

**MEMORANDUM OF AGREEMENT
BETWEEN
FEDERAL TRANSIT ADMINISTRATION
MUSCOGEE (CREEK) NATION
GEORGIA DEPARTMENT OF TRANSPORTATION
GEORGIA DEPARTMENT OF NATURAL RESOURCES,
HISTORIC PRESERVATION DIVISION
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
AND
CITY OF ALBANY
FOR
GDOT PROJECT T003329
DOUGHERTY COUNTY, GEORGIA**

WHEREAS, the Federal Transit Administration (FTA) plans to fund Georgia Department of Transportation (GDOT) Project T003329, City of Albany, Dougherty County, Georgia (undertaking); and,

WHEREAS, the City of Albany is the subgrantee of the FTA funding provided to GDOT; and,

WHEREAS, the undertaking consists of construction of a multimodal transportation center in downtown Albany, including a transit center operations building, an intercity bus/community center building, a loading platform, and associated parking area; and,

WHEREAS, the Albany Downtown Historic District, Albany District Pecan Growers' Exchange, Albany Railroad Depot Historic District, St. Nicholas Hotel, Northside Historic District, Parrish Service Station, Albany Freedom Historic District, the Historic Railroads of Albany and Site 9DU192 were identified in the undertaking's area of potential effects as resources listed in or eligible for listing in the National Register of Historic Places (NRHP); and,

WHEREAS, an Assessment of Effects for these resources was completed on July 16, 2010 and concurred with by the Georgia State Historic Preservation Officer (SHPO) on August 16, 2010; and,

WHEREAS, FTA has consulted with the Georgia SHPO, federally recognized tribal governments, the Southwest Georgia Regional Commission, the Flint Riverquarim, Sherman Timberlands, and the Advisory Council on Historic Preservation (ACHP) pursuant to 36 CFR Part 800, regulations implementing Section 106 of the National Historic Preservation Act (16 U.S.C. 470F); and,

WHEREAS, the proposed project has met the *Criteria for Council Involvement in Reviewing Individual Section 106 Cases*, as the consultation may present questions of policy or interpretation about how the regulations "Protection of Historic Properties" (36 CFR Part 800) are applied, the circumstances of the review have the potential to present procedural problem, and the ACHP indicated its interest in participating in the consultation to resolve Adverse Effects on October 19, 2010; and,

WHEREAS, construction of this undertaking provides the City of Albany with an opportunity to promote the rehabilitation and reuse of historic properties and economic development that may ultimately evolve from enhanced transit; and,”

NOW, THEREFORE, FTA, the SHPO, and the ACHP 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 the historic properties.

STIPULATIONS

I. Measures to Mitigate Adverse Effects and Minimize Harm

- A). The FTA will ensure the following measures are carried out in coordination with GDOT in order to mitigate the Adverse Effect to Site 9DU192:

Additional Testing:

- 1) As part of the project design plans, GDOT will ensure that a study will be conducted by qualified geophysical archaeologists using ground-penetrating radar (GPR) to determine the extents of Site 9DU192. The qualified geophysical archaeologists will meet at a minimum the qualifications set forth in 36 CFR Part 66, Appendix C. At least 30 days prior to the commencement of the GPR study, the qualifications of the geophysical archaeologists will be provided by GDOT to the Muscogee (Creek) Nation.
- 2) Prior to the commencement of the GPR study, GDOT will ensure that a testing plan is developed to guide the study effort. The testing plan will be provided to the Georgia SHPO and the Muscogee (Creek) Nation for review and comment prior to the start of the study. At a minimum, the study will utilize two different GPR antennas to provide the potential to locate both shallow and deep archaeological deposits. Additionally, five to seven 2x2 meter excavation units shall be excavated in the existing parking lot to test for the possibility of archaeological deposits that cannot be identified by the use of GPR and to ground-truth the GPR results. Design plans will be prepared with this information to avoid and to minimize ground disturbance within the limits of Site 9DU192.
- 3) Should the geophysical research prove unsuccessful in delimiting the locations of subsurface archaeological features, then subsurface archaeological testing would be used to expose and evaluate cultural deposits on the site. Subsurface testing would be completed through machine trenching and block stripping of the site surfaces in areas where the GPR results were either inconclusive or had identified potential human burial related features.
- 4) The draft report of the archaeological GPR study, the results of the cross trench excavation, and the results of any subsurface archaeological testing will be submitted to the Muscogee (Creek)

Nation and the Georgia SHPO for review and comment.

