

Appendix H – Memorandum of Agreement

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**MEMORANDUM OF AGREEMENT
PURSUANT TO 36 CFR PART 800**

WHEREAS, the Tennessee Valley Authority (TVA) proposes to issue a permit under Section 26a of the TVA Act, and the United States Army Corps of Engineers (USACE) proposes to issue a permit under Section 404 of the Clean Water Act to Knox County, Tennessee, for a pedestrian bridge across the French Broad River; and,

WHEREAS, TVA and USACE have consulted and designated TVA as the lead Section 106 compliance agency for this project; and,

WHEREAS, TVA, in consultation with the Tennessee State Historic Preservation Officer (SHPO), has determined that the archaeological area of potential effects (APE) will be the pedestrian bridge, parking area, and temporary equipment staging areas and access corridors, and the APE for visual effects on historic structures will be half-mile boundary from the bridge location or direct line of sight, whichever is less, as referenced in Appendix A; and,

WHEREAS, archaeological and historic structure resources identification and evaluation have been conducted within portions of these APEs, as referenced in Appendix B; and TVA and the SHPO agree that archaeological sites 40KN262 and 40KN287 are eligible for listing in the National Register of Historic Places (NRHP); and,

WHEREAS, TVA, in consultation with the SHPO, has determined that the undertaking will adversely affect archaeological site 40KN262, and may affect archaeological site 40KN287; and,

WHEREAS, consistent with 36 CFR Part 800.5(a)(3), the identification and evaluation of archeological resources and historic structures will be undertaken by TVA in a phased manner; and,

WHEREAS, TVA, in consultation with the SHPO, has determined that the undertaking will not adversely affect historic structures listed on or eligible for listing in the NRHP; and,

WHEREAS, TVA has consulted with Knox County, USACE, SHPO, Eastern Band of Cherokee Indians, Cherokee Nation, United Keetcowah Band, Chickasaw Nation, Muscogee (Creek) Nation of Oklahoma, Kialegee Tribal Town, Thlophlocco Tribal Town, Alabama Quassarte Tribal Town, Alabama-Coushatta Tribe, Shawnee Nation, Absentee-Shawnee Tribe of Oklahoma, Eastern Shawnee Tribe of Oklahoma, Choctaw Nation of Oklahoma, and Jena Band of Choctaw Indians ; and,

WHEREAS, there is no evidence to date that human remains, associated or unassociated funerary objects, sacred objects, or objects of cultural patrimony (collectively termed cultural items) are present at the designated sites; and,

WHEREAS, the possibility exists that cultural items could be inadvertently discovered during mitigation and construction activities; and,

WHEREAS, Knox County has been invited to be a signatory to this agreement and will be responsible for all costs necessary for implementation of this agreement; and,

WHEREAS, the USACE has been invited to be a signatory to this agreement; and,

WHEREAS, the United Keetoowah Band of Cherokee Indians in Oklahoma has been invited to concur with this agreement; and,

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WHEREAS, a Treatment Plan has been developed and is made a part of this Agreement as Appendix C, Treatment Plan; and,

NOW THEREFORE, TVA, Knox County, USACE and the SHPO agree that the undertaking shall be implemented in accordance with the following stipulations to satisfy TVA's and USACE's Section 106 responsibilities. The TVA Federal Preservation Officer, or the designee thereof, shall act for TVA in all matters concerning the administration of this Agreement.

STIPULATIONS

TVA shall ensure that the following stipulations are carried out before the commencement of any ground-disturbing activities could affect historic properties.

1. TREATMENT

The Treatment Plan, attached as Appendix C, has been developed in consultation with the SHPO, USACE, Knox County and those Indian tribes that attach religious and cultural significance to eligible properties. Such Treatment Plan includes the archaeological monitoring, data recovery and/or avoidance of 40KN262, 40KN287 and any newly identified and evaluated historic properties under Stipulations 2 and 3 below.

2. IDENTIFICATION

- a. Identification level surveys have been conducted within portions of the archaeological APE as defined in Appendix A-1 and described in Appendix B-1 and B-2. Once an access corridor and equipment staging areas have been formally selected, Knox County will conduct an identification survey within the boundaries of the access corridor and equipment staging areas before any construction is approved. The survey shall be carried out in a manner consistent with 48 FR 44720-23. This survey shall be conducted in consultation with TVA, USACE and the SHPO. Knox County will submit a written report of the results of the survey as an addendum to the report in Appendix B of this Agreement, to TVA for review and approval. TVA will submit the approved draft report to all signatories for review, allowing 30 days for comments.
- b. An identification level survey has been conducted within portions of the structural APE as depicted in Appendix A-2 and described in Appendix B-4.

