APPENDIX F

MD SHA / Maryland Historical Trust – Section 106 Memorandum of Agreement (MOA)

MEMORANDUM OF AGREEMENT
AMONG THE FEDERAL HIGHWAY ADMINISTRATION,
THE MARYLAND STATE HISTORIC PRESERVATION OFFICER
AND
THE MARYLAND DEPARTMENT OF TRANSPORTATION
STATE HIGHWAY ADMINISTRATION
PURSUANT TO 36 CFR PART 800
REGARDING THE WIDENING OF MD 175: BROCK BRIDGE ROAD TO MD 170
ANNE ARUNDEL COUNTY, MARYLAND

WHEREAS, the Federal Highway Administration (FHWA) proposes to assist the Maryland State Highway Administration (MD SHA) with the widening of MD 175 between Brock Bridge Road and MD 170 in Anne Arundel County (Undertaking;); and

WHEREAS, after detailed study of alternatives, the MD SHA has selected the following Preferred Alternative for construction: Alternative 4 Modified from west of Brock Bridge Road to MD 295, Alternative 6 with the 21½ Street Option from MD 295 to MD 32, Alternative 2 (Enhanced TSM) from MD 32 to MD 170, and MD 175/MD 295 Interchange Option F; and

WHEREAS, the FHWA has determined that the Undertaking will have adverse effects on Trusty Friend (MIHP No. AA-123) which is eligible for inclusion in the National Register of Historic Places (NRHP); and

WHEREAS, the FHWA has consulted with the Maryland State Historic Preservation Officer (MD SHPO) pursuant to 36 CFR 800, the regulations implementing Section 106 of the National Historic Preservation Act (16 U.S.C. 470f); and

WHEREAS, MD SHA has participated in the consultation, has responsibilities for implementing stipulations under the Memorandum of Agreement (MOA) and has been invited to be a signatory to the MOA pursuant to 36 CFR §800.6(c)(2); and

WHEREAS, FHWA has identified and consulted with the following parties in the Section 106 process: Ms. Elizabeth Brown, Ms. Sarah Shannon (Owner(s) of Trusty Friend), Fort George G. Meade, the National Park Service, the Jessup Improvement Association, the Odenton Heritage Society, and the Anne Arundel County Office of Planning and Zoning Office of Environmental and Cultural Resources; and

WHEREAS, the FHWA notified the Advisory Council on Historic Preservation (ACHP) of the adverse effect determination and the ACHP declined to participate in the consultation; and

WHEREAS, the views of the public regarding this undertaking have been sought and considered through a public meeting held on June 26, 2008; and

NOW, THEREFORE, the FHWA, MD SHPO, and MD SHA agree that the undertaking shall be implemented in accordance with the following stipulations in order to take into account the effect of the undertaking on historic properties.

STIPULATIONS

The FHWA and MD SHA shall ensure that the following measures are carried out:

I. Treatment of Standing Historic Properties -- Trusty Friend (MIHP No. AA-123)

A. Landscape Plan: At 30% completion of design of MD 175 Segment 9, MD SHA shall develop and implement a Landscape Plan to provide an appropriate vegetative buffer between Trusty Friend and the proposed Undertaking. The vegetative buffer shall occur within MD SHA's right-of-way for the MD 175 widening and encompass an area on the north side of Trusty Friend along its revised NRHP boundary. In developing the Landscape Plan, MD SHA will take into account the type of trees and shrubs that are present in the area of the proposed right-of-way acquisition in order to restore the appearance of the wooded area.

B. Review: Prior to implementation MD SHA shall provide a copy of the Landscape Plan to the MD SHPO and the Owner(s) of Trusty Friend for review and comment. MD SHPO and Owner(s) of Trusty Friend's reviews are subject to a thirty (30) day period beginning upon the date of receipt of said Landscape Plan. FHWA may assume MD SHPO and Owner(s) of Trusty Friend concurrence if there is no response from either the MD SHPO or the Owner(s) of Trusty Friend during that time frame.

C. Implementation: MD SHA shall implement the approved Landscape Plan as part of the construction of the Undertaking's Contract for Segment 9 or not later than one year following the completion of Segment 9.

