

MEMORANDUM OF AGREEMENT
BETWEEN TENNESSEE VALLEY AUTHORITY
AND THE
KANSAS STATE HISTORIC PRESERVATION OFFICER AND
CPV CIMARRON RENEWABLE ENERGY COMPANY, LLC
REGARDING THE CIMARRON I WIND ENERGY PROJECT

WHEREAS, CPV Cimarron Renewable Energy Company, LLC ("CPV Cimarron") is proposing to construct and operate a wind-powered generating facility in Gray County, Kansas, known as the Cimarron I Wind Energy Project ("the Project"); and,

WHEREAS, Contingent upon availability of transmission capacity and environmental acceptability of the Project, Tennessee Valley Authority (TVA) is executing a 20-year power purchase agreement for the purchase of up to 165.6 megawatts of renewable energy from CPV Cimarron; and,

WHEREAS, TVA has determined that the proposed project is an undertaking that may have an effect on historic properties and therefore subject to Section 106 of the National Historic Preservation Act (NHPA); and,

WHEREAS, TVA has determined, in consultation with the Kansas State Historic Preservation Officer (SHPO), the area of potential effects (APE) for archaeological resources is the geographic area in which any ground disturbance would occur, and the APE for architectural resources is a line of sight 0.5 mile from which the Project would be visible; and,

WHEREAS, Historic property identification surveys have been conducted for the Project and two archaeological sites (14GY100 and 14GY102) and twenty-one architectural resources (TTCW1, TTCW2, TTCW3, TTCW4, TTCW5, TTCW6, TTCW7, TTCW8, TTCW9, TTCW10, TTCW11, TTCW12, TTCW13, TTCW14, TTCW15, TTCW16, TTCW17, TTCW18, TTCW19, TTCW20, and TTCW21) have been identified within the respective APEs; and,

WHEREAS, Archaeological sites 14GY100 and 14GY102, and architectural resources TTCW1, TTCW2, TTCW3, TTCW4, TTCW5, TTCW6, TTCW7, TTCW9, TTCW10, TTCW11, TTCW12, TTCW13, TTCW14, TTCW15, TTCW16, TTCW17, TTCW18, TTCW19, TTCW20, and TTCW21 have been determined, in consultation with the SHPO, to be ineligible for the National Register of Historic Properties (NRHP); and,

WHEREAS, TVA initiated government-to-government consultation regarding any properties that may be of religious and cultural significance to Indian Tribes, with the following federally recognized Tribes: Apache Tribe of Oklahoma, Northern Arapaho Tribe, Cheyenne and Arapaho Tribes of Oklahoma, Northern Cheyenne Tribe, Comanche Nation of Oklahoma, Kiowa Indian Tribe of Oklahoma, Osage Nation of Oklahoma, Wichita and Affiliated Tribes, and the Kaw Nation of Oklahoma; and,

WHEREAS, CPV Cimarron has been invited by TVA to be a signatory to this Agreement; and,

WHEREAS, TVA has determined that the Project would have an adverse visual effect on TTCW8, a historic property eligible for listing on the NRHP, and has consulted with the SHPO pursuant to 36 C.F.R. part 800, of the regulations implementing Section 106 of the NHPA (16 U.S.C. §470f); and,

WHEREAS, TVA, in consultation with the SHPO and CPV Cimarron, has determined that alternative sites for the Project or vegetation screening are not economically or logistically feasible; and,

WHEREAS, pursuant to 36 C.F.R. § 800.6(a)(1), TVA has notified the Advisory Council on Historic Preservation (ACHP) of the adverse effect finding;

NOW THEREFORE, TVA, the SHPO, and CPV Cimarron agree that the undertaking shall be implemented in accordance with the following stipulations in order to minimize or mitigate adverse effects to TTCW8.

