes a written recommendation to the Council about the franchise, including findings about the value of the franchise, any response to objections that have been raised, and any other relevant issues; and
 - e) the Council decides that the franchise is expedient and proper.
2. On June 29, July 6 and July 13, 2017, the Maryland Transit Administration (MTA) published notice of its application for a franchise to use the public right-of-way. The Executive received no objection to the franchise by the July 24, 2017 deadline and was therefore not required to conduct a hearing on the franchise application.
3. July 24, 2017, the Council received the Executive's recommendation to grant a franchise to the Maryland Transit Administration (MTA) and a proposed franchise agreement.

Action

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

The County Council finds that granting a franchise to the Maryland Transit Administration (MTA) for use of the public right-of-way is expedient and proper. The Council grants the franchise under the terms of the attached franchise agreement.

This is a correct copy of Council action.



Linda M. Lauer, Clerk of the Council

FRANCHISE AGREEMENT

By and between Montgomery County, Maryland and Maryland Transit Administration of the Maryland Department of Transportation

By Resolution No. 18-883 dated the 25th day of July, 2017, the County Council for Montgomery County, Maryland, approves a Franchise to construct, operate, and maintain in good condition, the Purple Line in the Public Right-of-Way, and this Franchise Agreement ("Agreement") by and between Montgomery County, Maryland, a body corporate and politic (the "County"), and the Maryland Transit Administration ("MTA"), a unit of the Maryland Department of Transportation ("MDOT").

RECITALS

WHEREAS, under State and County law, the County has the right and power to regulate the time, location, and manner of attachment, installation, operation, and maintenance of facilities in the Public Right-of-Way within the limits of the County; and

WHEREAS, MTA applied to the County for a franchise to construct, install, operate, and maintain a light rail line to be called the Maryland National Capital Purple Line ("Purple Line"), which is in the nature of a permanent structure with a useful life exceeding 25 years, in, upon, under, above, and across the Public Right-of-Way of the County, pursuant to Chapter 49 of the Montgomery County Code 2014, as amended; and

WHEREAS, MTA has caused said franchise application to be published once a week for three consecutive weeks in one or more newspapers having general circulation in the County, setting forth the location, character, and extent of the franchise sought, and stating the terms and compensation to be received therefor; and

WHEREAS, the Montgomery County Council ("County Council"), pursuant to Resolution No. 16-1470, adopted July 27, 2010, has publicly supported the Purple Line project; and

WHEREAS, the Board of Public Works of Maryland ("BPW") has designated the Purple Line as a public-private partnership, pursuant to §§ 10A-101 through 10A-403, and § 11-203(h) of the State Finance and Procurement Article of the Annotated Code of Maryland; and

WHEREAS, on April 6, 2016, BPW authorized delivery of the Purple Line through a public-private partnership agreement (the "P3 Agreement") by and among MDOT, MTA, and Purple Line Transit Partners, LLC (the "Concessionaire"); and

WHEREAS, the Federal Transit Administration (FTA) is also participating in the financing of the Purple Line and requires MDOT and MTA's continuing control of the Purple Line through its investment in accordance with the FTA Master Agreement dated October 1, 2016;

47 **WHEREAS**, MTA, through the Concessionaire, or subsequent entity, will design,
48 construct and operate the Purple Line, a 16.2-mile light rail line with 21 stations that will extend
49 from Bethesda in the County to New Carrollton in Prince George's County, Maryland; and
50

51 **WHEREAS**, the Purple Line will be constructed, installed, operated, and maintained, so
52 that it is fully integrated into the highway network of roads, streets, highways, and bike lanes
53 lying adjacent to, intersecting with, or near to the Purple Line, including areas located within
54 portions of County Public Right-of-Way; and
55

56 **WHEREAS**, the Purple Line project is intended to enhance the region's transportation
57 system, provide an east-west transit corridor linking the Washington Metropolitan Area Transit
58 Authority ("WMATA") at its Red Line at Bethesda and Silver Spring to its Green Line at
59 College Park and WMATA's Orange Line at New Carrollton, improve traffic conditions on
60 highways, and link all three MARC railroad lines, AMTRAK, and local bus service.
61

62 **WHEREAS**, it appears to the County that the granting of the requested franchise for
63 certain right of way, described herein, is proper pursuant to Chapter 49 of the Montgomery
64 County Code 2014, as amended; and
65

66 **WHEREAS**, MTA's occupation of the right-of-way is governed by the provisions of
67 Section § 7-701(b) of the Transportation Article of the Annotated Code of Maryland.
68

69 **NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency
70 of which is hereby acknowledged, this Franchise Agreement is entered into by and between the
71 parties subject to the following terms and conditions:
72

73 **RECITALS INCORPORATED**

74
75 The foregoing recitals above are an integral part of this Agreement and set forth the
76 intentions of the Parties and the premises on which the Parties have decided to enter into this
77 Agreement. Accordingly, the foregoing recitals are fully incorporated into this Agreement by this
78 reference as if fully set forth herein.
79

80 **1. DEFINITIONS.**

81
82 For the purposes of this Agreement, the following words, terms, phrases, and their
83 derivations shall have the meanings given herein. The word "shall" is always mandatory.
84

85 **1.1 "Agreement"** means this Franchise Agreement.
86

87 **1.2 "CAO"** means the Chief Administrative Officer of the County or the CAO's
88 authorized designee.
89

90 **1.3 "Concessionaire"** means the business entity, Purple Line Transit Partners, LLC,
91 retained by MTA pursuant to the P3 Agreement to design, build, finance, operate, and maintain
92 the Purple Line.

93
94 1.4 "P3 Agreement" means the contract documents which set the rights and
95 obligations of MTA, MDOT and the Concessionaire for the duration of the term of the public-
96 private partnership, including rights and obligations to design, build, finance, operate, and
97 maintain the project assets and the terms of the compensation of the Concessionaire, and
98 contractual remedies for non-performance including a mechanism for incorporating and
99 enforcing the material terms of this Franchise Agreement as they relate to the design,
100 construction, and operation of the Purple Line within Public Right-of-Way.

101
102 1.5 "County" means Montgomery County, Maryland, a body corporate and politic of
103 the State of Maryland.

104
105 1.6 "County-Funded Project" means the Bethesda Metrorail Station South Entrance,
106 the Silver Spring Green Trail and certain portions of the Capital Crescent Trail, severally or
107 jointly, as context may require.

108
109 1.7 "Default" means a material breach of this Agreement.

110
111 1.8 "Effective Date" means the date of the Council resolution approving this
112 Agreement.

113
114 1.9 "Georgetown Branch" means that portion of the Georgetown Branch, which was
115 granted, conveyed, released, assigned, and quitclaimed to the County by means of the Quitclaim
116 Deed from Metropolitan Southern Railroad Company, Washington and Western Railroad
117 Company, and CSX Transportation, Inc. to Montgomery County, Maryland, dated December 16,
118 1988, and recorded among the Land Records of the aforesaid County in Liber 8613 at folio 497,
119 lying and extending between valuation stations 12+00 and 176+53.

120
121 1.10 "Law" means any judicial decision, statute, constitution, ordinance, resolution,
122 regulation, rule, tariff, administrative order, certificate, or other Federal, State, or County
123 requirement in effect either on the Effective Date or at any time during the presence of the Purple
124 Line in the Public Right-of-Way.

125
126 1.11 "Person" means an individual, a corporation, a limited liability company, a
127 general or limited partnership, a sole proprietorship, a joint venture, a business trust, and any
128 other form of business association or organization of any kind.

129
130 1.12 "Public Right-of-Way" means any location in, upon, above, along, across, under,
131 and over the public streets, highways, roads, lanes, courts, ways, railways, alleys, boulevards,
132 trails, and sidewalks, depicted in **Exhibit A-1, County Rights of Way Subject to the Grant of**
133 **Franchise**, including that portion of the Georgetown Branch shown in **Exhibit A-2**, both of
134 which are attached hereto and incorporated herewith in this Agreement, now or hereafter
135 acquired by, or dedicated to, or maintained by the County for public use.

1.13 "Purple Line" means all tangible objects, structures, equipment, and related appurtenances including, tracks, switches, turnouts, sidings, median opening modifications, stations, station platforms with amenities, station public entrances, operations and maintenance, construction staging areas, storage areas, depots, drainage and stormwater management systems, utility systems, overhead structures and catenary systems, signals, underground stations with street level access, bridge structures, traction power substations, tunnels, tunnel support, ventilation structures, and other appurtenances that MTA may deem necessary for the proper design, construction, operation, and maintenance in good condition of a proposed 16.2-mile light rail line and for its full integration into the highway network of roads, streets, highways and bike lanes adjacent to, intersecting with or near to the light rail line.

2. TERM.

2.1 This Agreement shall be for an initial term of seventy (70) years (the "Initial Term"), and shall commence on the Effective Date.

2.2 Subject to the below Section 11 and to Sections 49-20 through 49-22 of the Montgomery County Code and unless MTA provides written notice to the County no later than three (3) years prior to the expiration of either the Initial Term, or each succeeding term that MTA will not renew this Agreement, MTA may, upon Council review and approval and following the County's revaluation of the franchise, renew this agreement for two additional twenty-five (25) year periods, upon the same terms and conditions set forth.

3. SCOPE OF FRANCHISE.

3.1 The County hereby grants to MTA a non-exclusive, easement-in-gross within the Public Right-of-Way, authorizing MTA to design, build, construct, reconstruct, install, locate, move, remove, attach, reattach, reinstall, relocate, replace, maintain in good condition, and operate the Purple Line in, upon, under, above, and across the Public Right-of-Way, in accordance with County law. The use and occupation of that portion of the Georgetown Branch necessary for the Purple Line shall be governed by the National Trails System Act, including 16 U.S.C. § 1247, as amended, and any decision or certificate issued by the Interstate Commerce Commission or its successor. The Purple Line alignment is depicted in **Exhibit B**. Any amendment changing or adjusting the location of the Purple Line shall be made, in writing, to the County at least fifteen (15) days prior to commencement of construction, reconstruction, installation, location, removal, reattachment, reinstallation, or relocation. Notwithstanding the foregoing, the parties acknowledge that MTA is now revising and will continue to revise the Right-of-Way Plats up to and through the completion of the Final Design Plans for the Purple Line, and such revised Right-of-Way Plats will be made available to the County and attached hereto and incorporated herein as exhibits without necessity of any further amendment or modification of this Agreement.

