

DRAFT-1-11-2013

**AGREEMENT
BY AND BETWEEN
THE STATE HIGHWAY ADMINISTRATION OF THE
MARYLAND DEPARTMENT OF TRANSPORTATION,
ACTING FOR AND ON BEHALF OF
THE STATE OF MARYLAND AND
THE CITY OF TAKOMA PARK, MARYLAND**

MD ROUTE 410/CARROLL AVENUE

THIS AGREEMENT, effective this _____ day of _____, 2013, by and among the State Highway Administration of the Maryland Department of Transportation, acting for and on behalf of the State of Maryland, hereinafter called “SHA”, and the City of Takoma Park, Maryland, a body corporate and politic, hereinafter called the “CITY”.

WHEREAS, MD 195 (Carroll Avenue) from Garland Avenue (Mile Point 1.35) to Flower Avenue/MD 787 (Mile Point 1.14), known as the 7800 block of Carroll Avenue, consisting of approximately 0.21 miles of road, more or less hereinafter called the “**7800 Block of Carroll Avenue**” is currently signed for Maintenance by the CITY; and

WHEREAS, the 7800 Block of Carroll Avenue is more fully described in an exhibit attached hereto and incorporated herein as “EXHIBIT A”; and

WHEREAS, the CITY desires and SHA intends to maintain the 7800 Block of Carroll Avenue as part of the State Highway System; and

WHEREAS, ~~MD 410 through the CITY has been identified as part of the State highway system since the 1930s and the~~ SHA and the CITY acknowledge that because some of the MD 410 right-of-way through the CITY was originally dedicated to public use and/or to the CITY as shown on subdivision plats recorded prior to 1934, SHA has been inconsistent in its maintenance of these portions; these areas include: Philadelphia Avenue from Chestnut Avenue (Mile Point 5.00) to Cedar Avenue (Mile Point 5.20); Philadelphia Avenue from Maple Avenue (Mile Point 5.29) to Carroll Avenue/MD 195 (Mile Point 5.63); and Ethan Allen Avenue from Elm Avenue (Mile Point 6.16) to Carroll Avenue/MD 195 (Mile Point 5.63) in Montgomery County, Maryland, hereinafter referred to as “**MD 410 AREA**”; and

WHEREAS, This Agreement is intended to confirm that SHA will maintain the MD 410 Area road; and

WHEREAS, the SHA and the CITY acknowledge that this Agreement will not be construed as consent by the CITY to any future widening or modification of the MD 410 or as requiring such consent; and

WHEREAS, the SHA and the CITY acknowledge that this Agreement is not intended to limit any standing that the CITY may have in any future condemnation proceeding initiated by the SHA with regarding to any future widening of MD 410 or to confer any such standing; and

DRAFT-1-11-2013

WHEREAS, the parties to this Agreement acknowledge that the CITY includes a historic district listed on the National Register of Historic Places and that MD 410 through the CITY is critical to the interests of the CITY and that widening or other changes to MD 410 through the CITY can have significant impacts on the CITY; and

WHEREAS, the SHA acknowledges that the State has no present or long-range plans for the widening of MD 410 through or in the vicinity of the CITY; and

WHEREAS, the SHA acknowledges that past plans for the extension of Interstate 95 through Prince George's County in close proximity to MD 410 in the CITY are not being considered and have been precluded by Transportation Article § 8-601 since the late 1970's; and

WHEREAS, the SHA acknowledges that the CITY's police powers generally are to protect the common welfare of its residents and visitors and that consultation and coordination between SHA and the CITY are essential; and

WHEREAS, the CITY continues to maintain the sidewalks along MD 410 through the CITY and has a special interest in MD 410 through the CITY because it remains an important thoroughfare for local vehicular and pedestrian traffic through both residential and business areas and the SHA acknowledges that the existing crosswalks on MD 410 within the CITY are critical to pedestrian traffic and unless there is a safety concern, the crosswalks will not be removed or significantly modified; and

WHEREAS, the parties agree that SHA has full maintenance responsibility for MD 410 through the CITY, including the MD 410 AREA, but that the CITY should have a role of coordination and consultation in light of its special interest in MD 410; and

WHEREAS, the CITY and the SHA agree this Agreement will benefit the parties to this Agreement, is a necessary accommodation for the traveling public, and will promote the health, safety and general welfare of the citizens of the State, ~~and~~ Montgomery County and of the City.

NOW THEREFORE, THIS AGREEMENT WITNESSETH: that for and in consideration of the mutual covenants and premises between the parties hereto and in further consideration of the sum of One Dollar (\$1.00) paid to each party by the other, the adequacy and receipt of which is hereby acknowledged, the parties hereto agree as follows:

I. CARROLL AVENUE

- a. SHA will maintain the 7800 Block of Carroll Avenue as part of the State Highway System.

II. STATUS OF MD 410

- a. The parties agree that MD 410, including the MD 410 AREA, is to be maintained as part of the State highway system.