3. EVALUATION

Evaluation of archaeological sites has been conducted within portions the APE as depicted in Appendix A-1, and the results are described in Appendix B-3. Knox County will conduct additional archaeological evaluation investigations if project plans are revised or if resources potentially eligible for listing on the NRHP are identified during the investigations of the access corridor or equipment staging area. Such investigations will be conducted in consultation with the other signatories to this Agreement and in a manner consistent with the Secretary of the Interior's Standards and Guidelines for Identification (48 FR 44720-23) and the Tennessee SHPO Standards and Guidelines for Archaeological Resource Management Studies. The scope of work for the evaluation study will be submitted to TVA and the SHPO for approval. Upon completion of the evaluation, Knox County shall submit a draft report of the National Register eligibility evaluation to TVA for review and approval. TVA will submit the approved draft report to all signatories, allowing thirty (30) days for their review and comments.

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TVA, in consultation with the SHPO, USACE and Indian tribes that attach religious and cultural significance to identified properties, shall apply the National Register criteria (36 CFR Part 63) to properties identified within the APE in evaluating such properties for National Register eligibility. It is acknowledged that Indian tribes possess special expertise in assessing the eligibility of historic properties that may possess characteristics of religious and cultural significance to them. All evaluations of National Register eligibility shall be conducted in accordance with 36 CFR Part 800.4(c).

Any historic properties identified under Stipulation 2 above and found to meet the criteria for National Register eligibility will be treated according to the process under Appendix C, Treatment Plan.

4. SPECIAL CONSTRUCTION CONSIDERATIONS

To allow for certain construction activities within the boundary of 40KN262, special construction considerations may be agreed upon by TVA, USACE, SHPO, and Knox County. The use of matting at equipment staging areas must be of a design that is acceptable to all consulting parties. This matting will disperse the size, weight and pressure of the equipment during use to minimize impacting the ground below. All equipment that is used within the boundaries of 40KN262 will be confined to the matting. Furthermore, construction activities will only be conducted in dry weather conditions.

Additionally, a temporary barrier or fence will be installed adjacent to 40KN287 to avoid allowing any construction equipment within the boundary of the site.

5. POST REVIEW DISCOVERIES

Previously unidentified historic properties discovered during the implementation of the development will be subject to the evaluation process under Stipulation 3 and treated according to the process outlined in the Treatment Plan in Appendix C.

6. REPORTS

TVA shall ensure that all investigations undertaken for compliance with this agreement are recorded in formal written reports that meet the Secretary of Interior's Standards and Guidelines for Identification (48 FR 44720-23) and the Tennessee SHPO Standards and Guidelines for Architectural and Archaeological Resources Management Studies. The SHPO, USACE, Knox County and Indian tribes that attach religious and cultural significance to eligible properties shall be afforded thirty (30) days to review and comment on any reports submitted as compliance with this agreement.

7. TREATMENT OF HUMAN REMAINS AND FUNERARY OBJECTS

Knox County, in consultation with TVA, the SHPO, and Indian tribes that attach religious and cultural significance to NRHF eligible properties (concerned Indian tribes), shall ensure that the treatment of any human remains and associated funerary objects discovered within the project area complies with all applicable state and federal laws. Should human remains be encountered during historic properties investigations or post-review discovery, all ground disturbing activities within 50 feet of the discovery will be ceased immediately. The remains will be treated with respect to the deceased, and shall be protected from the time of discovery from further construction activities pending consultation to resolve treatment of such remains.

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Knox County shall immediately notify the Knox County Coroner, the State Archaeologist, TVA and the SHPO, should any human remains and/or associated funerary objects be encountered in connection with any activity covered by this agreement. TVA will notify the concerned Indian tribes within forty-eight (48) hours of being informed of the presence of these remains and/or funerary objects, and invite signatories and these Indian tribes to comment on any plans developed to treat these remains and/or funerary objects. Whenever and wherever it is feasible, human remains will be preserved in place. Knox County, in consultation with TVA, the SHPO, and concerned Indian tribes shall ensure that those remains and artifacts are treated in a manner that is consistent with the Advisory Council of Historic Preservation's "Policy Statement Regarding the Treatment of Human Remains and Grave Goods" (1988). Further, this treatment will be conducted in accordance with the applicable provisions of Tennessee Code Annotated (T.C.A.) 46-4-101 et seq. ("Termination of Use of Land as a Cemetery,"); T.C.A. 11-6-116, ("Excavation of Areas Containing Native American Indian Remains,"); T.C.A. 11-6-119 ("Reburial of Human Remains or Native American Burial Objects following Discovery or Confiscation") and Tennessee Rules and Regulations Chapter 0400-9-1 ("Native American Indian Cemetery Removal and Reburial."); and the policies of the culturally affiliated Indian tribes regarding the treatment of human remains and funerary objects, if such human remains are of Native American origin and cultural affiliation can be determined.