3.2 MTA shall ensure that the Concessionaire and contractors comply with all responsibilities and requirements assigned to MTA and described in this Agreement.

182 **3.3** Any and all rights expressly granted to MTA under this Agreement shall be
183 exercised at MTA's sole cost and expense and are subject to the prior and continuing right of the
184 County and the general public to use any and all parts of the Public Right-of-Way consistent with
185 the safe operation and maintenance of the Purple Line. The County makes no representations or
186 warranties with respect to the title to the Public Right-of-Way or the nature of the County's
187 interest in the Public Right-of-Way. MTA agrees, subject to applicable laws and available
188 appropriations, to indemnify and hold the County harmless from any claims or costs arising out
189 of or related to a constitutional takings claim or other legal action by reason of MDOT's use of
190 the Public Right-of-Way.

191
192 **3.4** To the extent required by Law, MTA shall obtain permission from individual
193 utility or property owners prior to the time that MTA undertakes any of the activities permitted
194 by this Agreement. Upon request, MTA shall provide documentation of said permission to the
195 County. Prior to undertaking any construction activity, MTA shall provide reasonable advance
196 notice to affected property owners as required by Law.

197
198 **3.5** Except as permitted by applicable Law or this Agreement, in the performance and
199 exercise of its rights and obligations under this Agreement, MTA shall not interfere in any
200 manner with the existence and operation of any and all public and private rights of way, sanitary
201 sewers, water mains, storm drains, gas mains, poles, aerial and underground electric and
202 telephone wires, electroliers, cable television, and other telecommunications, utility, and County
203 or municipal property without the express written approval of the owner or owners of each
204 affected property. MTA may adopt reasonable and lawful adjacent construction standards to
205 ensure the safe operation of the Purple Line during the design, construction operation and
206 maintenance of such property so long as the standards do not conflict with this Agreement.

207
208 **3.6** MTA shall comply with all applicable Law in the exercise and performance of its
209 rights and obligations under this Agreement. MTA hereby acknowledges that nothing in this
210 Agreement shall be construed to limit the exercise of the police powers of the County.

211
212 **3.7** MTA represents and agrees that the Public Right-of-Way that is the subject of this
213 Agreement will be used exclusively for the design, construction, operation, and maintenance of
214 the Purple Line and the County-Funded Projects.

215 216 **4. FEES AND TAXES.**

217
218 The County is not seeking monetary compensation in the form of fees or taxes for MTA's
219 use and occupation of the Public Right-of-Way. The County recognizes that the Purple Line
220 provides valuable benefits to County residents.

221 222 **5. DAMAGE TO PUBLIC RIGHT-OF-WAY.**

223
224 Whenever the construction, reconstruction, installation, location, removal, reattachment,
225 reinstallation, or relocation of the Purple Line is performed by MTA under this Agreement, and
226 such construction, reconstruction, installation, location, removal, reattachment, reinstallation, or
227 relocation shall cause the County's Public Right-of-Way to be damaged, MTA, at its sole cost

and expense, shall promptly repair the Public Right-of-Way impacted by its activities and return the Public Right-of-Way to its previous condition. If MTA does not repair the site as required within ninety (90) days after the County notifies MTA of the damage, then the County shall have the option to perform or cause to be performed such reasonable and necessary work on behalf of MTA and charge MTA for the actual costs incurred by the County to repair the damage. Upon receipt of an invoice from the County requesting payment, MTA shall reimburse the County for all such costs within sixty (60) days.

6. DELIVERY OF AS-BUILT DRAWINGS.

Within thirty (30) days of the completion of any construction, reconstruction, installation, location, removal, reattachment, reinstallation, or relocation work, MTA promptly shall furnish to the County, in hard copy and electronic format or other format reasonably acceptable to the County, suitable documentation containing a full set of as built drawings showing, in detail, the exact location of the Purple Line in the Public Right-of-Way.

7. INSURANCE.

7.1 MTA shall require the Concessionaire and all of its contractors, as well as any other contractors engaged by MTA to perform work in the design, construction, operation and maintenance of the Purple Line in the Public Right-of-Way to continuously carry those levels of insurance required in the P3 Agreement as executed on April 7, 2016, including commercial general liability, errors and omissions liability, and railroad liability and other coverages as defined therein to the extent applicable to any work or services performed by the Concessionaire or its contractors, or any MTA contractors, and shall cause the Concessionaire to include in its coverages the same types of insurance and limits of liability required by the P3 Agreement in favor and benefit of the County. The County shall be named an additional insured where applicable.

7.2 MTA is covered by the State of Maryland's State Insurance Program, which includes self-insurance for general liability, under a Self-Insurance Retention Policy ("SIR"), and commercial insurance for excess coverage over the SIR for catastrophic property and liability losses, and railroad liability and other obligations. The excess insurance policy or policies to be maintained by MTA, subject to its limits, shall protect the County fully from any and all claims for damages that may be claimed by the County or the public that may arise from the acts or omissions of any of the MTA's officials, employees, agents, representatives, successors, or assigns. MTA shall provide the County with its current policy limits immediately upon request by the County.

7.3 If MTA engages additional contractor(s), other than the Concessionaire, to perform work or services within the County Right-of-Way subject to the Franchise, MTA will notify the County and require such contractor(s) to meet the County's insurance requirements.

8. INDEMNIFICATION.

8.1 MTA agrees to indemnify, defend and hold harmless, subject to applicable laws

and available appropriations, the County and its respective officials, employees, agents, and representatives ("Indemnified Parties") from and against all actions, claims, suits, penalties, obligations, liabilities, damages to property, environmental claims or injuries to persons, (collectively, "Claims") brought against or suffered by the County arising from or in connection with any willful or negligent act or omission of MTA, its officials, employees, agents, or representatives in performance or prosecution of the work performed pursuant to this Agreement or arising from or in connection with any willful or negligent act or omission of MDOT, its officials, employees, agents, or representatives in the performance or prosecution of Purple Line operations in, upon, over, under, or across the Public Right-of-Way, including the use and occupation of those portions of the Georgetown Branch, as shown in **Exhibit A**, which is attached hereto and incorporated herein.

8.2 MTA shall cause the Concessionaire and any subsequent or replacement contractor performing design, construction, operational, or maintenance activities for the Purple Line in, upon, over, under, or across the Public Right-of-Way, to indemnify and hold harmless the Indemnified Parties from and against all Claims brought against or suffered by the Indemnified Parties arising from or in connection with any act or omission of Concessionaire, its officials, employees, agents, contractors or representatives in performance or prosecution of the work set forth in this Agreement, and in the P3 Agreement, and arising from or in connection with Purple Line operations in, upon, over, under, or across the Public Right-of-Way.

9. FEDERAL FIXED GUIDEWAY REQUIREMENTS.

MTA and the County acknowledge that the Purple Line is subject to federal regulations relating to Rail Fixed Guideway Systems set forth in the Code of Federal Regulations (CFR) Title 49, Part 659 ("Rail Systems Regulations"). Notwithstanding any provision of this Agreement to the contrary, the County and MTA may not take any action that is inconsistent with such federal regulations or that would result in the Purple Line operating in a manner inconsistent with such federal regulations.

10. NOTICES.

All notices which shall or may be given pursuant to this Agreement shall be in writing and delivered personally or transmitted: (i) through the United States mail, by registered or certified mail, postage prepaid; (ii) by means of prepaid overnight delivery service; (iii) by facsimile transmission, if followed by a hard copy of the same delivered through the U.S. mail or by overnight delivery service as just described; or (iv) by email transmittal, as follows:

County:	Chief Administrative Officer
	Executive Office Building
	101 Monroe Street – Second Floor
	Rockville, Maryland 20850
	Ph: 240-777-8888
	Email: Timothy.Firestine@montgomerycountymd.gov

319 With a copy to:

320 Director, Montgomery County Department of
321 Transportation
322 Executive Office Building
323 101 Monroe Street – Tenth Floor
324 Rockville, Maryland 20850
325 Ph: 240-777-7175
326 Email: Al.Roshdieh@montgomerycountymd.gov

327 MTA:

328 Maryland Transit Administration
329 Attn.: Executive Director,
330 Transit Development and Delivery
331 6811 Kenilworth Ave
332 Suite 300-A
333 Riverdale, Maryland 20737
334 Ph: 443-451-3721
335 Email: clattuca@mta.maryland.gov

336 With a copy to:

337 Office of the Attorney General
338 ATTN: Principal Counsel
339 6 St. Paul Street, 12th Floor
340 Baltimore, Maryland 21202
341 Ph: 410.767.5833
342 Email: bsmith10@mta.maryland.gov

343 Notices shall be deemed given upon receipt or refusal of delivery. Either party may from
344 time to time designate any other address for this purpose by written notice to the other party in
345 the manner set forth above.

347 11. TERMINATION AND DEFAULT.

348
349 11.1 The County may terminate this Agreement if MTA ceases, for three (3)
350 consecutive years, to operate the Purple Line along the Public Right-of-Way, subject to
351 applicable federal and state laws and regulations.

352
353 11.2 The County reserves the right to remedy any Default under this Agreement and
354 otherwise enforce the provisions of this Agreement under Chapter 49 of the Montgomery County
355 Code and any other applicable law; provided, however, that the County must give MTA written
356 notice of any Default and MTA shall have sixty (60) days within which to cure such Default (or,
357 if such Default is not curable within sixty (60) days, MTA shall have thirty (30) days within
358 which to commence such cure and thereafter diligently prosecute such cure to completion). If
359 MTA does not cure a Default, and the County is unable to remedy the Default, the County
360 reserves the right to terminate or revoke the franchise.

361 In the event of a dispute between the parties over a claimed Default, either party may invoke the
362 dispute resolution procedures contained in Section 12.15.i of this Agreement. If the County and
363 MTA are unable to resolve a dispute, the County may take enforcement action under this section.