D. Tree Protection: MD SHA will insert a special provision in the Undertaking's Contract Documents requiring that any tree immediately adjacent to the revised Trusty Friend NRHP boundary whose trunk, roots or branches extend into MD SHA's right-of-way acquisition area will be placed in a "Tree Protection Area" and that these will be examined and treated by an ISA Certified Arborist. The treatments will include, but are not limited to root pruning, crown thinning, aeration and fertilization by the ISA Certified Arborist prior to commencement of, during and upon completion of construction of the Undertaking.

E. Modifications: MD SHA shall coordinate any change, modification, or refinement to the design or scheduling of this Undertaking that may potentially impact the viewshed of Trusty Friend with the MD SHPO and the Owner(s) of Trusty Friend at that time, in accordance with the provisions of Stipulation III, Ancillary Activities and Alignment Modifications.

F. MIHP Addendum: Upon the completion of the Undertaking, MD SHA shall prepare an Addendum to the existing MIHP record that describes and justifies the revised NRHP boundary, illustrates the new boundary on mapping, and documents the post-construction condition of the property in photographs that meet the MD SHPO's standards and guidelines.

II. Unexpected Discovery of Historic Properties

Should historic properties be unexpectedly identified during the implementation of the Undertaking, FHWA and MD SHA shall ensure that reasonable efforts are made to avoid, minimize, or mitigate adverse effects to such properties, and shall consult the MD

SHPO to resolve any unavoidable adverse effects pursuant to 36 CFR § 800.6. FHWA and MD SHA shall ensure that any resulting cultural resources work is accomplished in accordance with the relevant performance standards in Stipulation V.

III. Ancillary Activities and Alignment Modifications

Related ancillary activities including, but not limited to, environmental stewardship measures, stormwater management facilities, wetland mitigation sites, parkland mitigation sites, reforestation areas, hiker/biker facilities, or alignment modifications to the previously investigated alternatives may be added to this Undertaking in the future. If retained in future design plans, this specifically includes a proposed stormwater management pond with boundaries corresponding to the Anne Arundel County tax parcel on Map 13, Grid 11, Parcel 169.

Should such activities be added for which cultural resources studies have not been completed, MD SHA shall ensure that consultation ensues with the MD SHPO and other relevant consulting parties and that all required cultural resources studies are implemented in accordance with the applicable performance standards in Stipulation V and with the following coordination procedures:

A. Identification: MD SHA professional cultural resources staff shall review any additions or changes to the project and implement identification investigations as necessary. The MD SHA shall provide all completed information to the MD SHPO and all consulting parties under this MOA for review and comment.
B. Evaluation: The MD SHA shall ensure that all historic resources identified in any areas inventoried under Stipulation III.A will be evaluated in accordance with 36 CFR §800.4(c). The results of any such evaluation efforts shall be provided to the MD SHPO and all consulting parties under this MOA for review and to the MD SHPO for concurrence. The consulting parties shall provide comment within 30 days of the receipt of acceptable documentation.
C. Treatment: Should any property eligible for inclusion in the NRHP be identified under Stipulation III.A and III.B, the MD SHA shall make a reasonable good-faith effort to avoid adversely impacting the resources by relocating or modifying the proposed action. If adverse impacts are unavoidable, the MD SHA and MD SHPO and all consulting parties to this MOA shall consult to develop and implement appropriate treatment options. All work shall be accomplished in accordance with the performance standards outlined in Stipulation V.

IV. Coordination with the Maryland Historical Trust Act of 1985

The MD SHPO agrees that fulfillment of the terms of this MOA will satisfy the responsibilities of MD SHA and any other Maryland state agency under the requirements of the Maryland Historical Trust Act of 1985, as amended, State Finance Procurement Article §§5A-325 and 5A-326 of the Annotated Code of Maryland, for the components of the Undertaking that require licensing, permitting, and/or funding actions from Maryland State agencies;

V. Administration

A. Professional Qualifications: MD SHA shall ensure that all archeological work carried out pursuant to this agreement is conducted by or under the direct supervision of a person or persons meeting at a minimum the Secretary of the Interior's Professional Qualifications Standards (48 FR 44738-9 and 36 CFR Part 61) for Archeologists. All architectural work shall be carried out by or under the direct supervision of a person or persons meeting at a minimum the Secretary of the Interior's Professional Qualification Standards (48 FR 44738-9 and 36 CFR Part 61) for Architectural History.

