

**MEMORANDUM OF AGREEMENT
AMONG
THE UNITED STATES ARMY CORPS OF ENGINEERS, SAVANNAH DISTRICT,
THE GEORGIA STATE HISTORIC PRESERVATION OFFICER,
AND THE CITY OF DALTON
REGARDING THE
REPLACEMENT OF THE UNDERWOOD STREET BRIDGE
WHITFIELD COUNTY, GEORGIA
SAS 2024-00419
HP-250430-003**

WHEREAS, the United States Army Corps of Engineers, Savannah District (USACE) has been delegated the responsibility of overseeing the implementation of Section 404 of the Clean Water Act (CWA) (33 United States Code (U.S.C.) 1344), and the authority to issue permits under this Act; and,

WHEREAS, the USACE issues permits under Section 404 of the CWA in accordance with regulations set forth in Title 33 Code and in accordance with regulations set forth in Title 33 Code of Federal Regulations (CFR) Parts 320-332; and,

WHEREAS, in accordance with the regulations at 33 CFR Parts 320-332, the USACE is responsible for considering effects of its permit actions on historic properties in the processing and issuance of permits under its authorities, as one of several public interest factors, and is further required to make its permit decisions consonant with other related Federal environmental laws, including the National Historic Preservation Act of 1966, as amended (NHPA; formerly 16 U.S.C. 470 et seq.; now 54 U.S.C. 300101 et seq.), especially Sections 106 (formerly 16 U.S.C. 470(f); now 54 U.S.C. 306108) and 110 (formerly 16 U.S.C. 470h-2; now 54 U.S.C. 306101 et seq.) and its implementing regulation, 36 CFR 800 of that Act; and,

WHEREAS, the heads of all Federal agencies are required to take into account the effects of their actions and decisions (i.e., undertakings) on historic properties listed in or eligible for inclusion in the National Register of Historic Places (NRHP) and to allow the Advisory Council on Historic Preservation (Council) a reasonable opportunity to comment on those effects, in accordance with Section 106 of the NHPA (54 U.S.C. 306108), as amended; and,

WHEREAS, the USACE is delegated the regulatory responsibility for implementing Sections 404 of the CWA within the geopolitical boundaries of the State of Georgia, and Section 106 for permit actions on which it is the Lead Federal agency, or the sole Federal agency; and,

WHEREAS, the Georgia Department of Community Affairs Historic Preservation Division, acting as the professional staff for the Georgia State Historic Preservation Officer (GA SHPO), advises Federal agencies in making determinations of eligibility for inclusion in the NRHP and on effects of the undertaking, and comments on those agencies' determinations; and,

WHEREAS, the City of Dalton plans to carry out the replacement of the Underwood Street Bridge pursuant to permitting under Section 404 of the CWA administered by the

USACE (undertaking); and,

WHEREAS, the undertaking consists of constructing a bridge to carry Underwood Street over Mill Creek, west of Bermuda Street and east of Beechland Circle in Dalton, Whitfield County, Georgia, including demolition of the circa (ca.) 1921 closed spandrel deck arch bridge and the contemporary abandoned bridge, replacing the historic bridge with a larger bridge; and,

WHEREAS, the USACE has defined the undertaking's Scope of Analysis (Scope) for the project as a 100-meter radius around the impacts to jurisdictional waters and further defined the Area of Potential Effects (APE). The APE consists of the 1000-foot-long project corridor, containing 5.27-acres and its immediate vicinity (viewshed); and,

WHEREAS, the USACE has determined that the undertaking will have an adverse effect on the ca. 1921 Underwood Street bridge, which is eligible under Criteria A, B, and C for listing in the NRHP; and,

WHEREAS, the City of Dalton is a consulting party as an applicant for federal permitting and is therefore an invited Signatory, pursuant to 36 CFR § 800.2(c)(4); and,

WHEREAS, the USACE has consulted with the Alabama-Quassarte Tribal Town, Alabama-Coushatta Tribe of Texas, Cherokee Nation, Coushatta Tribe of Louisiana, Eastern Band of Cherokee Indians, Kialegee Tribal Town, Seminole Nation of Oklahoma, Seminole Tribe of Florida, Muscogee Nation, Poarch Band of Creek Indians, Thlopthlocco Tribal Town, and the United Keetoowah Band of Cherokee Indians in Oklahoma, and none have requested to enter into this agreement as an invited Signatory/Concurring party; and,

WHEREAS, the USACE notified the following potential Consulting parties regarding the nature of the undertaking and informed those entities of our efforts to identify historic properties and were invited to participate in the Section 106 process: The Whitfield-Murray Historical Society and the Historic Bridge Foundation, and as a result of these efforts, both have elected not to participate; and,

WHEREAS, in accordance with 36 CFR § 800.6(a)(1), the USACE has notified the Council of its adverse effect determination with specified documentation, and the Council has chosen not to participate in the consultation pursuant to 36 CFR § 800.6(a)(1)(iii);

NOW, THEREFORE, the USACE, GA SHPO, and City of Dalton 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 property.

