

Appendix F

Programmatic Agreement for Archaeological Investigations

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PROGRAMMATIC AGREEMENT
AMONG THE TENNESSEE VALLEY AUTHORITY, THE UNITED STATES ARMY
CORPS OF ENGINEERS, THE TENNESSEE STATE HISTORIC PRESERVATION
OFFICER, AND THE CITY OF KNOXVILLE REGARDING THE KNOXVILLE SOUTH
WATERFRONT REDEVELOPMENT PURSUANT TO 36 CFR PART 800

WHEREAS, the City of Knoxville (City), under the Knoxville South Waterfront Redevelopment Proposal, hereinafter referred to as "Proposal", (see Appendix A which is made a part of this Programmatic Agreement (PA) by reference), plans to improve and enhance the shoreline of the south side of the Tennessee River (Tennessee River Mile 646.6-649.2); and,

WHEREAS, the City has requested the necessary approval from the Tennessee Valley Authority (TVA) under Section 26a of the TVA Act, permits from the United States Army Corps of Engineers (USACE) under Section 404 of the Clean Water Act, Section 10 of the Rivers and Harbors Act of 1899, permits from the Tennessee Department of Environment and Conservation under the Tennessee Water Quality Control Act of 1977, and Section 401 of the Clean Water Act for water-use facilities and the placement of fill along Fort Loudoun Reservoir, Knoxville Tennessee; and,

WHEREAS, under 36 CFR § 800.2(a)(2), TVA has consulted with USACE, and USACE has designated TVA as the lead federal agency for Section 106 compliance (see Appendix B which is made a part of this PA by reference); and,

WHEREAS, TVA has consulted with the Tennessee State Historic Preservation Officer (TN SHPO) in accordance with 36 CFR Part 800, regulations implementing Section 106 of the National Historic Preservation Act (NHPA); and,

WHEREAS, TVA and the TN SHPO have determined that the Proposal for which these federal and state agency permits are necessary may affect historic properties eligible for listing in the National Register of Historic Places (NRHP); and,

WHEREAS, TVA and the TN SHPO have also determined that the Proposal may have an effect upon historic properties eligible for listing in the NRHP that is reasonably foreseeable, in that they may occur later in time, be farther removed in distance, or be cumulative; and,

WHEREAS, TVA has consulted with the Eastern Band of Cherokee Indians, Cherokee Nation, United Keetoowah Band of Cherokee Indians in Oklahoma, Muscogee (Creek) Nation of Oklahoma, Poarch Band of Creek Indians, Kialegee Tribal Town, Thlopthlocco Tribal Town, Alabama-Quassarte Tribal Town, Alabama-Coushatta Tribe, Eastern Shawnee Tribe of Oklahoma, Absentee Shawnee Tribe of Oklahoma, Shawnee Tribe, Choctaw Nation of Oklahoma, and Chickasaw Nation regarding the potential for this undertaking (this term is defined in 36 C.F.R. § 800.16[y]), to affect properties of religious, cultural, and traditional significance to those federally-recognized tribal governments; and,

WHEREAS, TVA, in consultation with TN SHPO and the City, has determined the archaeological and architectural primary area of potential effects (APE) for the Proposal, and this APE is documented on a map contained in Appendix A. In addition, a secondary APE for the Proposal bounds the potential visual and auditory effects of the

Proposal, and is represented as the area within the yellow line on the map contained within Appendix A; and,

WHEREAS, architectural cultural resources investigations within a portion of the primary APE have previously been conducted and the results of these investigations are presented in Appendix C; and,

WHEREAS, the regulations of the Advisory Council on Historic Preservation (ACHP) provide, under 36 C.F.R. § 800.14(b)(3), for the development of a PA to address the potential adverse effects of a complex undertaking such as the Proposal; and,

WHEREAS, definitions pertaining to this PA shall be carried in Appendix D, which is made a part of this PA by reference.

NOW THEREFORE, the City, TVA, USACE, and the TN SHPO agree that the undertaking shall be implemented in accordance with the following stipulations to satisfy participating federal agencies' responsibilities under Section 106 of NHPA. The TVA Federal Preservation Officer, or the formal designee thereof, shall act for TVA in all matters concerning the administration of this Agreement.