DRAFT-1-11-2013

- b. The SHA will determine the maintenance schedule and implementation of routine maintenance to the MD 410, consistent with SHA policy and fiscal restraints. Routine maintenance performed by SHA under current policy and fiscal restraints will include, but not be limited to, grass mowing, tree trimming, removal of fallen trees, bush trimming, litter pick-up, sweeping, roadway patching, concrete repairs, inlet repairs or replacement, pipe repairs or cleaning, sign repairs or installation, line striping, pavement markings, snow removal operations, graffiti removal, and animal carcass removal. Through this MOU the CITY grants to SHA permission to undertake this maintenance beyond the existing edge of the curb along the MD 410 Area.
- c. In the event of an emergency, the CITY will contact SHA and describe the nature of the emergency. SHA will then assess and address the situation accordingly.
- d. The SHA contact in charge of communications regarding maintenance of MD 410 within the CITY is Augustine “Augie” Rebish, Deputy District Engineer, SHA District 3, (301) 513-7331, or his successor.

III. UTILITY PERMITS

In the event an entity requests a utility permit from SHA for work to be performed in the MD 410 right-of way within the CITY, SHA will contact the CITY and provide the CITY with the permit application and drawings. Prior to the issuance or modification of any permit, the CITY will be given notice and an opportunity to comment. ~~Unless otherwise notified, the CITY will then have three (3) business days from the date on which it has received the proposed permit application and drawings, to provide comments to SHA.~~ SHA will respond to the CITY’s concerns and will then provide the issued utility permit to the CITY. SHA also shall respond promptly to any concerns raised by the CITY while work is being performed in the MD 410 right-of way within the CITY.

- a. The SHA contact in charge of communications regarding utility permitting for MD 410 within the CITY is Victor F. Grafton, District Utility Engineer, SHA District 3, (301) 513-7350, or his successor.
- b. The permit application and supporting documents, including drawings as well as the approved permit, when it becomes available, will be delivered to: City Engineer, Ali Khalilian, 31 Oswego Avenue, Silver Spring, Maryland 20910; alik@takomagov.org; (301) 891-7620, or his successor.

IV. SIGNALIZATION

- a. The CITY will receive notice of proposed signalization changes along the MD 410 within the CITY and will be provided the opportunity to comment.

DRAFT-1-11-2013

- b. The SHA, in cooperation with the CITY, will use its best efforts to explore the possibility of transferring control of MD 410 traffic signal operations within the CITY to Montgomery County. In support of this effort, SHA will promptly conduct an analysis of SHA traffic signals along MD 410 within the CITY to determine the need for upgrades, if any. Within 180 days of the execution of this Agreement, SHA will provide the CITY information on the estimated cost and extent of work required to transfer control of MD 410 traffic signal operations within the CITY to Montgomery County. If practicable and mutually agreeable, SHA and the CITY may include other signals in the CITY as part of this analysis. SHA shall undertake the upgrades to the traffic signals identified in the analysis by the completion of Fiscal Year 2015 so that the signals may be maintained by Montgomery County by the completion of Fiscal Year 2015, if state or local funds are available for this purpose by the completion of Fiscal Year 2013. If funds are not available by the end of Fiscal Year 2013, the parties will seek funding for this project in subsequent years until the upgrades are complete and the signals are transferred to Montgomery County.
- c. The SHA contact in charge of communications regarding signalization in and around the vicinity of MD 410 within the CITY is the Assistant District Engineer, SHA District 3 Traffic, (301) 513-7498.

V. SIGNS

- a. In the event the SHA determines ~~,in its sole and absolute discretion,~~ that the installation of a new sign by SHA is necessary along MD 410 within the CITY, SHA will contact the CITY. Prior to any changes, the CITY will be given notice and an opportunity to comment.
- b. The SHA contact in charge of communications regarding signage in and around the vicinity of MD 410 within the CITY is the Assistant District Engineer, SHA District 3 Traffic, (301) 513-7498.

VI. PEDESTRIAN CROSSWALKS

- a. The SHA acknowledges the CITY's interest in pedestrian crosswalks along MD 410 within the CITY. Prior to any changes, the CITY will be given notice and an opportunity to comment.
- b. The SHA contact in charge of communications regarding pedestrian crosswalks in and around the vicinity of MD 410 within the CITY is the Assistant District Engineer, SHA District 3 Traffic, (301) 513-7498.
- c. SHA agrees to expedite its review of a new crosswalk the CITY is requesting at Grant Avenue and MD 410 (Carroll Avenue).

VII. SIDEWALKS

DRAFT-1-11-2013

- a. Installation of new sidewalks along State highways where none exist today may be eligible for construction funding under the provisions of SHA's Sidewalk Retrofit Program. Once constructed and in accordance with the Annotated Code of Maryland relating to Construction and Maintenance of Sidewalk (8-630(6)(i), the maintenance and repair of sidewalk would then become the responsibility of the political subdivision in which the sidewalk is located. The SHA will continue to upgrade sidewalk ramps and curb cuts to current ADA standards and in accordance with SHA's Accessibility Guidelines for Pedestrian Facilities along State Highways when work is performed on or adjacent to a state road. ~~Under the Annotated Code, absent a capital improvement project for the adjacent highway, t~~ The local jurisdiction CITY is responsible for securing rights of way for the placement of new sidewalk and may be required to provide a funding match.
- b. The SHA contact in charge of communications regarding sidewalks in and around the vicinity of MD 410 within the CITY is Lisa Choplin, Chief, Office of Highway Development, Innovative Contracting Division, or her successor.