Treatment Measures:

- 5) Upon completion of the GPR study, GDOT will ensure that the project plans are designed to preserve archaeological resources in place as much as possible while meeting the need and purpose of the project. The conceptual project plans will be submitted by GDOT to the Muscogee (Creek) Nation and the Georgia SHPO for review and comment.
- 6) Based on previous survey and testing results, including the archaeological GPR study, cross trench excavation, any subsurface archaeological testing and in consultation with the Muscogee (Creek) Nation and the Georgia SHPO, FTA will ensure that a data recovery plan is developed for those areas of archaeological site 9DU192 where ground-disturbing construction cannot be avoided by project design. The plan will be consistent with the ACHP's "Recommended Approach for Consultation on Recovery of Significant Information from Archaeological Sites", and the FTA will ensure that the plan is implemented. The data recovery plan will be submitted by GDOT to the Georgia SHPO and the Muscogee (Creek) Nation, and the comments from the Muscogee (Creek) Nation and the Georgia SHPO will be taken into consideration prior to the implementation of the data recovery plan.
- 7) All archaeological work called for in Stipulation 6, described above, will be conducted under the direct supervision of an archaeologist who meets, at a minimum, the qualifications set forth in 36 CFR Part 61, Appendix C.
- 8) The archaeological documentation and artifacts generated by GDOT Project T003329, Dougherty County, Georgia will be curated at a suitable repository in Georgia agreed upon by the FTA, Muscogee (Creek) Nation, Georgia SHPO, and GDOT which meets the criteria as set forth in 36 CFR 79 (Curation of Federally-Owned and Administered Archaeological Collections). Upon request, the project documentation, archaeological field notes, maps, and other pertinent data will be made available to Federal, State, Tribal and other parties as appropriate.
- 9) The draft report of the archaeological data recovery investigations will be submitted by GDOT to the Muscogee (Creek) Nation and the Georgia SHPO for review and comment.
- 10) Copies of the final report of the archaeological data recovery investigations, incorporating comments received on the draft report will be supplied by GDOT to the ACHP, the Muscogee (Creek) Nation, and the Georgia SHPO.
- 11) The City of Albany will ensure that an archaeologist meeting, at a minimum, the qualifications set forth in 36 CFR Part 61, Appendix C, will supervise all subsurface disturbance during

construction at the project site. The qualifications of the archaeologist supervising the subsurface disturbance will be provided by GDOT to the Muscogee (Creek) Nation at least 30 days prior to the commencement of subsurface disturbance. The archaeological supervision will include the recovery, recording, and reporting of all subsurface archaeological features or artifact concentrations located during construction. The supervising archaeologist will provide a weekly update via email to the Muscogee (Creek) Nation Tribal Historic Preservation Officer (THPO) regarding the progress of the subsurface ground disturbance and the archaeological supervision. If any archaeological features or concentrations are located during project construction, land disturbing activity shall be halted in the immediate vicinity of the resource(s). The archaeologist will immediately notify the Georgia SHPO and proceed in accordance with Stipulations I.A.13 and I.A.14.

Construction Protections:

- 12) Special provisions in the construction contract will be implemented requiring the contractor to ensure the following: place orange fabric safety fence along the limits of the proposed project's APE at archaeological site 9DU192; label the portions of archaeological site 9DU192 outside the project's APE as Environmentally Sensitive Areas (ESAs) and prohibit the use of staging, construction easements, and vehicular use within the ESAs; and notify the City of Albany 48 hours prior to subsurface excavation or any construction activity that could result in subsurface disturbance, so that an archaeologist meeting, at a minimum, the qualifications set forth in 36 CFR Part 61, Appendix C, can supervise all subsurface disturbance at the project site. In addition, special provisions in the construction contract will specify the following: should any unanticipated discovery of human remains occur, all construction activity will immediately cease in accordance with Stipulation I.A.13, and should archaeological supervision detect previously unidentified archaeological resources, all land disturbing activity will immediately cease in accordance with Stipulation I.A.14.