STIPULATIONS

TVA shall ensure that the following stipulations are implemented:

1. LAND ACQUISITION AND PROPOSAL PARTICIPATION

Public land acquired by the City for purposes of the Proposal will be subject to all stipulations contained in this Agreement document. This public land within the Proposal is depicted on a map contained within Appendix A in the Vision Plan. The City will encourage current and future private landowners that participate in the Proposal to avoid or minimize effects to historic properties. The City will ensure that private development plans submitted for work within the primary APE of the Proposal, and that are submitted to the City for approval are compliant with the current South Waterfront zoning ordinances and the historic zoning ordinances of the City. The City will provide copies of all historic properties survey documentation prepared consequent to this PA to participating private landowners who present development plans to assist them in avoiding and minimizing effects to NRHP-eligible historic properties.

A. PERMITS

Private sector developers of projects that lie within the Proposal's APE and that are subject to the permitting jurisdiction of TVA or USACE, will apply for those two agency's required federal permits or approvals, and, through that process, TVA and USACE will meet the requirements of Section 106 of NHPA.

B. FEDERAL UNDERTAKINGS

A federal agency providing funding, licensing, permitting, or approval for any activity associated with the Proposal has the opportunity to be an Invited Signatory to this Agreement Document but all other conditions and stipulations of

this Agreement Document that apply to its Signatories or Invited Signatories shall remain the same. If a Federal agency chooses not to be added as a Invited Signatory, then that federal agency will proceed with Section 106 review as stipulated at 36 CFR §§ 800.4 through 800.7.

2. IDENTIFICATION AND EVALUATION OF HISTORIC PROPERTIES

A. SCOPE OF WORK

1. The City shall request proposals from qualified architectural and archaeological consultants to prepare cultural resources survey reports that identify and evaluate historic properties located within the Proposal's primary and secondary APE. These requests for proposals shall take the form of Scopes of Work (SOW).
2. Before the City requests such cultural resource survey proposals, the Signatories and Invited Signatories shall review and comment on the City's prepared SOW for such survey services. Within seven (7) days of receiving the draft SOW for review and comment, the Signatories and Invited Signatories shall provide TVA with their written opinion on the sufficiency of the SOW. Failure to respond within the allotted number of days will indicate concurrence with the SOW.
3. Using approved SOWs, the City will select qualified consultants to prepare these cultural resources survey reports. The City shall instruct these consultants to use existing information such as previous survey data, photographs, maps, drawings, building plans, descriptions, sketches, etc., to inform the conclusions of their survey report.

B. PHASED COMPLIANCE FOR ARCHAEOLOGICAL RESOURCES

1. Consistent with 36 CFR § 800.4(b)(2), this PA allows phased identification, evaluation, and treatment of archaeological historic properties to meet the requirements of Section 106 of the NHPA. Before any demolition or ground-disturbing activity associated with any portion of a project identified in the Proposal, the City shall ensure that archaeological resources surveys have been conducted to identify all archaeological historic properties that may be affected by that specific project. The surveys will be carried out in a manner consistent with the Secretary of the Interior's (Secretary) *Standards and Guidelines for Identification* (48 CFR 44720-23) and the TN SHPO's *Standards and Guidelines for Architectural and Archaeological Resource Management Studies*.
2. The City will submit a written copy of each archaeological survey report to TVA for review and distribution. Upon TVA concurrence with the report's findings, TVA will submit copies of each report to the Signatories and Invited Signatories for review and comment. Within thirty (30) days of receiving each report, Signatories and Invited Signatories shall provide TVA with their written review comments. Failure to respond within the allotted number of days will indicate concurrence with the findings of the archaeological survey report.

C. ARCHITECTURAL RESOURCES SURVEY

1. Within six months of the ratification of this PA, the City will have prepared an architectural resources survey report for all above-ground structures within the primary and secondary APE depicted in Appendix A. This survey report will be prepared by a person or persons who meet the professional qualifications for cultural resources consultants that are codified at 36 CFR Part 61. The survey report will also conform to the TN SHPO's *Standards and Guidelines for Architectural and Archaeological Resource Management Studies*.
2. The City will provide the Knoxville Historic Zoning Commission (Commission) a draft copy of this survey report for review and comment. Upon the Commission's concurrence, the City will submit this survey report to TVA for review and distribution. Upon TVA concurrence with the report's findings, TVA will submit this survey report to the Signatories and Invited Signatories for review and comment. Within thirty (30) days of receiving this survey report, Signatories and Invited Signatories shall provide TVA with their comments. Failure to respond within the allotted number of days will indicate concurrence with the findings of this survey report.

D. EVALUATION OF NRHP ELIGIBILITY

1. TVA, in consultation with the TN SHPO and the City, in accordance with 36 CFR § 800.4(c), shall evaluate the NRHP eligibility of properties identified in each cultural resources survey report prepared consequent to this PA. Cultural resources that have been evaluated and have been found to meet NRHP criteria by TVA, the City, and the TN SHPO, shall be considered NRHP-eligible historic properties.
2. If TVA and the TN SHPO do not agree that an identified property is NRHP eligible, TVA shall obtain a determination of eligibility from the Secretary pursuant to 36 CFR Part 63.