365 **11.3** In addition to the notice requirements under Section 10 of this Agreement, the
366 County shall provide sixty (60) days prior written notice to the Secretary of MDOT before
367 exercising its termination rights under Sections 11.1 and 11.2 above. Any such notice shall be in
368 writing and delivered personally or transmitted: (i) through the United States mail, by registered
369 or certified mail, postage prepaid; (ii) by means of prepaid overnight delivery service; or (iii) by
370 facsimile transmission, if followed by a hard copy of the same delivered through the U.S. mail or
371 by overnight delivery service as just described to:

372
373 Maryland Department of Transportation
374 Attn: Secretary
375 7201 Corporate Center Drive
376 Hanover, Maryland 21076
377 Phone#: 410-865-1001
378

379 **12. GENERAL PROVISIONS.**

380

381 **12.1** Excepting its assignment of its rights and obligations to the Concessionaire
382 pursuant to the terms of the P3 Agreement, MTA shall not otherwise transfer or assign the Public
383 Right-of-Way or any part thereof without the express prior written consent of the County, which
384 consent shall not be unreasonably withheld, conditioned, or delayed. MTA shall give the County
385 prior written notice of any such proposed assignment or transfer for which the County's consent
386 is subject to County Council review and approval within a reasonable time period not to exceed
387 ninety (90) days after receipt of MTA's notice. The County Council's failure to approve or
388 disapprove any such request within such ninety (90) day period shall be deemed an approval.
389 MTA shall provide all information and documents reasonably requested by the County relating
390 to the assignment or transfer.
391

392 **12.2** While this Agreement does not provide MTA with exclusive use of the Public
393 Right-of-Way, so that the County shall have the right to permit other Persons to install
394 equipment or devices in the Public Right-of-Way, the County also shall ensure that such
395 installation, or any construction, reconstruction, installation, location, removal, reattachment,
396 reinstallation, or relocation thereof, by other Persons shall not occur in Public Right-of-Way
397 occupied by MTA without first notifying MTA in writing, and causing such other Persons to
398 submit all plans, plats, and applications to MTA for prior review and approval. MTA's approval
399 shall not be unreasonably withheld, but shall be subject to such conditions as MTA may
400 determine to be necessary to ensure compliance with federal safety regulations and MTA's
401 construction, operation and maintenance of the Purple Line.
402

403 **12.3** MTA shall maintain the Purple Line and the Public Right-of-Way that it occupies
404 in good condition and free of hazards at its expense.
405

406 **12.4** This Agreement may not be amended except pursuant to a written instrument
407 signed by both parties.
408

409 **12.5** If any one or more of the provisions of this Agreement shall be held by a court of
410 competent jurisdiction in a final judicial action to be void, voidable, or unenforceable, such

provision(s) shall be deemed severable from the remaining provisions of this Agreement and shall in no way affect the validity of the remaining portions of this Agreement.

12.6 An MTA designated representative shall be available to the staff employees of any County department having jurisdiction over MTA's franchise activities 24 hours a day, 7 days a week, regarding problems or complaints resulting from the construction, reconstruction, installation, location, removal, reattachment, reinstallation, or relocation of the Purple Line.

12.7 This Agreement shall be governed by and construed in accordance with the laws of the state of Maryland and all applicable provisions of federal, County and local laws and regulations, without reference to conflicts of law principles. If suit is brought by a party to this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of Maryland, or in the United States District Court for the District of Maryland, Southern Division.

12.8 All exhibits referred to in this Agreement and any addenda, attachments, and schedules which may, from time to time, be referred to in any duly executed amendment to this Agreement are by such reference incorporated into this Agreement and shall be deemed a part of this Agreement.

12.9 This Agreement is binding upon the successors and assigns of the parties hereto.

12.10 MTA acknowledges that this Agreement is not intended to limit any applicable current or future regulatory powers of the County.

12.11 MTA agrees to require that the Concessionaire and any contractors comply with the nondiscrimination in employment policies in County contracts as required by Section 11B-33 and Section 27-19 of the Montgomery County Code 1994, as amended, as well as all other applicable state and federal laws and regulations regarding employment discrimination. Further, in accordance with federal civil rights law and civil rights regulations and policies of the State of Maryland, MTA assures the County that, MTA's divisions, offices, and employees, consultants, contractors and agents are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity.

12.12 Both the County and MTA represent that it has not retained anyone to solicit or secure this Agreement, upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except for bona fide employees or an attorney rendering a professional legal service consistent with applicable canons of ethics.

12.13 MTA understands that, unless authorized under Section 11B-52 and Chapter 19A of the Montgomery County Code 1994, as amended, it is unlawful for any person transacting business with the County to employ a public employee for employment contemporaneous with his or her public employment.

457 **12.14** In any case where the approval or consent of one party hereto is required,
458 requested or otherwise to be given under this Agreement, such party shall not unreasonably
459 condition, delay, or withhold its approval or consent.

460
461 **12.15 Miscellaneous Provisions.**

- 462
- 463 a. **Headings.** The headings to articles, sections, appendices and exhibits (if any) of this
464 Agreement are for ease of reference only and shall not in any way affect its
465 construction or interpretation.
- 466
- 467 b. **Word References.** References to "Parties" in this Agreement shall be deemed to
468 include references to their successors and permitted assigns. Unless the context of this
469 Agreement provides otherwise: (a) a reference to any agreement or any instrument or
470 any provision of any of them includes any amendment, variation, restatement or
471 replacement of such agreement, instrument or provision, as the case may be; (b) a
472 reference to an applicable law includes all regulations, rules, subordinate legislation
473 and other instruments issued or promulgated thereunder as in effect from time to time
474 and all consolidations, amendments, re-enactments, extensions, restatements or
475 replacements of such applicable law; (c) "including" means "including, but not
476 limited to" and other forms of the verb "to include" are to be interpreted similarly; (d)
477 references to "or" shall be deemed to be disjunctive but not necessarily exclusive (i.e.,
478 unless the context dictates otherwise, "or" shall be interpreted to mean "and/or" rather
479 than "either/or"); (e) where a word or phrase is specifically defined, other
480 grammatical forms of such word or phrase have corresponding meanings; and (f) all
481 accounting terms used but not defined herein have the meanings given to them
482 pursuant to generally accepted accounting standards consistent with industry practice.
- 483
- 484 c. **Rights.** Nothing in this Agreement is intended to, or shall be construed to create or
485 confer any rights, benefits or remedies upon, or create any obligations of the parties
486 hereto toward, any person or entity other than the parties to this Agreement.
- 487
- 488 d. **Enforceability.** If any provision or any part of a provision of this Agreement shall be
489 finally determined to be superseded, invalid, illegal, or otherwise unenforceable
490 pursuant to any applicable Law, such determination shall not impair or otherwise
491 affect the validity, legality, or enforceability of the remaining provision or parts of the
492 provision of this Agreement which shall remain in full force and effect as if the
493 unenforceable provision or part were deleted.
- 494
- 495 e. **Preemption.** If federal or state laws, rules or regulations preempt a provision or limit
496 the enforceability of a provision of this Agreement, then, the provision shall be read
497 to be preempted to the extent and for the time, but only to the extent and for the time,
498 required by law.
- 499
- 500 f. **Force Majeure.** MTA or its Concessionaire shall not be deemed in default of
501 provisions of this Agreement or the Montgomery County Code where performance
502 was rendered impossible by war or riots, labor strikes or civil disturbances, floods,

503 earthquakes, fire, explosions, or epidemics, contamination, or other causes beyond
504 MTA's or its Concessionaire's control, and the franchise shall not be revoked or
505 MTA or its Concessionaire penalized for such noncompliance, provided that MTA
506 takes or causes the Concessionaire to take immediate and diligent steps to bring the
507 Purple Line back into compliance and to comply as soon as possible under the
508 circumstances without unduly endangering the health, safety, and integrity of MTA's
509 or its Concessionaire's employees or property, or the health, safety, and integrity of
510 the public, Public Rights-of-Way, public property, or private property.

511
512 g. **No Waiver.** The failure of either Party to exercise, or delay in exercising, any right or
513 remedy related to the performance of any of the obligations required by this
514 Agreement shall not be construed as a waiver or relinquishment of such obligation or
515 right with respect to future performance, nor shall it preclude or restrict any further
516 exercise of that or any other right or remedy.

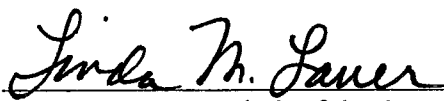
517
518 h. **Police Powers.** Nothing in this Agreement affects the County's police powers.


519
520 i. **Dispute Resolution.** Either party may invoke this provision to resolve a dispute
521 arising out of or relating to this Agreement by conducting negotiations between senior
522 executives of the parties who have authority to settle the same. If the senior
523 executives cannot agree, the dispute shall be elevated to the Director of MCDOT and
524 the Secretary of MDOT. If the Director and the Secretary are not able to settle the
525 dispute within 90 days, the County may take enforcement action under Section 11.
526

527 IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by
528 their proper and duly authorized officers, on the second day and year above written.
529

530 WITNESS:

MONTGOMERY COUNTY, MARYLAND

531
532
533 
534 Linda M. Lauer, Clerk of the Council
535
536

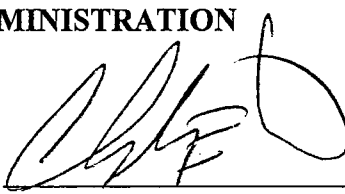
By: 
Roger Berliner, President
Montgomery County Council

537
538
539 The Provisions of this Agreement are agreed to and hereby accepted.

