

APPENDIX D
MEMORANDUM OF AGREEMENT
SECTION 106 FINDINGS

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

WHEREAS, the Federal Transit Administration (FTA) has determined that Georgia Department of Transportation (GDOT) Project T003329, Dougherty County, Georgia, will have an effect upon nine properties eligible for inclusion in the National Register of Historic Places (NRHP), and has consulted with the Georgia State Historic Preservation Officer (SHPO), federally recognized tribal governments, the Southwest Georgia Regional Commission, the Flint Riverquarim, Sherman Timberlands, and the Advisory Council on Historic Preservation (Council) 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 and the circumstances of the review have the potential to present procedural problems; and,

WHEREAS, the proposed project would construct a multimodal transportation center in downtown Albany, which would include a transit center operations building, an intercity bus/community center building, a loading platform, and associated parking area; and,

WHEREAS, nine NRHP listed or eligible properties were identified in the project's area of potential effects; and,

WHEREAS, an Assessment of Effects was completed on July 16, 2010 for these resources with findings of No Adverse Effect for 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 and Adverse Effect for Site 9DU192; and,

NOW, THEREFORE, FTA and the SHPO 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

The FTA will ensure the following measures are carried out in order to mitigate the Adverse Effect to Site 9DU192:

- 1) As part of the project design plans, a study shall be conducted by qualified geophysical archaeologists, meeting at a minimum the qualifications set forth in 36 CFR Part 66, Appendix C, using ground-penetrating radar (GPR) to determine the extents of Site 9DU192. Prior to the commencement of the GPR study, the qualifications of the geophysical archaeologists will be provided to the Muscogee Creek Nation.
- 2) Prior to the commencement of the GPR study, a testing plan will be 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 attempt 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.
- 5) Upon completion of the GPR study, the project plans will be designed to preserve archaeological resources in place as much as possible while meeting the need and purpose of the project. The project plans will be submitted 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 Council's "Handbook on Treatment of Archaeological Properties, Part III, Recommendations for Archaeological Data Recovery", and the FTA will ensure that the plan is implemented. However, 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 66, 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 Georgia DOT 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 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 to the Council, the Muscogee Creek Nation, and the Georgia SHPO.
- 11) An archaeologist meeting, at a minimum, the qualifications set forth in 36 CFR Part 66, Appendix C, will monitor all subsurface disturbance as a result of project construction at the project site.
- 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 66, Appendix C, can supervise all subsurface disturbance at the project site.
- 13) Should any inadvertent discovery of human remains occur during implementation of the

archaeological work or during project construction, the Muscogee Creek Nation and all applicable federally recognized Native American tribal governments will be notified and consulted as to the treatment and disposition of the human remains and in accordance with the Council's "Policy Statement Regarding Treatment of Burial Sites, Human Remains, and Funerary Objects."

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:

- 14) The Georgia SHPO and other consulting parties will be given the opportunity to review and comment on the conceptual plans, the preliminary construction plans and documents and any significant changes to the 90% complete construction plans, as they become available, prior to proceeding with the work to insure no changes in the effects assessment and compliance with the *Secretary's Standards*.
- 15) 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 against the street. No buildings will be constructed that exceed three stories in height, and no building will include a front, street elevation longer than 100 feet.
- 16) Plan details including proposed landscaping, and other site accessories such as benches, trash receptacles, lighting, 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. 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.
- 17) 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.

- 18) Plan details including the final site plan, showing the location of driveways, parking areas, 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.
- 19) The Georgia SHPO will have the opportunity to complete site visits during the construction phase as they determine necessary.

II. Design Review

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 Memorandum of Agreement (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 GDOT, 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 the Muscogee Creek Nation or the SHPO should object within thirty (30) days to any reports or plans provided for review pursuant to this Memorandum of Agreement (MOA), FTA shall consult with the Muscogee Creek Nation or the SHPO to resolve the objection. If FTA determines that the objection cannot be resolved, then FTA shall request further comments or recommendations of the Council concerning the dispute pursuant to 36 CFR Part 800. Any Council comment provided in response to such a request will be taken into account by FTA in accordance with 36 CFR Part 800 with reference only to the subject of the dispute. 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

The agreement may be amended when such an amendment is agreed to in writing by all signatories to this agreement. The amendment will become effective on the date an executed copy thereof is filed with Council.

VI. Termination

If any signatory to this Memorandum of Agreement 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 to the agreement. If within 30 days (or another period to which all Parties agree)

after the initiation of consultation an amendment cannot be reached, any signatory may terminate the agreement 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. 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 Council 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.

FEDERAL TRANSIT ADMINISTRATION

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

MUSCOGEE CREEK NATION

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

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

GEORGIA DEPARTMENT OF TRANSPORTATION

BY: _____ DATE: _____
Erik Steavens, Director of Intermodal

CITY OF ALBANY

BY: _____ DATE: _____
Willie Adams, Mayor