

Attachment 7. Cultural Resources Memorandum of Agreement

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**MEMORANDUM OF AGREEMENT
PURSUANT TO 36 CFR PART 800 BETWEEN THE TENNESSEE VALLEY AUTHORITY
AND THE TENNESSEE STATE HISTORIC PRESERVATION OFFICER
KNOX COUNTY, TENNESSEE**

WHEREAS, the Knoxville Utilities Board (Applicant) has requested a permit under Section 26a of the *Tennessee Valley Authority (TVA) Act* to install a new sewer line segment and replace the existing portion of the line that crosses the Tennessee River on Fort Loudoun Reservoir (Tennessee River Mile 647.6); and

WHEREAS, TVA, in consultation with the Tennessee State Historic Preservation Officer (TN SHPO), has determined the area of potential effect (APE) to be the sewer line route and temporary/permanent construction easements related to the pipeline installation (Appendix A); and

WHEREAS, identification and evaluation studies have been conducted within APE (Appendix B); and

WHEREAS, TVA and TN SHPO (together, the "Signatories") agree that archaeological site 40KN317 is eligible for listing on the National Register of Historic Places (NRHP); and

WHEREAS, TVA, in consultation with TN SHPO, has determined that the undertaking will adversely affect archaeological site 40KN317 (Appendix A); and

WHEREAS, TVA, in consultation with TN SHPO, has determined that the undertaking will not affect any archaeological site listed on or eligible for listing on NRHP other than 40KN317; and

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

WHEREAS, TVA has notified the Advisory Council on Historic Preservation (Council) regarding the adverse effect finding pursuant to 36 CFR § 800.6(a)(1); and

WHEREAS, the Applicant 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, TVA has consulted with Eastern Band of Cherokee Indians, Cherokee Nation, United Keetoowah Band of Cherokee Indians in Oklahoma, The Chickasaw Nation, Muscogee (Creek) Nation of Oklahoma, Kialegee Tribal Town, Thlopthlocco Tribal Town, Alabama Quassarte Tribal Town, Alabama-Coushatta Tribe of Texas, Shawnee Tribe, Absentee-Shawnee Tribe of Oklahoma, Eastern Shawnee Tribe of Oklahoma, and Choctaw Nation of Oklahoma, and has invited them to participate with this undertaking (Appendix A); and

WHEREAS, the Eastern Band of Cherokee Indians, United Keetoowah Band of Cherokee Indians, and Alabama-Coushatta Tribe of Texas (together with the Applicant, the "Invited Signatories") have participated in the consultation and TVA has invited them to be signatories to this agreement; and

WHEREAS, there is no evidence that human remains, associated or unassociated funerary objects, sacred objects, or objects of cultural patrimony (collectively termed cultural items) are present at 40KN317; and

WHEREAS, the possibility still exists that cultural items could be inadvertently discovered during mitigation and construction activities associated with this undertaking; and

WHEREAS, a Treatment Plan has been developed in consultation with Signatories and Invited Signatories and is made a part of this agreement as Appendix C, Treatment Plan.

NOW THEREFORE, TVA, the Applicant and TN SHPO agree that the undertaking shall be implemented in accordance with the following stipulations to satisfy TVA's responsibilities under Section 106 of the *National Historic Preservation Act (NHPA)*. 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 that could affect historic properties.

1. TREATMENT

The Treatment Plan, attached as Appendix C, has been developed in consultation with the Signatories and Invited Signatories. This Treatment Plan consists of avoidance and data recovery at Site 40KN317. Applicant shall comply with the Treatment Plan.

2. REPORTS

The surveys required under the Treatment Plan will be carried out in a manner consistent with the Secretary of the Interior's (Secretary) *Standards and Guidelines for Identification* (48 FR 44720-44724) and the TN SHPO *Standards and Guidelines for Architectural and Archaeological Resource Management Studies*.

A written report of the survey results shall be submitted by the Applicant to TVA for distribution to the Signatories and Invited Signatories for review and comment. Recipients will be allowed thirty (30) days for review and comment. Failure to respond within the allotted number of days will indicate concurrence with the findings of the survey report.