VIII. STORMWATER

- a. SHA shall be responsible for managing stormwater on MD 410, including pipes and inlets.
- b. The SHA contact in charge of communications regarding SHA's stormwater management facilities in and around the vicinity of MD 410 within the CITY is Karuna Pujara, Chief, Office of Highway Development, Highway Hydraulics Division, SHA District 3, (410) 545-8390, or her successor.

IX. NOTICES AND COMMUNICATIONS

Notices and communications required under the terms of this Agreement shall be made or sent to the following:

If to SHA:

- A. Kate Mazzara
Assistant District Engineer
District 3 – Project Development
9300 Kenilworth Avenue
Greenbelt, Maryland 20770
Tel: (301) 513-7346
Fax: (301) 513-7390
Email: KMazzara@sha.state.md.us

and

Brian Young

DRAFT-1-11-2013

District Engineer
District 3
9300 Kenilworth Avenue
Greenbelt, Maryland 20770
Tel: (301) 513-7311
Fax: (301) 513-7415
Email: BYoung@sha.state.md.us

With copies to:

E. Glenn Klaverweiden
Agreements Coordinator
Regional and Intermodal Planning Division
Maryland State Highway Administration
707 North Calvert Street, MS C-502
Baltimore MD 21202
Tel: (410) 545-5677
Fax: (410) 209-5025
Email: gklaverweiden@sha.state.md.us
and

B. If to CITY:

Daryl Braithwaite
Public Works Director
31 Oswego Avenue
Silver Spring, Maryland 20910
Phone:
Fax:
E-mail: DarylB@takomagov.org

With copies to:

Susan C. Silber, Esquire
City Attorney for the City of Takoma Park
Silber, Perlman, Sigman & Tilev, P.A.
7000 Carroll Avenue, Suite 200
Takoma Park, Maryland 20912-4437
Phone: (301) 891-2200
Fax: (301) 891-2206
Email: Silber@SP-law.com

X. GENERAL PROVISIONS

- a. This Agreement shall inure to and be binding upon the Parties, their agents, successors and assigns.

DRAFT-1-11-2013

- b. If SHA is delayed, hindered or prevented from performing any act or thing required to be performed pursuant to the terms of this Agreement because of budgetary constraints, strikes, lockouts, casualties, acts of God, labor troubles, material shortages, riots, insurrection, war or other causes beyond its reasonable control, then the performance of such act or thing shall be excused for the period of delay and the time for performance of such act or thing shall be excused for the period of delay and the time for performance of any act or thing shall be extended for a period equivalent to the period of such delay.
- c. This Agreement and the rights and responsibilities of the parties hereto shall be determined in accordance with Maryland law and in Maryland courts.
- d. The recitals (WHEREAS) clauses at the beginning of this Agreement are incorporated herein as substantive provisions of this Agreement.
- e. If either party changes the designated contact persons listed in this Agreement, the other party will be notified.
- e. ~~f.~~ Unless a different time is specified herein, if a provision of this Agreement provides notice and an opportunity to comment, the CITY will provide its comments within ten (10) business days of receipt of notice of the proposed action. With regard to unusual or large-scale projects, as determined by the City, the City shall be entitled to twenty (20) business days to provide comments to SHA. The SHA will review the CITY's comments and respond prior to commencing any action unless legitimate safety concerns require some immediate action of the part of SHA. In all instances, no permits shall be issued until all CITY issues have been resolved to the satisfaction of the CITY and SHA.
- g. Notwithstanding any provision of this Agreement to the contrary, the CITY shall retain the authority under its police power to respond appropriately to protect the common welfare of its residents and visitors and SHA shall retain the authority to respond, as necessary, to any emergency or unsafe condition within its right-of-way.
- g.h. SHA will submit to review by the Montgomery County Historic Preservation Commission and the Maryland Historic Trust for review of all capital projects beyond the curbline of MD 410 as the curbline exists on February 19, 2013 affecting either the national or the local the Takoma Park Historic Districts.

DRAFT-1-11-2013

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 written above.

MARYLAND STATE HIGHWAY ADMINISTRATION

Witness

BY: _____ (Seal)
Melinda B. Peters Date
Administrator

APPROVED AS TO FORM AND SUFFICIENCY

Assistant Attorney General

RECOMMENDED FOR APPROVAL LEGAL

Gina M. Anthony
Director
Office of Real Estate

Gregory D. Welker
Deputy Administrator/Chief Engineer
For Operations

Douglas H. Simmons
Deputy Administrator/Chief Engineer
For Planning, Engineering, Real Estate
and Environment

Lisa B. Connors
Director
Office of Finance

DRAFT-1-11-2013

**CITY OF TAKOMA PARK,
a body corporate and politic**

ATTEST:

BY: _____ (Seal)
Bruce R. Williams Date
Mayor

**APPROVED AS TO FORM
AND LEGAL SUFFICIENCY**

Susan Silber
City Attorney