8. TIMETABLE FOR COMPLIANCE

- a. TVA and Knox County shall ensure that Stipulations 1-4 of this agreement are met before commencement of any ground-disturbing activities. If development is to be completed in a phased construction, the stipulations of this agreement may be satisfied independently for each phase.
- b. Throughout this agreement, unless otherwise stated, the SHPO, USACE, Knox County and Indian tribes that attach religious and cultural significance to eligible properties shall have thirty (30) days to review and comment on all reports concerning investigations of historic properties and proposed data recovery plans provided by TVA. Comments received from the signatories shall be taken into consideration in preparing final plans. TVA will supply copies of the final reports and data recovery plans to the signatories.

9. PHASED COMPLIANCE

Pursuant to 36 CFR Part 800.5(a)(3), TVA, in consultation with the SHPO and other consulting parties, shall use a phased process in applying the criteria of adverse effect consistent with phased identification and evaluation efforts conducted pursuant to 36 CFR Part 800.4 (b)(2).

10. ADMINISTRATIVE CONDITIONS

- a. If Stipulations 1 to 8 has not been implemented within ten (10) years from the date of this agreement's execution, this agreement shall be considered null and void, unless the signatories have agreed in writing as provided in Paragraph 10.b. below to an extension for carrying out its terms. Upon the agreement's becoming null and void, TVA, SHPO, USACE and Knox County will resume consultation pursuant to 36 CFR Part 800.
- b. If the implementation of Stipulations 1 to 8 has not commenced within 4 (four) years from the date of this agreement's execution, TVA, SHPO, USACE and Knox County shall review the agreement to determine whether the agreement should be extended. If an extension is deemed necessary, TVA, SHPO, USACE and Knox County will consult in accordance with 36 CFR Part 800.6(c) to make appropriate revisions to the agreement.

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- c. The signatories to this agreement may agree to amend the terms of the agreement. Such amendment shall be effective upon the signatures of all signatories to this agreement, and the amendment shall be appended to the agreement as an attachment.
- d. Should any signatory object within thirty (30) days after receipt of any plans, specifications, contracts, or other documents provided for review pursuant to this agreement, TVA shall consult with the objecting party to resolve the objection.
- e. If any signatory to this agreement determines that the terms of the agreement cannot be or are not being carried out, the signatories shall consult to seek an amendment to the agreement. If the agreement is not amended, then any signatory may terminate the agreement. If the agreement is so terminated, TVA shall ensure that historic properties within the area of potential effect for the undertaking are protected in accordance with Section 106 of the National Historic Preservation Act until such time that TVA may enter into a new MOA with the signatories or request the comments of the Council pursuant to 36 CFR Part 800.7(a).

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Execution of this Agreement by TVA, SHPO, and Knox County, and implementation of its terms evidence that TVA has taken into account the effects of the undertaking on historic properties, and that TVA has complied with its obligations under section 106 of the National Historic Preservation Act.

SIGNATORIES

TENNESSEE VALLEY AUTHORITY

By: Bridgette K. Ellis
[Bridgette K. Ellis, Senior Vice President, O&ER]

Date: 8/21/07

THE TENNESSEE STATE HISTORIC PRESERVATION OFFICER

By: E. Patrick McIntyre
[E. Patrick McIntyre, State Historic Preservation Officer]

Date: 8/29/07

INVITED SIGNATORIES

United States Army Corps of Engineers

By: Bernard R. Lindstrom
[Lieutenant Colonel Bernard R. Lindstrom, District Engineer]

Date: 1/16/08

KNOX COUNTY, TENNESSEE

By: Michael R. Ragsdale
[Michael R. Ragsdale, Knox County Mayor]

Date: 9/17/07

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CONCURRENCE BY OTHERS

UNITED KEETOOWAH BAND OF CHEROKEE INDIANS OF OKLAHOMA

By: George G. Wickcliffe
[George G. Wickcliffe, Chief]

Date: 9/18/07

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