STIPULATIONS

The USACE shall ensure that the following measures are carried out by a person meeting the applicable Secretary of the Interior's (SOI) Professional Qualifications Standards pursuant to 36 CFR § 800.2 Section 112 (a) (1) (A):

I. PHOTOGRAPHIC PERMANENT ARCHIVAL RECORD (PAR)

- A. Prior to commencing demolition of the Underwood Street bridge, digital photographs will be taken of the Underwood Street bridge including views of all elevations of the exterior, views of the interior public spaces and/or interior rooms, and structural and/or architectural/decorative detailing on both the exterior and interior of the building. Digital photographs showing the building within its setting will also be included.
- B. Utilizing the digital photographs, a photographic permanent archival record (PAR) will be produced in accordance with the *Guidelines for Establishing a Photographic Permanent Archival Record* (PAR Guidelines; Appendix A) found on SHPO's website (<https://dca.georgia.gov/document/resources/par-guidelines-2020/download>). The document will comply with the minimum level standards necessary for document retention at the SHPO. A digital draft copy of the PAR will be provided to SHPO for review/comment. The City of Dalton, will respond to SHPO comments regarding the draft PAR. After the draft has been revised, as applicable, a final archival copy of the PAR will be produced utilizing instructions provided in the PAR Guidelines document and will be provided to SHPO for retention.

II. DURATION

This Memorandum of Agreement (MOA) will expire if its terms are not carried out within five (5) years from the date of its execution. Prior to such time, the USACE may consult with the other Signatories to reconsider the terms of the MOA and amend it in accordance with Stipulation VI below.

III. POST-REVIEW DISCOVERIES

If the Undertaking's scope of work (SOW) changes after execution of this MOA, and/or if previously unknown properties are discovered as the undertaking is carried out that may be historically significant, and/or if unanticipated effects on historic properties are found, the City of Dalton will notify the USACE who will consult with the GA SHPO and all other applicable parties, including appropriate Indian tribes, to determine if additional impacts have or may occur. If the unanticipated discovery of human burials occurs, including burial features with no identifiable human remains, all work and ground disturbing activities within a 100-meter diameter of the burial shall immediately cease and the City of Dalton shall immediately notify the medical examiner, USACE, and City of Dalton within the same business day (8 hours). The USACE shall then notify the Office of the State Archaeologist and the GA SHPO. If the unanticipated discovery is determined to be Native American, in consultation with GA SHPO, the USACE will notify all concerned Tribal Historic Preservation Officers (THPO) within 48-

hours of the discovery. No photography of the human remains, burials or funerary objects is permitted. Based on the circumstances of the discovery, equity to all parties, and considerations of the public interest, the USACE may modify, suspend, or revoke the permit in accordance with 33 C.F.R. Part 325.7. The USACE, in consultation with the City of Dalton, GA SHPO, and THPO(s), shall develop a treatment and disposition plan. The USACE, in consultation with GA SHPO and the City of Dalton, will implement a discovery plan in accordance with applicable state and federal laws (36 C.F.R. Part 800.13; 43 C.F.R. Part 10, Subpart B; Official Code of Georgia (OCGA) 36-72; OCGA 44- 12-260, OCGA 31-21-6), if necessary. Undertaking activities shall not resume without written authorization from the State Archaeologist, the GA SHPO, and the USACE.

IV. MONITORING AND REPORTING

Following the execution of this MOA, the City of Dalton shall provide the USACE and the GA SHPO yearly updates that summarize all work undertaken pursuant to the terms of this MOA. Such report shall include any scheduling changes proposed, any problems encountered, and any disputes and objections received in the City of Dalton's efforts to carry out the terms of this MOA.

V. DISPUTE RESOLUTION

Should any Signatory to this MOA object at any time to any actions proposed or the manner in which the terms of this MOA are implemented, the USACE shall consult with such party to resolve the objection. If the USACE determines that such objection cannot be resolved, the USACE will:

- A. Forward all documentation relevant to the dispute, including the USACE's proposed resolution, to the Council. The Council shall provide the USACE 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, the USACE shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the Council, signatories and concurring parties, and provide them with a copy of this written response. The USACE will then proceed according to its final decision.
- B. If the Council does not provide its advice regarding the dispute within the thirty (30)-days, the USACE may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, the USACE shall prepare a written response that takes into account any timely comments regarding the dispute from the signatories and concurring parties to the MOA and provide them and the Council with a copy of such written response.
- C. The USACE's responsibility to carry out all other actions subject to the terms of this MOA that are not the subject of the dispute remain unchanged.

VI. AMENDMENTS

This MOA may be amended when such an amendment is agreed to in writing by all Signatories. The amendment will be effective on the date a copy signed by all of the Signatories is filed with the Council.

VII. TERMINATION

If any Signatory to this MOA determines that its terms will not or cannot be carried out, that party shall immediately consult with the other Signatories to attempt to develop an amendment per Stipulation VI, above. If within thirty (30) days (or another time period agreed to by all signatories) an amendment cannot be reached, any Signatory may terminate the MOA upon written notification to the other Signatories.

Once the MOA is terminated, and prior to work continuing on the undertaking, the USACE must either (a) execute an MOA pursuant to 36 CFR § 800.6 or (b) request, take into account, and respond to the comments of the Council under 36 CFR § 800.7. The USACE shall notify the Signatories as to the course of action it will pursue.

Execution of this MOA by the USACE, GA SHPO, and City of Dalton, its filing with the Council, and implementation of its terms evidence that the USACE has taken into account the effects of this undertaking on historic properties and afforded the Council an opportunity to comment.

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SIGNATORY:

U.S. Army Corps of Engineers, Savannah District

Jason O’Kane, PMP Chief, Regulatory Division

Date _____

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SIGNATORY:

Georgia State Historic Preservation Officer

_____ Date _____
Jennifer Flood, Division Director, Deputy State Historic Preservation Officer

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INVITED SIGNATORY:

City of Dalton

Annalee Sams, Mayor

Date _____