STIPULATIONS:

I. TREATMENT PLAN AND IMPLEMENTATION

The following measures shall be taken to minimize or mitigate adverse effects to TTCW8:

- a. Prior to the implementation of the Project, the architectural resources TTCW1, TTCW2, TTCW3, TTCW4, TTCW5, TTCW6, TTCW7, TTCW9, TTCW10, TTCW11, TTCW12, TTCW13, TTCW14, TTCW15, TTCW16, TTCW17, TTCW18, TTCW19, TTCW20, TTCW21, and the architectural resources associated with the historic property TTCW8, will be entered in to the Kansas Historic Resources Inventory (KHRI) online database, managed by the SHPO.
- b. Prior to the implementation of the Project, CPV Cimarron will transfer money in the amount of three thousand dollars (\$3,000) to the Kansas Historic Preservation Fund-eligible activities, which money the SHPO will hold in reserve for Historic Preservation-eligible activities in Gray County, Kansas.
- c. Within one hundred eighty (180) days of the signing of this Agreement, CPV Cimarron will conduct documentation equivalent to NRHP nomination of historic property TTCW8. This measure involves completing documentation of all contributing and noncontributing architectural resources associated with TTCW8 (i.e., the resources identified as follows in *Historic Architecture Reconnaissance Survey Supplemental Information, Cimarron Wind Energy Project – Phase 1, Gray County, Kansas, KSR&C No. 09-12-054*: the house, the Gambrel-Roof barn, the Gable-Roof storage building, the Gable-Roof garage, the small animal shed, the dilapidated structure of unknown function, the outhouse, the pump house, and the windmill). The house, the Gable-Roof storage building, and dilapidated structure have been determined to be non-contributing by the SHPO; all other resources have been determined NRHP eligible. This documentation will be undertaken using the NRHP Registration Form (National Park Service Form 10-900. OMB No. 1024-0018. United States Department of the Interior. National Park Service).

II. TIME TABLE FOR COMPLIANCE

- a. TVA shall ensure that all documentation specified under Stipulation I is collected prior to the commencement of any activities associated with the Project that would preclude such documentation.
- b. The SHPO shall have thirty (30) days upon receipt to review and comment on all investigation reports and treatment plans required to be prepared under this Agreement.

III. CHANGES IN PROJECT DESIGN

Should any changes to the project occur subsequent to the execution of this Agreement, TVA, in consultation with the Kansas SHPO, would determine the new APE, identify historic properties within this new APE, and further consult with the SHPO and other consulting parties regarding the impacts of the changed project on historic properties.

IV. POST REVIEW DISCOVERIES

If historic properties are discovered or unanticipated effects on historic properties found after the completion of the Section 106 process, TVA, the SHPO, and invited signatory, CPV Cimarron, shall make reasonable efforts to avoid, minimize, or mitigate adverse effects to such properties pursuant to 36 C.F.R. § 800.13(b).

V. ADMINISTRATIVE CONDITIONS

- a. If Stipulation I of this Agreement has not been implemented within one (1) year from the date of its execution, this Agreement shall be terminated, unless the parties have agreed in writing to an extension for carrying out its terms. Upon this Agreement being terminated, TVA, the SHPO, and invited signatory, CPV Cimarron, will resume consultation pursuant to 36 C.F.R. § 800.6.
- b. If Stipulation I of this Agreement has not been implemented within six (6) months from the date of its execution, TVA, the SHPO, and invited signatory, CPV Cimarron, shall review the Agreement to determine whether the Agreement should be extended. If an extension is deemed necessary, TVA, the SHPO, and invited signatory, CPV Cimarron, will consult in accordance with 36 C.F.R. § 800.6(c)(7) to make any appropriate revisions to the Agreement.
- 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 this Agreement.

SIGNATORIES:

TENNESSEE VALLEY AUTHORITY

By: Anda A. Ray
Anda A. Ray
Senior Vice President and Senior Policy Official

Date: 11/16/11

KANSAS STATE HISTORIC PRESERVATION OFFICER

By: Jennie Chinn
Jennie Chinn
State Historic Preservation Officer
Executive Director Kansas State Historical Society

Date: 11/18/11

INVITED SIGNATORIES:

CPV CIMARRON RENEWABLE ENERGY COMPANY, LLC

By: Sean J. Finnerty
Sean J. Finnerty
Senior Vice President

Date: 11/28/2011