Unanticipated Discoveries:

- 13) Should any inadvertent discovery of human remains occur during implementation of the archaeological work or during project construction, project construction will immediately cease, and no construction will resume until the Muscogee (Creek) Nation and all applicable federally recognized Native American tribal governments are notified and consulted as to the treatment and disposition of the human remains in accordance with the ACHP's "Policy Statement Regarding Treatment of Burial Sites, Human Remains, and Funerary Objects."
- 14) If any previously unidentified archaeological resources are located during project construction, land disturbing activity shall be halted in the immediate vicinity of the resource(s) to provide no more than five days time for the supervising archaeologist, in consultation with the State Historic

Preservation Officer, to evaluate their significance by applying National Register criteria, and allowing for their proper excavation and recovery. The work stoppage will not exceed the minimum time necessary for completion of this work for each occurrence of a significant archaeological resource (see GDOT Standard Specifications of Road and Bridges, 1993, Section 107.13(A), paragraphs 4 and 5).

- B) The FTA will ensure the following measures are carried out in order to minimize harm to the Albany Downtown Historic District, Albany District Pecan Growers' Exchange, Albany Railroad Depot Historic District, St. Nicholas Hotel, Northside Historic District, Parrish Service Station, Albany Freedom Historic District, and the Historic Railroads of Albany:

Conceptual Plans Design Review:

- 1) GDOT will provide the conceptual plans, as they become available, to the Georgia SHPO, other consulting parties, and the Albany Historic Preservation Commission for concurrent review and comment to ensure that the plans adhere to the *Secretary's Standards* and to ensure no changes in the effects assessment. The review of the plans will be coordinated with the application for a Certification of Appropriateness (COA) from the Albany Historic Preservation Commission as required in Section I.B.3. GDOT will incorporate these comments into the preliminary construction plans and documents.
 - a. Plan details including the buildings' footprints, dimensions and locations will be submitted to the Georgia SHPO and other consulting parties for review and comment. In order to ensure compliance with the *Secretary's Standards*, the buildings' footprints, dimensions, proportions, scale and locations will be consistent with the historic buildings located in their immediate vicinity along N. Washington Street and Roosevelt Avenue. The *Albany Design Guidelines* will be used for guidance in creating an appropriate design within the local context. Namely, the buildings will be placed with their primary façade oriented towards the street. The buildings will be placed as close as possible to the zero lot line of the property within the design constraint of avoiding archaeological resources. No buildings will be constructed that exceed three stories in height, and no building will include a front, street elevation longer than 100 feet.
 - b. Plan details including proposed landscaping, fencing, paving and sidewalk materials and other site accessories such as benches, trash receptacles, lighting, lighting posts and other aesthetic features will be submitted to the Georgia SHPO and other consulting parties for review and comment. In order to ensure compliance with the *Secretary's Standards*, the proposed parking areas will be shielded through landscaping. Landscaping will also be used to shield service areas, such as the location of dumpsters. A privacy/security fence will be constructed along the east side of the project site to prevent access by persons or debris to the private property to the east. Lighting will be minimized to that required for safety at the site, in order to retain the character of the historic district. The *Albany Design Guidelines* will be used for guidance in creating an appropriate site design within the local context.

- c. Plan details including the design and architectural details of the buildings will be submitted to the Georgia SHPO and other consulting parties for review and comment. In order to ensure compliance with the *Secretary's Standards*, the exterior of the buildings will be brick or stucco to be compatible with the character of the surrounding historic commercial buildings. The buildings will use a flat roof or a roof hidden behind the front wall. A storefront-style opening with display windows and at least one entry to the first floor will be located on the first floor of the buildings to ensure compatibility with the existing streetscape. The *Albany Design Guidelines* will be used for guidance in creating an appropriate design within the local context.
- d. Plan details including the site plan, showing the location of driveways, parking areas, sidewalks and any other paved areas, will be submitted to the Georgia SHPO and other consulting parties for review and comment. In order to ensure compliance with the *Secretary's Standards*, bus platforms and parking areas will be located behind the buildings. Landscaping will be utilized to shield these facilities from view. The *Albany Design Guidelines* will be used for guidance in creating an appropriate site design within the local context.