B. Standards and Guidelines: All cultural resource work carried out pursuant to this MOA shall be conducted in a manner consistent with the principals and standards contained in the documents (and subsequent revisions thereof) listed below:
- *Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation* (48 FR 44716-44742);
- *Standards and Guidelines for Archeological Investigations in Maryland* (Shaffer and Cole 1994);
- *Standards and Guidelines for Architectural and Historical Investigations in Maryland* (Maryland Historical Trust, 2000);
- *Advisory Council on Historic Preservation – Section 106 Archaeology Guidance* (ACHP 2007);
- *Recommended Approach for Consultation on Recovery of Significant Information from Archaeological Sites* (ACHP 1999);
- *Secretary of the Interior's Standards for the Treatment of Historic Properties* (36 CFR Part 68).

C. Curation: MD SHA shall ensure that all materials and records (including recovered artifacts, documentation, maps, and photographs) generated by the project for which clear title can be obtained are processed consistent with the *Technical Update No. 1 of the Standards and Guidelines for Archeological Investigations in Maryland* (MHT, revised 2005) and are submitted to the MD SHPO for curation in accordance with the *Curatorial Services Agreement between the Maryland State Highway Administration and the Maryland Historical Trust* (dated 2008).

VI. Dispute Resolution

A. Should the MD SHPO, or any of the signatories to this MOA, object in writing within 30 days to any documents or actions proposed pursuant to this MOA, the FHWA shall consult with the objecting party to resolve the objection. If after initiating such consultation the FHWA determines that the objection cannot be resolved through consultation, the FHWA shall forward all documentation relevant to the objection to the ACHP including the FHWA's proposed response to the objection. Within 30 days after receipt of all pertinent documentation, the ACHP shall exercise one of the following options:

1) Advise the FHWA that the ACHP concurs in the FHWA' proposed response to the objection, whereupon the FHWA shall respond to the objection accordingly;
2) Provide the FHWA with recommendations, which the FHWA shall take into account in reaching a final decision regarding its response to the objection; or
3) Notify the FHWA that the objection will be referred for comment pursuant to 36 CFR §800.7, and proceed to refer the objection and comment. The resulting comment shall be taken into account by the FHWA in accordance with 36 CFR §800.7(c)(4), and Part 110(1) of the National Historic Preservation Act.

B. Should the ACHP not exercise one of the above options within 30 days after receipt of all pertinent documentation, the FHWA may assume the ACHP's concurrence in its proposed response to the objection.

C. The FHWA shall take into account any ACHP recommendation or comment provided in accordance with this stipulation with reference only to the subject of the objection; the FHWA' responsibility to carry out all actions under this MOA that are not the subjections of the objection shall remain unchanged.

VII. Resolution of Objections by the Public

If at any time during implementation of the measures stipulated in this MOA, should any objections pertaining to any such measure or its manner of implementation be raised by a member of the public, the FHWA shall notify the parties in this MOA and take the objection into account, consulting with the objector and, should the objector so request, with any of the parties to this MOA to resolve the objection.

VIII. Amendment

If any of the signatories to this MOA believes that the terms of the MOA cannot be carried out, or that an amendment to the terms must be made, that signatory shall immediately consult with the other signatories to develop amendments. If an amendment cannot be agreed upon, the dispute resolution process set forth in Stipulation VI will be followed.

IX. Termination

Any signatory to this MOA may terminate the MOA by providing 30 days written notice to the other parties, provided that the parties will consult during the period prior to termination to seek agreement on amendments or other actions that would avoid termination. Termination of this MOA would require compliance with 36 CFR 800. This MOA may be terminated by the execution of a subsequent agreement that explicitly terminates or supersedes its terms.

X. Duration/Sunset

This MOA shall be null and void if its terms are not carried out within ten (10) years from the date of its execution, unless the signatories agree in writing to an extension for carrying out its terms.

Execution of this MOA by the FHWA, the MD SHPO, and MD SHA, and implementation of its terms, is evidence that the FHWA has afforded the signatories an opportunity to comment on the Undertaking and its effects on historic properties, and that FHWA has taken into account the potential effects of the Undertaking on historic properties.

FEDERAL HIGHWAY ADMINISTRATION

for **Hassan Raza, Division Administrator** — **Date** 04/01/2011

MARYLAND STATE HISTORIC PRESERVATION OFFICE

J. Rodney Little, Maryland State Historic Preservation Officer — **Date** 3-4-11

MARYLAND DEPARTMENT OF TRANSPORTATION
STATE HIGHWAY ADMINISTRATION

Neil J. Pedersen, Administrator — **Date** 3/24/11