E. PREVIOUS SURVEYS

1. The City will provide the results of previous cultural resources survey reports to preparers of cultural resources survey reports required by this PA. The results of those previous reports shall provide the basis for the findings of any survey reports required by this Agreement Document (see Appendix C).
2. The City will also submit copies of any previous cultural resources survey reports to TVA for review and distribution to the Signatories and Invited Signatories.

3. TREATMENT OF HISTORIC PROPERTIES:

Properties located within the APE that the City, TVA, and the TN SHPO agree are eligible or listed in the NRHP or are determined eligible by the Keeper of the NRHP will be treated in the manner listed below.

A. AVOIDANCE AND MINIMIZATION

1. The City, in consultation with Signatories and Invited Signatories, will take all appropriate steps proportionate to its jurisdiction to ensure that historic properties determined eligible for listing in the NRHP are avoided and preserved in place before the City conducts or authorizes activities under the Proposal that would diminish the integrity of such properties.
2. As the Proposal is being implemented, if the City in consultation with the Signatories and Invited Signatories, determines that a proposed development application would diminish the integrity of an historic property located within the APE, the City will explore alternatives to avoid adversely affecting historic properties eligible for the NRHP in consultation with TVA and the TN SHPO, and consult with these agencies to resolve the potential for adverse effect.
3. If the City determines that avoidance of adverse effect is not economically prudent or technically feasible, the City will consult with TVA and the TN SHPO to determine a course of action that will minimize any adverse project-related effects to historic properties. TVA will present this course of action to Signatories and Invited Signatories for review and comment. The City will submit supporting documentation to TVA and then TVA will distribute the minimization proposal to the Signatories and Invited Signatories for review and comment. Within fifteen (15) days of receiving each proposal, the Signatories and Invited Signatories shall provide TVA with their review comments. Failure to respond within the fifteen (15) days will indicate concurrence with the recommendations of the minimization proposal.

B. MITIGATION

1. If, after consultation with Signatories and Invited Signatories, TVA has determined that an architectural historic property owned by, or to be acquired by, the City and located within the APE will be adversely affected by unavoidable physical destruction or damage and all avoidance and minimization alternatives have been considered and found not to be prudent or feasible, the City will develop a Mitigation Plan in consultation with other Signatories and Invited Signatories. Upon concurrence with all Signatories and Invited Signatories, the City will carry out this mitigation plan to resolve project related adverse effects to historic properties.
2. The Mitigation Plan to address adverse effects to above-ground historic properties may include, but is not limited to the following:
 - a. The City will submit to TVA and the TN SHPO a landscape plan that mitigates adverse effects to the architectural historic property.
 - b. The City will submit to TVA and the TN SHPO a photographic recordation plan that mitigates adverse effects to the architectural historic property.
 - c. The City will require all newly-constructed City-owned structures that may adversely affect a historic property to be compatible with natural

background colors, including roofs to minimize the effects on the property. City-owned new construction will comply with the Secretary's *Standards for New Construction*.

- d. The City will encourage the developers and builders of privately owned structures that could adversely affect a historic property to be compatible with natural background colors, including roofs to minimize effects on the property.
 - e. The City will integrate into the final design of the proposed property an information kiosk(s) that will interpret the historical significance of the historic property that was adversely affected by the undertaking.
3. If, after consultation with Signatories and Invited Signatories, TVA has determined that an archaeological historic property owned by the City or to-be owned by the City will be adversely affected by unavoidable physical destruction or damage and all avoidance alternatives have been considered and found not to be prudent or feasible, and the archaeological historic property contains no human remains or associated funerary objects, the City will submit a proposed Data Recovery Plan (Plan) written by a qualified professional archaeologist that meets *Archeology and Historic Preservation: Secretary of Interior's Standards and Guidelines* to TVA. Upon concurrence, TVA will distribute the Plan to all Signatories and Invited Signatories for review and comment. Within 15 days of receiving the Plan for review and comment, the Signatories and Invited Signatories shall provide TVA with their written review comments. Failure to respond within 15 days will indicate concurrence with the Plan.
- a. The Plan shall be developed consistent with the applicable provisions in 36 CFR §§ 800.5 and 800.16 and the standards set forth in *Archeology and Historic Preservation: Secretary of Interior's Standards and Guidelines*. The Plan shall specify, at a minimum:
 - i. the property, properties, or portions of properties where data recovery is to be carried out;
 - ii. any property, properties, or portions of properties that will be destroyed without data recovery;
 - iii. the research questions to be addressed through data recovery, with an explanation of their relevance and importance;
 - iv. the field and laboratory methods to be used, with an explanation of their relevance to the research questions;
 - v. the methods to be used in analysis, data management, and dissemination of data, including a schedule;
 - vi. the proposed curation of recovered materials and records. The City will select a curation facility in consultation with the