Preliminary Construction Plans Design Review and Certificate of Appropriateness:

- 2) GDOT will provide the preliminary construction plans, as they become available, to the Georgia SHPO, other consulting parties, and the Albany Historic Preservation Commission for review and comment to ensure that the plans adhere to the *Secretary's Standards* and to ensure no changes in the effects assessment. GDOT will incorporate these comments into the final construction plans and documents. Plan details will be provided as specified in Stipulation I.B.1.a-d.
- 3) GDOT will apply for a Certificate of Appropriateness from the Albany Historic Preservation Commission in accordance with the Albany Historic Preservation Ordinance.

Construction Protections:

- 4) GDOT will provide any significant changes to the 90% complete construction plans, as they become available, to the Georgia SHPO, other consulting parties, and the Albany Historic Preservation Commission to ensure no changes in the effects assessment and compliance with the *Secretary's Standards*. Plan details of any significant changes will be provided as specified in Stipulation I.B.1.a-d.
- 5) The Georgia SHPO will have the opportunity to complete site visits during the construction phase as they determine necessary.
- 6) GDOT will develop a plan for monitoring ground borne vibration during construction should construction methods selected during final design indicate vibration might affect historic properties. Should vibration monitoring indicate that construction activities could change the effect to historic properties, FTA and GDOT will work with consulting parties to develop an

amendment to this MOA to minimize and to mitigate these adverse effects in accordance with Stipulations V.

Changes in Effects:

- 7) If it should prove infeasible for GDOT to adhere to the *Secretary's Standards*, if the project has unanticipated effects on historic properties, or if other factors result in a change in the intended effects to historic resources, FTA and GDOT will consult with consulting parties in a continuance of the Section 106 process to develop appropriate mitigation measures and amend this MOA to mitigate these adverse effects in accordance with Stipulations V.

II. Design Review

Following receipt of a review request from GDOT accompanied by the necessary documentation, a thirty (30) day review period will be provided for consulting parties to comment for all reports and plans provided for review pursuant to this MOA.

III. Term of the Agreement

If GDOT Project T003329 is not implemented within seven (7) years of this agreement's ratification, this agreement shall be considered null and void, and FTA, if it chooses to continue with the undertaking, shall reconsider the terms of this agreement in accordance with 36 CFR Part 800.

IV. Dispute Resolution

If any signatory to this agreement objects within thirty (30) days to any reports or plans provided for review pursuant to this MOA, FTA shall consult with such party to resolve the objection. If FTA determines that the objection cannot be resolved, then FTA shall request further comments or recommendations of the ACHP concerning the dispute.

FTA will forward all documentation relevant to the dispute, including FTA's proposed resolution, to the ACHP. The ACHP shall provide FTA with its advice on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, FTA shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, and other signatories, and provide them with a copy of this written response. FTA will then proceed according to its final decision. If the ACHP does not provide its advice regarding the dispute within the thirty (30) day time period, FTA may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, FTA shall prepare a written response that takes into account any timely comments regarding the dispute from the signatories to the MOA, and provide them with a copy of such written response. The FTA's responsibility to carry out all actions under this MOA that are not the subject of the dispute will remain unchanged.

V. Amendments

Any signatory may propose amendments to this MOA. The MOA may be amended when such an amendment is agreed to in writing by all signatories to this MOA. The amendment will become effective on the date an executed copy thereof is filed with ACHP.

VI. Termination

If any signatory to this MOA determines that the terms of the agreement will not or cannot be carried out, that signatory shall immediately consult with the other signatories in order to develop an amendment. If within 30 days (or another period to which all signatories agree) after the initiation of consultation an amendment cannot be reached, any signatory may terminate the MOA upon written notification to the other signatories.

Once the agreement is terminated, and prior to work continuing on the undertaking, GDOT must either (i) execute a new agreement pursuant to 36 CFR § 800.6 or (ii) request, take into account, and respond to the comments of the Council under 36 CFR § 800.7. GDOT shall notify the other signatories to this agreement as to the course of action that it will pursue.

VII. Coordination with Other Federal Reviews

In the event that GDOT or another agency applies for additional federal funding or approvals for the undertaking, and the undertaking remains unchanged, such funding or approving agency may comply with Section 106 by agreeing in writing to the terms of this MOA and notifying and consulting with Georgia SHPO and ACHP. Any necessary modifications will be considered in accordance with Stipulation V.