3. TREATMENT OF HUMAN REMAINS AND FUNERARY OBJECTS

The Applicant, in consultation with TVA, TN SHPO and federally recognized Indian tribes that attach religious and cultural significance to NRHP-eligible properties (concerned Indian tribes), shall ensure that the treatment of any human remains and cultural items discovered within the project's APE complies with all applicable state and federal laws. Should human remains be encountered during archaeological properties investigations hereunder or later discovered post-review, 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.

The Applicant shall immediately notify the Knox County Coroner, the State Archaeologist, TVA, and TN SHPO should any human remains and/or cultural items be encountered in connection with any activity covered by this agreement. TVA will notify the concerned Indian tribes within seventy two (72) hours of being informed of the presence of human remains and/or cultural items. TVA, in consultation with concerned Indian tribes, will treat these human remains and/or cultural items within seven (7) calendar days. Whenever and wherever feasible, human remains will be preserved-in-place.

The Applicant, in consultation with TVA, TN SHPO, and concerned Indian tribes, shall ensure that those human remains and/or cultural items are treated in a manner that is consistent with the Council's *Policy Statement Regarding Treatment of Burial Sites, Human Remains and Funerary Objects* (2007). Further, this treatment will be conducted in accordance with applicable provisions of Tennessee state law, including 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*). (Appendix D); and in accordance with 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.

Decisions for determining the treatment of Native American human remains and cultural items identified during data recovery and/or project construction will be based on the following:

1. Preference will be to avoid human remains and cultural items. Avoidance would require no disturbance or any activity that would impact or affect the context of a burial.
2. Human remains and cultural items that can neither be avoided nor preserved-in-place, due to the necessity of excavation or construction activity, must be relocated. These human remains and cultural items will be re-interred in a new location to be determined in consultation with TVA, the Applicant, TN SHPO, and concerned Indian tribes. The relocated human remains and cultural items will be protected from any further disturbance.

4. TIMETABLE FOR COMPLIANCE

- a. TVA and the Applicant shall ensure that Stipulations 1-3 of this agreement are met before commencement of any ground-disturbing activities within the temporary/permanent construction easements to the pipeline installation at 40KN317.
- b. Throughout this agreement, unless otherwise stated, the Signatories and Invited Signatories shall have thirty (30) days to review and comment on all reports concerning investigations of historic properties. Comments received from the Signatories and Invited 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 and Invited Signatories.

5. ADMINISTRATIVE CONDITIONS

- a. If Stipulations 1 to 4 have not been implemented within two (2) 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 5.b. (below) to an extension for carrying out its terms. Upon the agreement becoming null and void, Signatories and Invited Signatories will resume consultation pursuant to 36 CFR Part 800.
- b. If the implementation of Stipulations 1 to 4 has not commenced within two (2) years from the date of this agreement's execution, Signatories and Invited Signatories shall review the agreement to determine whether the agreement should be extended. If an extension is deemed necessary, Signatories and Invited Signatories will consult in accordance with 36 CFR § 800.6(c) to make appropriate revisions to the agreement.
- c. The Signatories or Invited 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 and Invited 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 APE for the undertaking are protected in accordance with Section 106 of NHPA until such time as TVA may enter into a new Memorandum of Agreement with the Signatories or request the comments of the Council pursuant to 36 CFR § 800.7(a).

Execution of this agreement by TVA and TN SHPO, 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 *NHPA*.

SIGNATORY
TENNESSEE VALLEY AUTHORITY

By: Anda A. Ray

Date: 11-23-09

Anda A. Ray, Senior Vice President, Office of Environment and Research
and Senior Policy Officer

SIGNATORY

THE TENNESSEE STATE HISTORIC PRESERVATION OFFICER

By: E. Patrick McIntyre, Jr. Date: 12/14/07
E. Patrick McIntyre, Jr., State Historic Preservation Officer

INVITED SIGNATORY

KNOXVILLE UTILITIES BOARD

By: Julie B. Childers
Julie Childers, Vice President of Engineering

Date: 11/30/09

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