540
541 WITNESS:

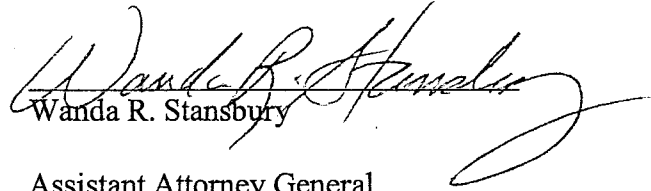
MARYLAND TRANSIT
ADMINISTRATION

542
543
544
545
546 _____
547

By: 
Charles E. Lattuca
Executive Director

Transit Development and Delivery

Approved for form and legal sufficiency


Wanda R. Stansbury

Assistant Attorney General

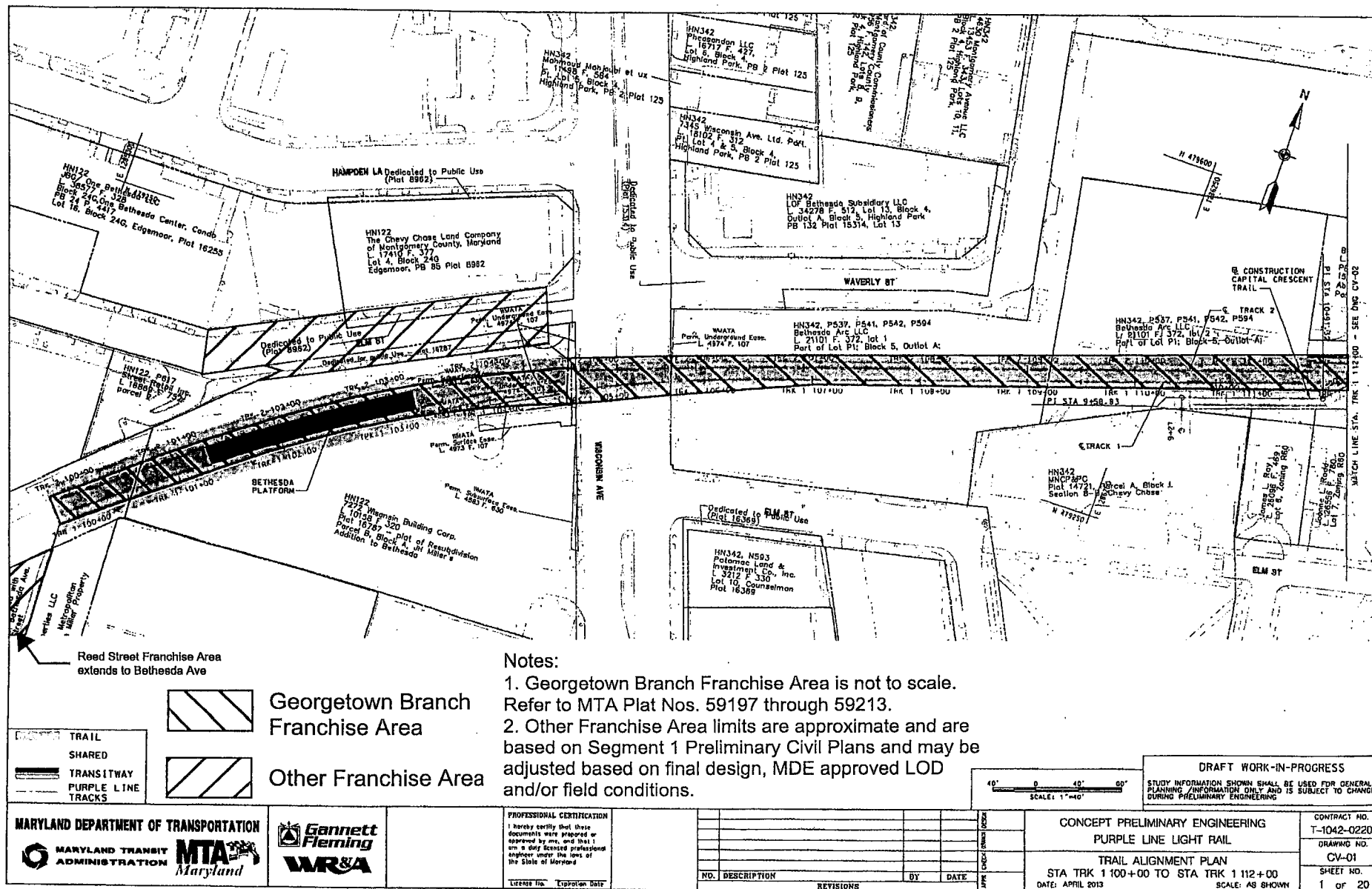
Purple Line

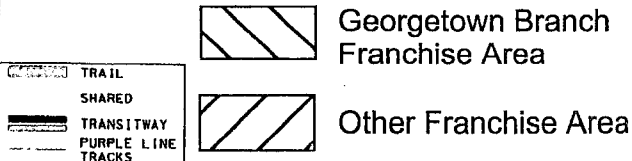
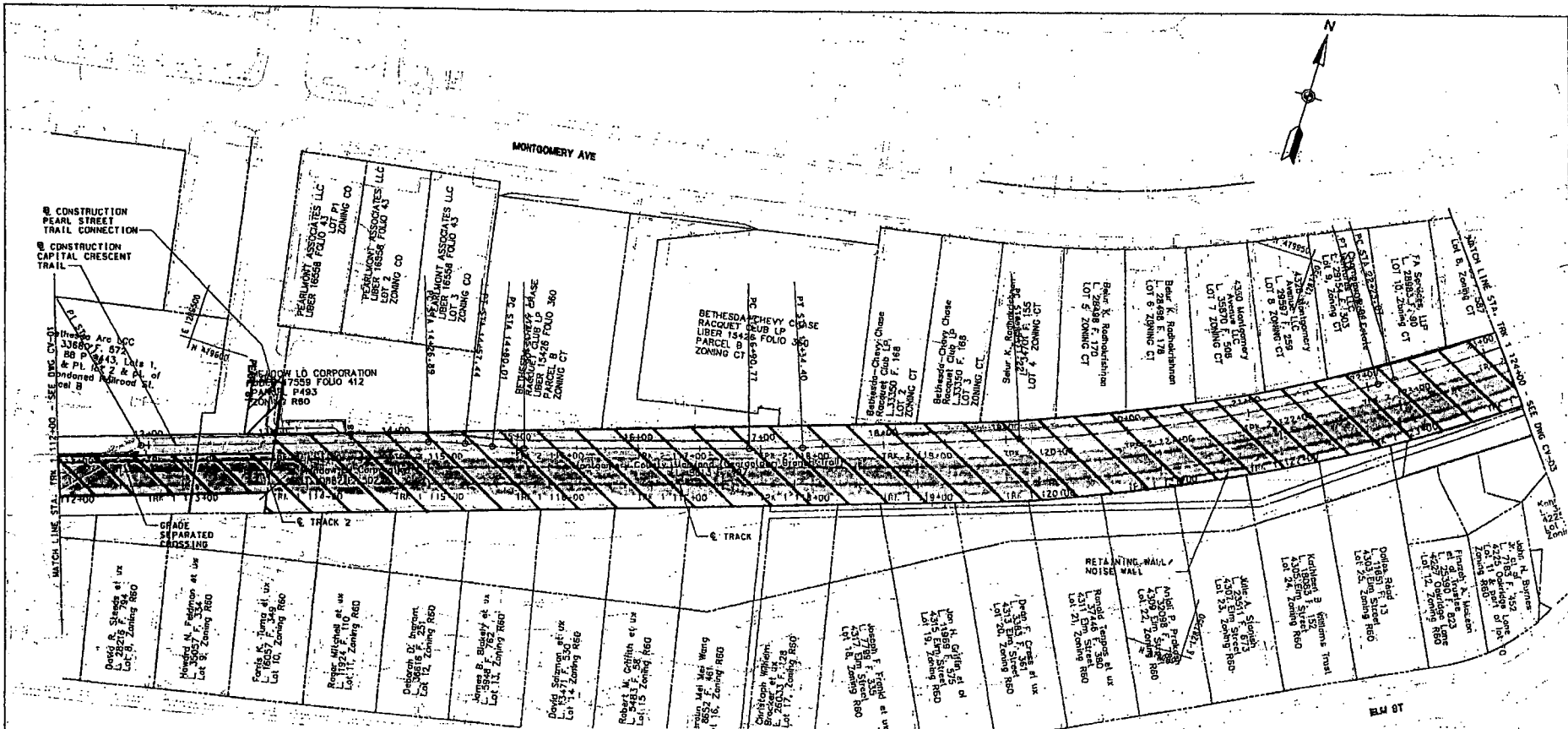
EXHIBIT A: MONTGOMERY COUNTY PUBLIC RIGHTS OF WAY SUBJECT TO PURPLE LINE FRANCHISE AGREEMENT

MTA ITEM NUMBER	PLAT NUMBER	TAX DISTRICT	TAX ACCOUNT IDENTIFICATION NUMBER	ADDRESS	OWNER NAME	PURPOSE FOR ROW USE BY PURPLE LINE
01400	59200 to 59211	7	429431	GEORGETOWN BRANCH	MONTGOMERY COUNTY	Trackway on Georgetown Branch ROW
01411	59212 59213	13	2807015	GEORGETOWN BRANCH	MONTGOMERY COUNTY	Trackway on Georgetown Branch ROW
02075	59213 59214	13	n/a	TALBOT AVENUE, PUBLIC ROW	MONTGOMERY COUNTY	Trackway (fee) and Traction Power Substation (perpetual easement)
02267	59210 59211	13	n/a	BROOKVILLE ROAD, PUBLIC ROW	MONTGOMERY COUNTY	Lyttonsville Vehicle Storage Yard and Purple Line Operations Facility; co-locate parking deck over storage yard for Purple Line and County Depot employees
02275	59229 59230	13	n/a	PLYMOUTH STREET, PUBLIC ROW	MONTGOMERY COUNTY	Purple Line Underground Tunnel
02278	59207	7	n/a	COQUELIN PARKWAY, PUBLIC ROW	MONTGOMERY COUNTY	Construction of culvert extension under Georgetown Branch ROW
02311	59197	7	n/a	ELM STREET, PUBLIC ROW	MONTGOMERY COUNTY	Underground structures and support systems for Bethesda Metro South Entrance elevator / stairway access
02316	59198	7	n/a	WISCONSIN AVENUE	MONTGOMERY COUNTY	Trackway
02317	59199	7	n/a	GEORGETOWN BRANCH	MONTGOMERY COUNTY	Trackway on Georgetown Branch ROW
02318	59199	7	n/a	GEORGETOWN BRANCH	MONTGOMERY COUNTY	Trackway on Georgetown Branch ROW
n/a	59219	13	n/a	RAMSEY AVENUE, PUBLIC ROW	MONTGOMERY COUNTY	Trackway on Ramsey Avenue ROW
n/a	59198	7	n/a	REED STREET, PUBLIC ROW	MONTGOMERY COUNTY	Track Maintenance Vehicle Access
n/a	59229 59230	13	n/a	BRADFORD ROAD, PUBLIC ROW	MONTGOMERY COUNTY	Purple Line Underground Tunnel
n/a	59230	13	n/a	READING RD	MONTGOMERY COUNTY	Purple Line Underground Tunnel
n/a	59230	13	n/a	FLOWER AVENUE	MONTGOMERY COUNTY	Purple Line Underground Tunnel