VIII. Acknowledgment

Execution of this MOA by the FTA, the SHPO and the Council, and implementation of its terms, is evidence that the FTA has afforded the ACHP an opportunity to comment on GDOT Project T003329, Dougherty County, Georgia, and its effects on historic properties, and that the FTA has taken into account the effects of the undertaking on historic properties.

SIGNATORIES (per 36 CFR 800.6(c)(1)):

FEDERAL TRANSIT ADMINISTRATION

BY: Yvette G. Taylor DATE: 8-25-11
Yvette G. Taylor, Regional Administrator

GEORGIA STATE HISTORIC PRESERVATION OFFICER

BY: David Crass DATE: 20-2029 '11
David Crass, Division Director, Deputy SHPO/State Archaeologist

ADVISORY COUNCIL ON HISTORIC PRESERVATION

BY: John M. Fowler DATE: 9/8/11
John M. Fowler, Executive Director

INVITED SIGNATORIES (per 36 CFR 800.6(c)(2)):

MUSCOGEE (CREEK) NATION

BY: _____ DATE: _____
A.D. Ells, Principal Chief

GEORGIA DEPARTMENT OF TRANSPORTATION

BY: _____ DATE: _____
Gerald Ross, Chief Engineer

CITY OF ALBANY

BY: _____ DATE: _____
Willie Adams, Mayor

CONCURRING PARTIES (per 36 CFR 800.6(c)(3)):

SHERMAN TIMBERLANDS, LLC

BY: _____ DATE: _____

FLINT RIVER QUARIUM

BY: _____ DATE: _____

SIGNATORIES (per 36 CFR 800.6(c)(1)):

FEDERAL TRANSIT ADMINISTRATION

BY: _____ DATE: _____
Yvette G. Taylor, Regional Administrator

GEORGIA STATE HISTORIC PRESERVATION OFFICER

BY: _____ DATE: _____
David Crass, Division Director, Deputy SHPO/State Archaeologist

ADVISORY COUNCIL ON HISTORIC PRESERVATION

BY: _____ DATE: _____
John M. Fowler, Executive Director

INVITED SIGNATORIES (per 36 CFR 800.6(c)(2)):

MUSCOGEE (CREEK) NATION

BY: _____ DATE: _____
A.D. Ellis, Principal Chief

GEORGIA DEPARTMENT OF TRANSPORTATION

BY: Gerald Ross DATE: 6/10/2011
Gerald Ross, Chief Engineer

CITY OF ALBANY

BY: _____ DATE: _____
Willie Adams, Mayor

CONCURRING PARTIES (per 36 CFR 800.6(c)(3)):

SHERMAN TIMBERLANDS, LLC

BY: _____ DATE: _____

FLINT RIVER QUARIUM

BY: _____ DATE: _____

SIGNATORIES (per 36 CFR 800.6(c)(1)):

FEDERAL TRANSIT ADMINISTRATION

BY: _____ DATE: _____
Yvette G. Taylor, Regional Administrator

GEORGIA STATE HISTORIC PRESERVATION OFFICER

BY: _____ DATE: _____
David Crass, Division Director, Deputy SHPO/State Archaeologist

ADVISORY COUNCIL ON HISTORIC PRESERVATION

BY: _____ DATE: _____
John M. Fowler, Executive Director

INVITED SIGNATORIES (per 36 CFR 800.6(c)(2)):

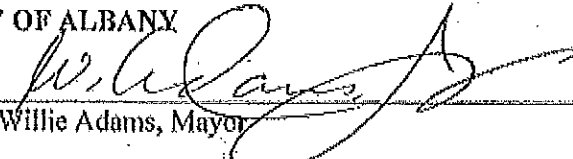
MUSCOGEE (CREEK) NATION

BY: _____ DATE: _____
A.D. Ellis, Principal Chief

GEORGIA DEPARTMENT OF TRANSPORTATION

BY: _____ DATE: _____
Gerald Ross, Chief Engineer

CITY OF ALBANY

BY:  _____ DATE: 6/28/11
Willie Adams, Mayor

CONCURRING PARTIES (per 36 CFR 800.6(c)(3)):

SHERMAN TIMBERLANDS, LLC

BY: _____ DATE: _____

FLINT RIVER QUARIUM

BY: _____ DATE: _____