Montgomery County Public Rights of Way for Temporary Use During Construction

n/a	59198	7	n/a	Woodmont Avenue	MONTGOMERY COUNTY	Temporary Construction Access, Project Sign
n/a	59200	7	n/a	Pearl Street	MONTGOMERY COUNTY	Construction of CCT Trail Connection
n/a	59202	7	n/a	Kentbury Drive	MONTGOMERY COUNTY	Construction of CCT Trail Connections
n/a	59202	7	n/a	Sleaford Road	MONTGOMERY COUNTY	Construction of CCT Trail Connection
n/a	59204 59205	7	n/a	Newdale Road	MONTGOMERY COUNTY	Construction of CCT Trail Connection, Sidewalk, Curb & Gutter
n/a	59207 59208	7	n/a	Jones Mill Road	MONTGOMERY COUNTY	Construction of bridge and associated roadway modifications
n/a	59207 59208	7	n/a	Jones Bridge Road	MONTGOMERY COUNTY	Roadway and Sidewalk modifications
n/a	59210	13	n/a	Terrace Drive	MONTGOMERY COUNTY	Construction of CCT Trail Connection
n/a	59210	13	n/a	Grubb Road	MONTGOMERY COUNTY	Construction of CCT Trail Connection
n/a	59211	13	n/a	Lyttonsville Place	MONTGOMERY COUNTY	Construction of bridge and associated roadway modifications
n/a	59212 59213	13	n/a	Stewart Avenue	MONTGOMERY COUNTY	Roadway and Sidewalk modifications
n/a	59213	13	n/a	Kansas Avenue	MONTGOMERY COUNTY	Construction of CCT and CCT Trail Connection
n/a	59214	13	n/a	Michigan Avenue	MONTGOMERY COUNTY	Roadway and Sidewalk modifications
n/a	59214	13	n/a	Lanier Drive	MONTGOMERY COUNTY	Roadway and Sidewalk modifications
n/a	59214	13	n/a	Hanover Street	MONTGOMERY COUNTY	Roadway and Sidewalk modifications





Notes:

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DRAFT WORK-IN-PROGRESS
STUDY INFORMATION SHOWN SHALL BE USED FOR GENERAL PLANNING PURPOSES ONLY AND IS SUBJECT TO CHANGE DURING PRELIMINARY ENGINEERING

MARYLAND DEPARTMENT OF TRANSPORTATION
MARYLAND TRANSIT ADMINISTRATION
MTA
Maryland

Gannett Fleming
WR&A

PROFESSIONAL CERTIFICATION
I hereby certify that these documents were prepared or approved by me, and that I am a duly licensed professional engineer under the laws of the State of Maryland.
License No. Expiration Date

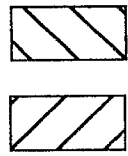
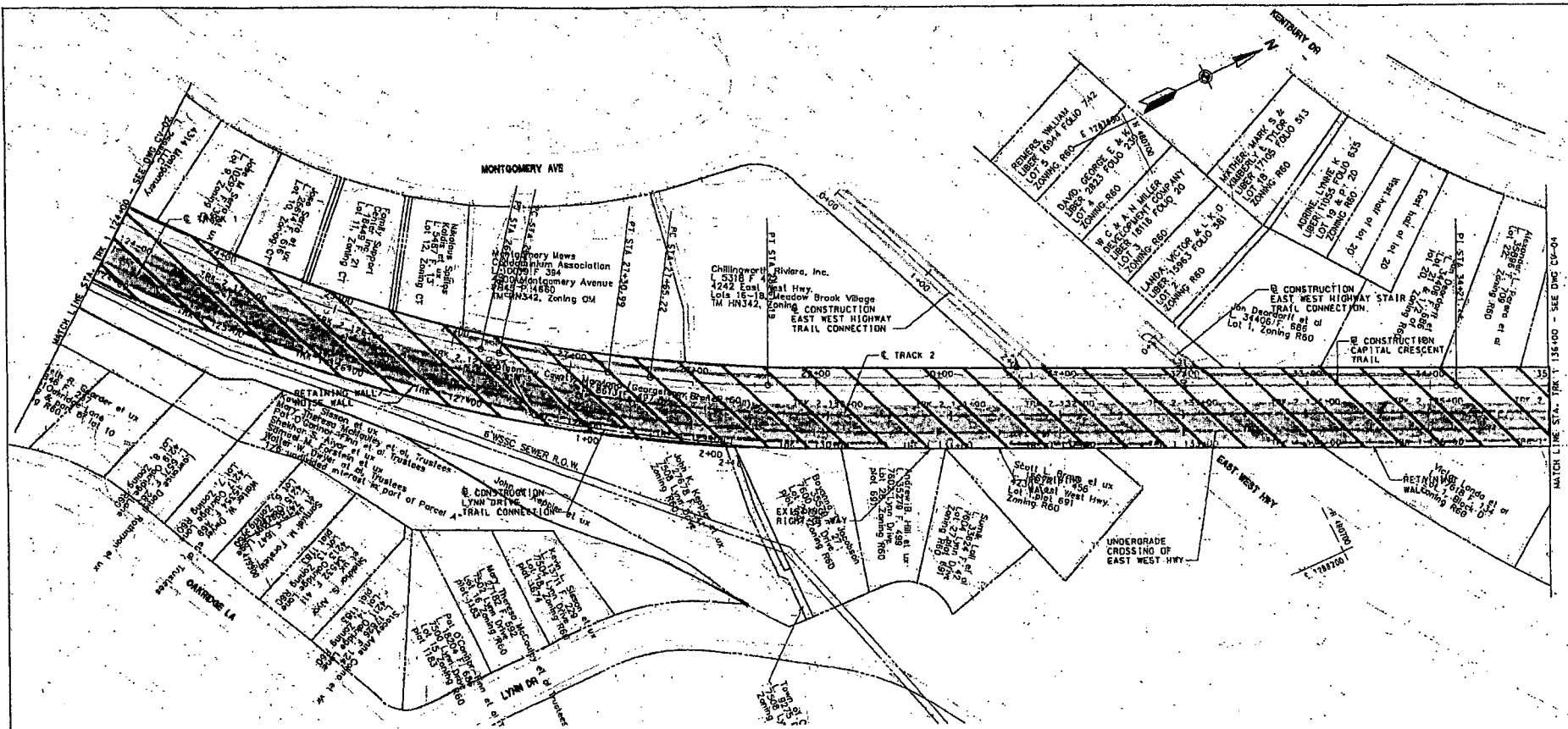
NO.	DESCRIPTION	BY	DATE

DATE: APRIL 2013

CONCEPT PRELIMINARY ENGINEERING
PURPLE LINE LIGHT RAIL
ALIGNMENT PLAN
STA TRK 1112+00 TO STA TRK 1124+00
SCALE: AS SHOWN

CONTRACT NO. T-1042-0220
DRAWING NO. CV-02
SHEET NO. 2 OF 20

4/23/2013

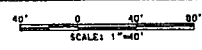


Georgetown Branch Franchise Area

Other Franchise Area

Notes:

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License No. _____ Expiration Date _____

NO.	DESCRIPTION	BY	DATE

CONCEPT PRELIMINARY ENGINEERING

PURPLE LINE LIGHT RAIL

ALIGNMENT PLAN

STA TRK 1124+00 TO STA TRK 1136+00

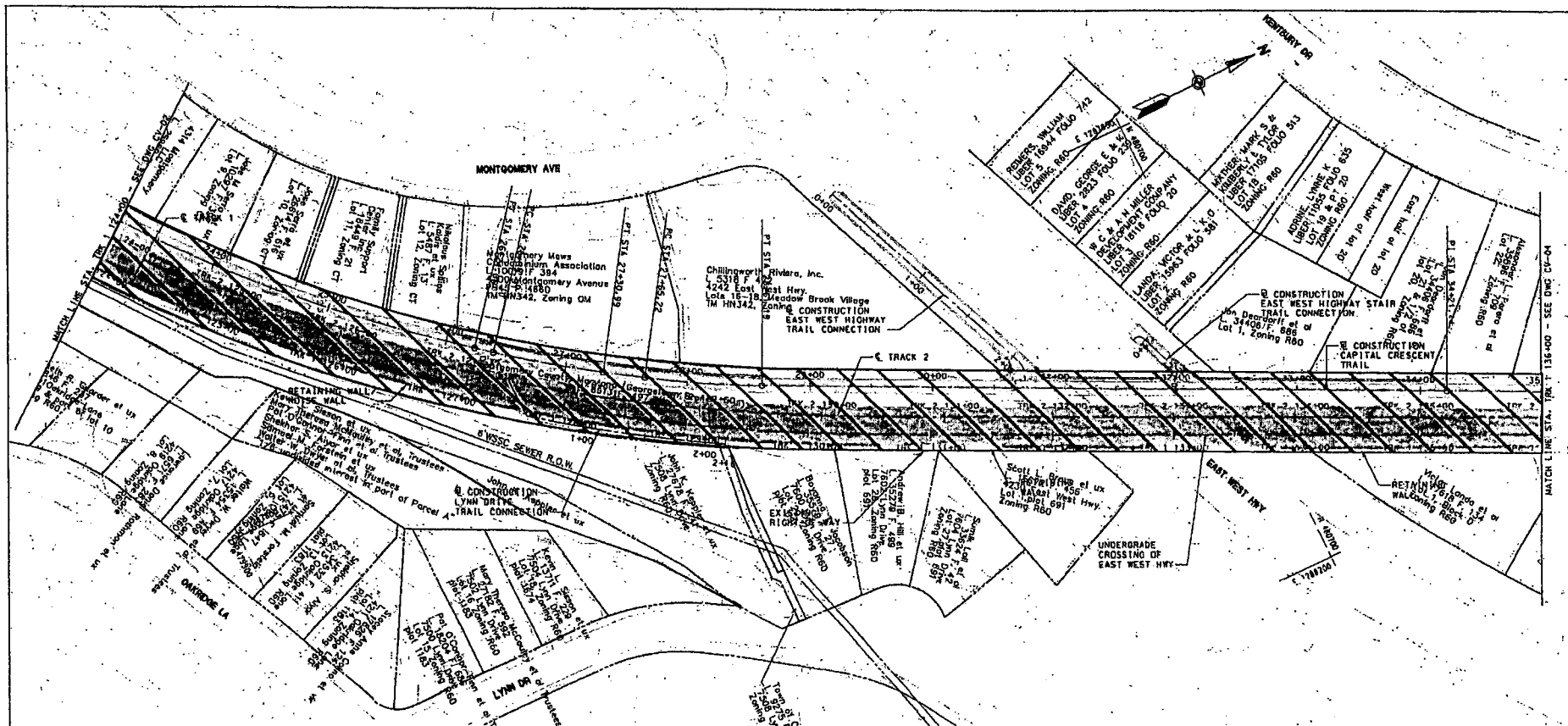
DATE: APRIL 2013 SCALE: AS SHOWN

CONTRACT NO. T-1042-0220

DRAWING NO. CV-03

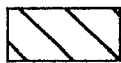
SHEET NO. 3 OF 20

4/23/2013

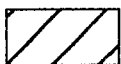


Notes:

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Georgetown Branch Franchise Area



Other Franchise Area

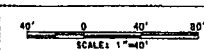
TRAIL
SHARED
TRANSITWAY
PURPLE LINE
TRACKS

MARYLAND DEPARTMENT OF TRANSPORTATION
MARYLAND TRANSIT ADMINISTRATION
MTA Maryland

Gannett Fleming
WR&A

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NO.	DESCRIPTION	BY	DATE



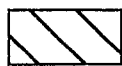
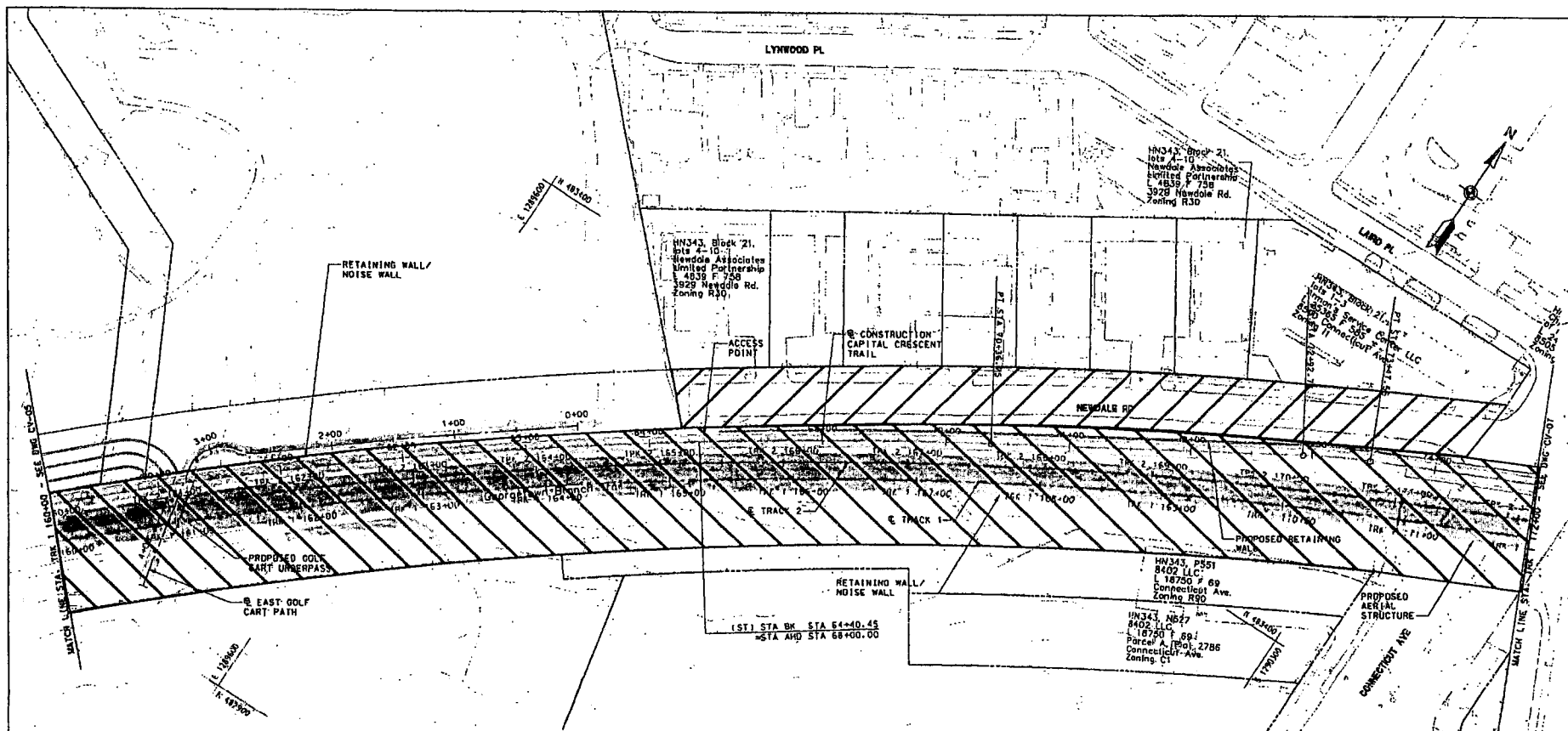
DRAFT WORK-IN-PROGRESS
STUDY INFORMATION SHOWN SHALL BE USED FOR GENERAL PLANNING INFORMATION ONLY AND IS SUBJECT TO CHANGE DURING PRELIMINARY ENGINEERING

CONCEPT PRELIMINARY ENGINEERING
PURPLE LINE LIGHT RAIL

ALIGNMENT PLAN
STA TRK 1124+00 TO STA TRK 1136+00
DATE: APRIL 2013 SCALE: AS SHOWN

CONTRACT NO.
T-1042-0220
DRAWING NO.
CV-03
SHEET NO.
3 OF 20

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Georgetown Branch Franchise Area



Other Franchise Area

TRAIL
SHARED
TRANSITWAY
PURPLE LINE
TRACKS

Notes:

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0' 40' 80'
SCALE: 1"=40'

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MARYLAND DEPARTMENT OF TRANSPORTATION
MARYLAND TRANSIT ADMINISTRATION
MTA
Maryland

Gannett Fleming
WRA

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LICENSE NO. EXPIRATION DATE

NO.	DESCRIPTION	REVISIONS	BY	DATE

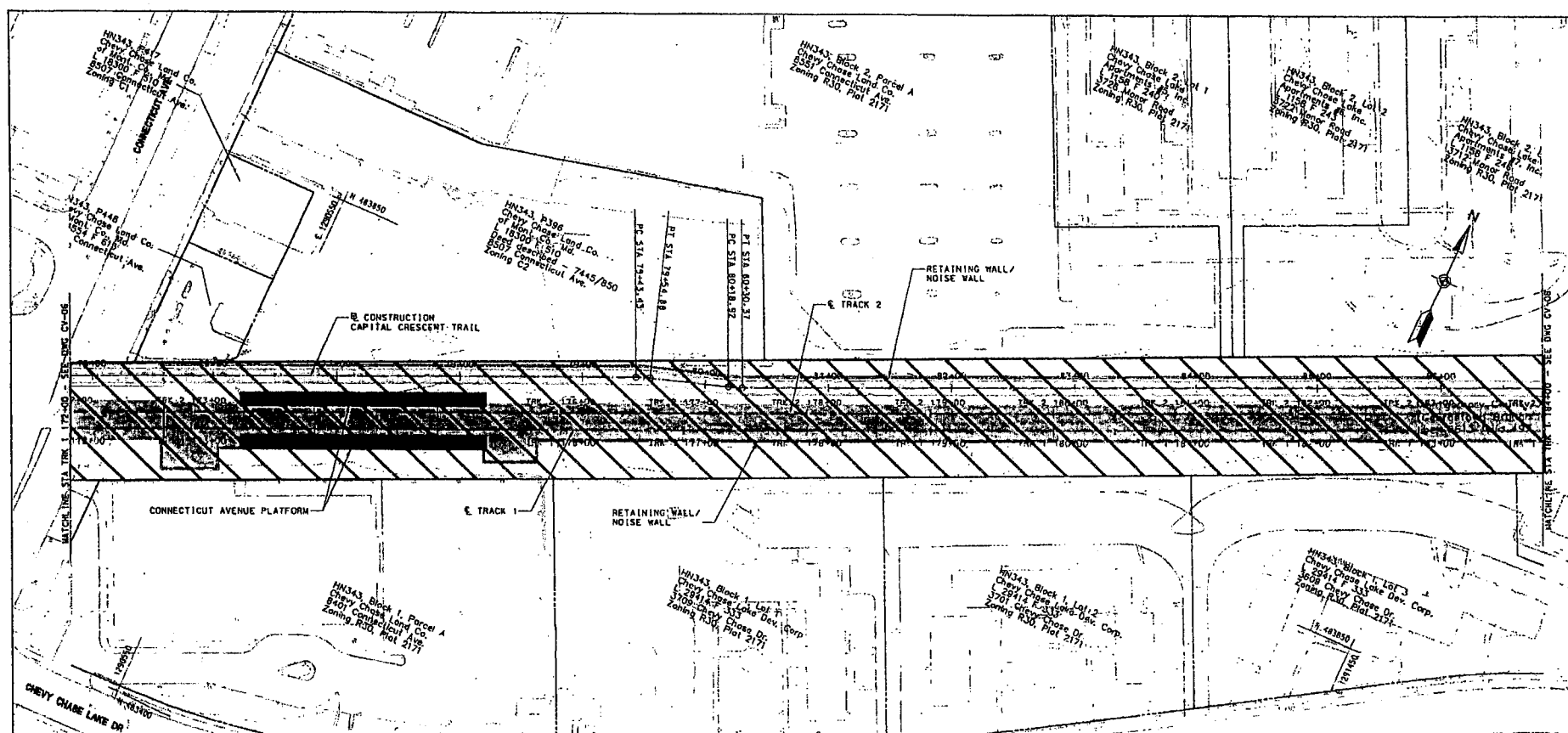
CONCEPT PRELIMINARY ENGINEERING
PURPLE LINE LIGHT RAIL

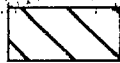
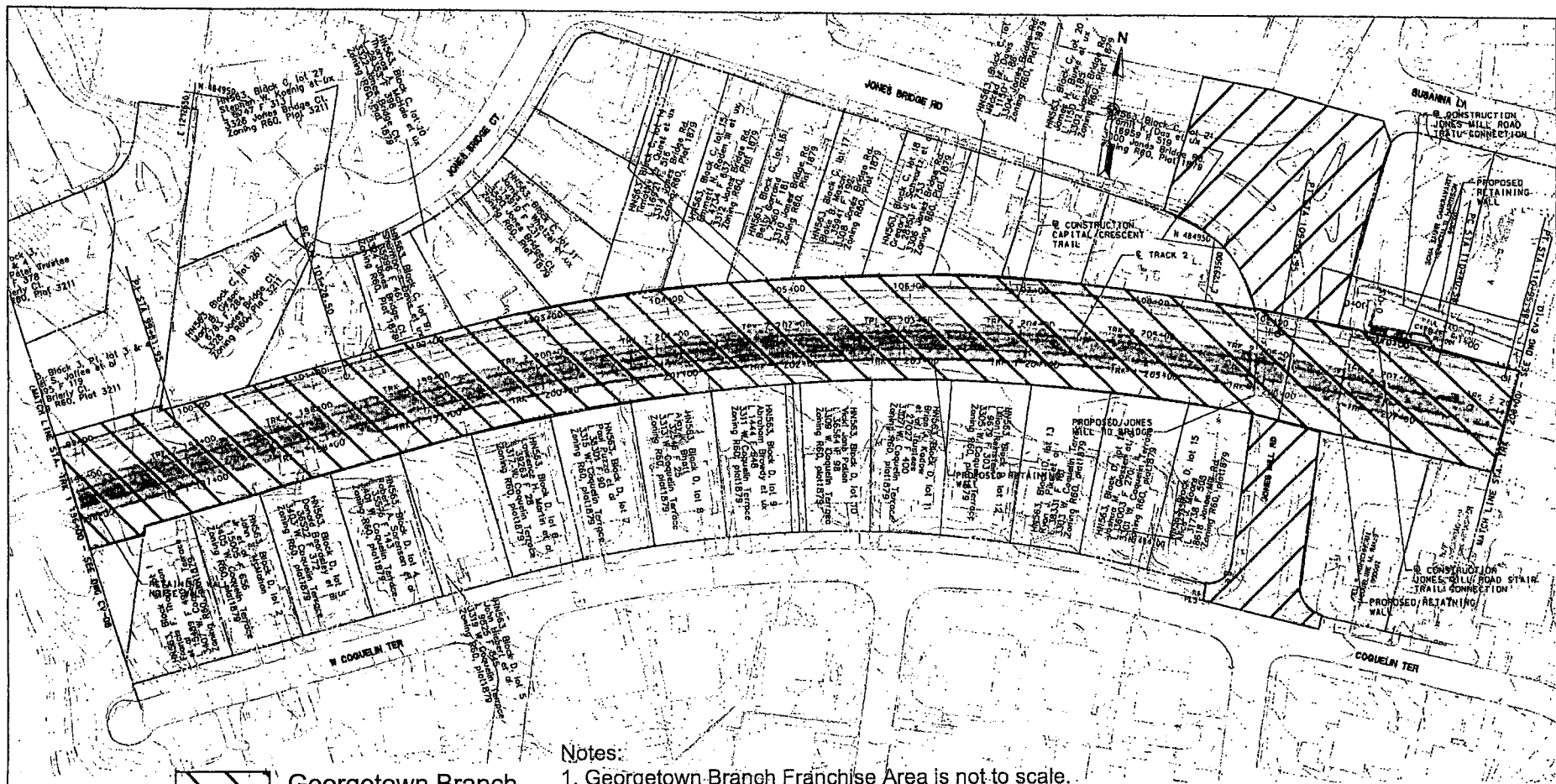
ALIGNMENT PLAN

STA TRK 1 160+00 TO STA TRK 1 172+00
DATE: APRIL 2013 SCALE: AS SHOWN

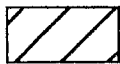
CONTRACT NO.
T-1042-0220
DRAWING NO.
CV-06
SHEET NO.
6 of 20

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Georgetown Branch Franchise Area

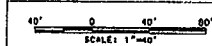


Other Franchise Area

TRAIL
SHARED
TRANSITWAY
PURPLE LINE
TRACKS

Notes:

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MARYLAND DEPARTMENT OF TRANSPORTATION



MARYLAND TRANSIT ADMINISTRATION



WR&A

PROFESSIONAL CERTIFICATION
I hereby certify that these documents were prepared or approved by me, and that I am a duly licensed professional engineer under the laws of the State of Maryland.
License No. "Expiration Date"

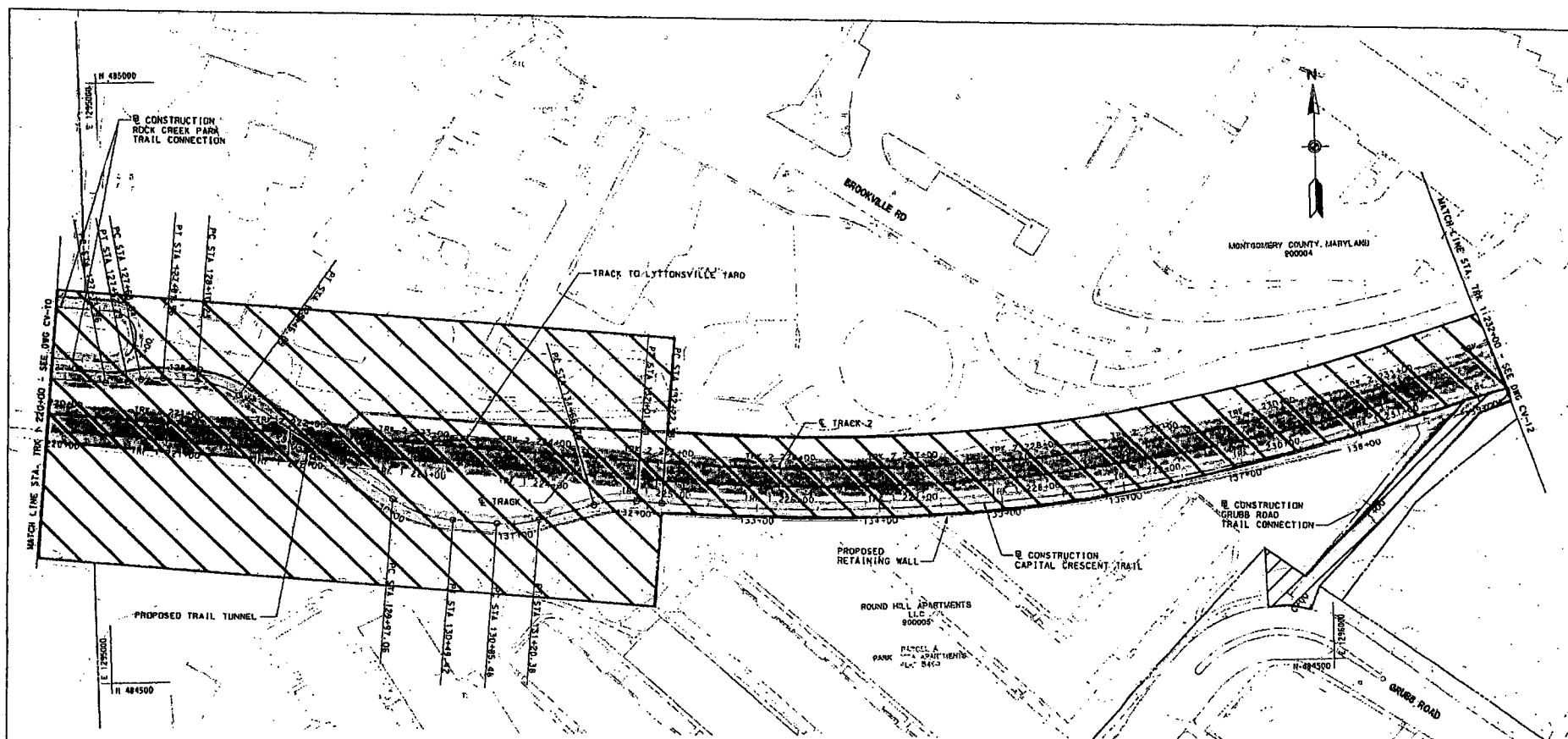
NO.	DESCRIPTION	REVISIONS	BY	DATE

CONCEPT PRELIMINARY ENGINEERING
PURPLE LINE LIGHT RAIL

ALIGNMENT PLAN
STA TRK 1196+00 TO STA TRK 1208+00
DATE: APRIL 2013 SCALE: AS SHOWN

CONTRACT NO.
T-1042-0220
DRAWING NO.
CV-09
SHEET NO.
9 OF 20

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Notes:

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MARYLAND DEPARTMENT OF TRANSPORTATION
 **MARYLAND TRANSIT ADMINISTRATION**  **MTA**
Maryland



PROFESSIONAL CERTIFICATION
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License No.	Expiration Date

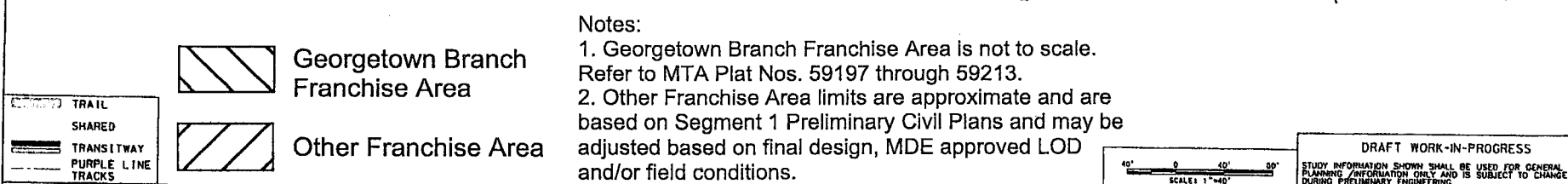
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CONCEPT PRELIMINARY ENGINEERING
PURPLE LINE LIGHT RAIL

ALIGNMENT PLAN

STA TRK 1 220+00 TO STA TRK 1 232+00
DATE: APRIL 2013 SCALE: AS SHOWN

CONTRACT NO.	T-1042-0220
DRAWING NO.	CV-11
SHEET NO.	11 OF 20



1. Georgetown Branch Franchise Area is not to scale. Refer to MTA Plat Nos. 59197 through 59213.
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PLANNING / INFORMATION ONLY AND IS SUBJECT TO CHANGE
DURING PRELIMINARY ENGINEERING

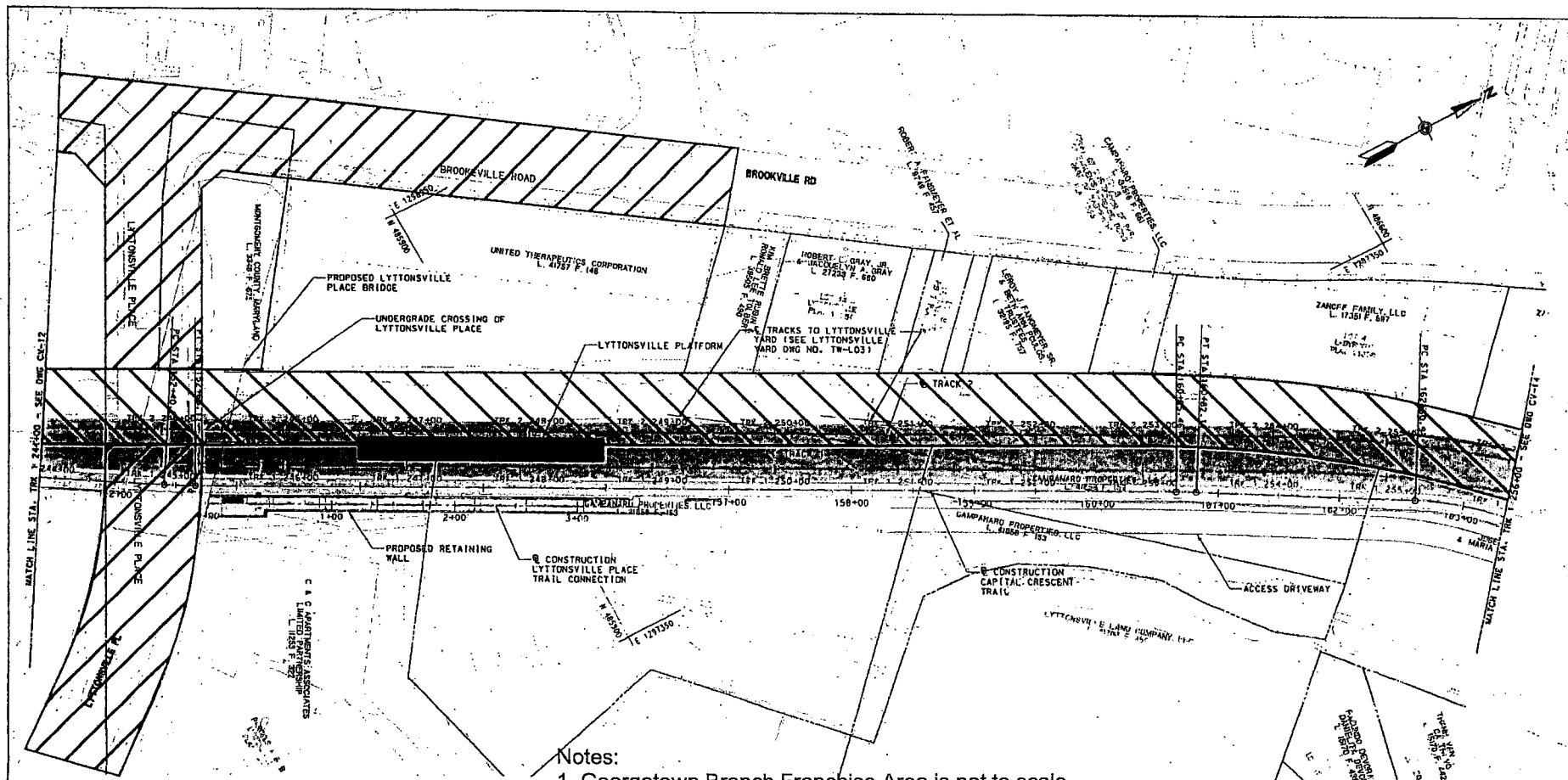
PROFESSIONAL CERTIFICATION
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License No.	Expiration Date


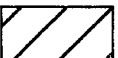
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STA TRK 1 232+00 TO STA TRK 1 244+00
DATE: APRIL 2013 SCALE: AS SHOWN

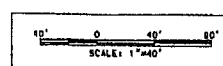
CONTRACT NO.	T-1042-0220
DRAWING NO.	CV-12
SHEET NO.	12 OF 20



- Notes:
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 Georgetown Branch Franchise Area
 Other Franchise Area

TRAIL
 SHARED
 TRANSITWAY
 PURPLE LINE TRACKS



DRAFT WORK-IN-PROGRESS
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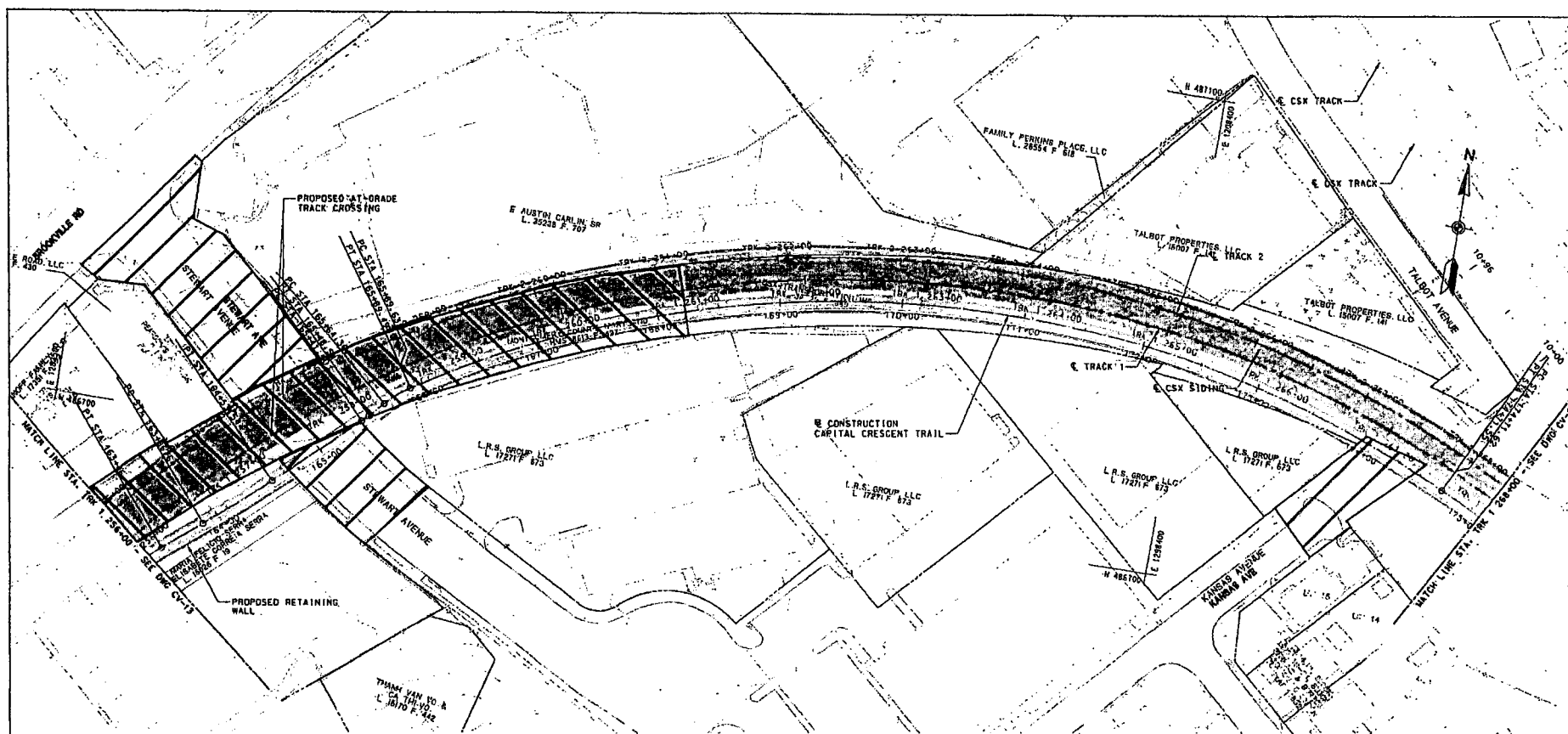
PROFESSIONAL CERTIFICATION
 I hereby certify that these documents were prepared or approved by me, and that I am a duly licensed professional engineer under the laws of the State of Maryland.
 License No. _____ Expiration Date _____

NO.	DESCRIPTION	BY	DATE

CONCEPT PRELIMINARY ENGINEERING
 PURPLE LINE LIGHT RAIL
 ALIGNMENT PLAN
 STA TRK 1244+00 TO STA TRK 1256+00
 DATE: APRIL 2013 SCALE: AS SHOWN


CONTRACT NO.
 T-1042-0220
 DRAWING NO.
 CV-13
 SHEET NO.
 19 OF 20

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Notes:

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Georgetown Branch Franchise Area



Other Franchise Area

MARYLAND DEPARTMENT OF TRANSPORTATION



**MARYLAND TRANSIT
ADMINISTRATION**



PROFESSIONAL CERTIFICATION

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License No.	Expiration Date
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[illegible]

CONCEPT PRELIMINARY ENGINEERING
PURPLE LINE LIGHT RAIL

ALIGNMENT PLAN
STA TRK 1 256+00 TO STA TRK 1 268+00
DATE: APRIL 2013 SCALE: AS SHOWN

DRAFT WORK-IN-PROGRESS

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PLANNING / INFORMATION ONLY AND IS SUBJECT TO CHANGE
DURING PRELIMINARY ENGINEERING

CONTRACT NO.
T-1042-0220

DRAWING NO.
CV-14

SHEET NO.
14 OF 20

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/23/2017

EXHIBIT B