TN SHPO and TVA in accordance with 36 CFR Part 79 except for items specified under Stipulation B.4 below;

- vii. proposed methods for involving the interested public in data recovery;
 - viii. proposed methods for disseminating results of the work to the interested public;
 - ix. a proposed schedule for the submission of progress reports to the TN SHPO; and
4. A plan, developed in consultation with the TN SHPO, federally-recognized tribal governments, and the other Signatories and Invited Signatories, delineating the manner in which historic properties, human remains, and associated funerary objects discovered subsequent to the ratification of this PA document would be treated.

The City and TVA shall provide all Signatories an opportunity to monitor the implementation of the Plan. Monitoring may consist of, but may not be limited to, bi-weekly updates of fieldwork or on-site meetings at the request of the Signatory.

C. POST REVIEW DISCOVERIES

Previously unidentified archaeological historic properties inadvertently discovered during the implementation of a project located within the Proposal's primary APE shall be protected and stabilized to prevent any further disturbance until the Signatories and Invited Signatories can make an informed decision about their NRHP eligibility and what further steps to take to meet federal agency obligations under Section 106 and the terms of this PA.

D. TREATMENT OF HUMAN REMAINS

1. The City shall ensure that the treatment of any human remains discovered on City-owned property within the APE complies with all state and federal laws concerning archaeological sites and treatment of human remains.
2. The City shall notify owners of private land within the APE that treatment of human remains identified on their private lands must comply with Tennessee state law.
3. Regarding human remains identified on state lands as a consequence of the Proposal, the City shall notify appropriate state agencies that human remains have been so identified and ensure that the remains are treated in a manner consistent with the ACHP's *Policy Statement Regarding Treatment of Burial Sites, Human Remains and Funerary Objects* (2007). 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).

4. Should human remains be encountered either during historic properties investigations or post-review discovery, all ground-disturbing activities within a three (3) meter radius of the burial will cease immediately. The City will notify the Knox County Coroner, the State Archaeologist, and TVA immediately. TVA will notify the Signatories and potentially culturally affiliated federally-recognized tribal governments within seventy-two (72) hours and invite them to comment on any plans developed to treat the human remains.

4. ADMINISTRATIVE CONDITIONS:

A. PROJECT MONITORING BY THE CITY

1. Consistent with Stipulation 2 that allows phased compliance, the City shall ensure that the commitments in this PA are met before the City begins any activities associated with the Proposal described in Appendix A. In the event that previously unidentified historic properties should be encountered during the implementation of any ground-disturbing activities, the City will consult with Signatories to determine where work can resume while the effects to the historic property are addressed.
2. The City will maintain on its website for public review, at www.cityofknoxville.org/southwaterfront, a "Programmatic Agreement – Monitored Activities" link that will post information regarding review activities associated with this PA. At the request of any Signatory or Invited Signatory, the City will provide any available information regarding any project of interest that may have an impact on archaeological or historic structures, either proposed or under construction, within fifteen (15) days of receipt of the written request for information.
3. This does not further obligate the City to provide additional funding or personnel for activities of the Signatories or Invited Signatories beyond what is specifically addressed by this PA.

B. PROJECT MONITORING BY THE SIGNATORIES

The Signatories and Invited Signatories may monitor activities carried out pursuant to the PA. In accordance with the terms of this PA, the City will cooperate with the Signatories and Invited Signatories in carrying out their monitoring and review responsibilities.

C. REVIEW AND COMMENT

1. Throughout the duration of this PA, Signatories and Invited Signatories shall have a specified number of days to review and comment on all Scopes Of Work (SOW), cultural resource survey reports concerning identification and evaluation of historic properties, and proposed Plans provided by the City and TVA. Within that specified number days of receiving any of these documents for review and comment, the Signatories and Invited Signatories shall provide TVA and the City with their written comments.
2. Comments received from the Signatories and Invited Signatories shall be taken into consideration in preparing final documents.

D. REPORTS AND PLANS

The City shall provide copies of all final reports and Plans to TVA to distribute to the Signatories and Invited Signatories.

E. DURATION

This PA will be in effect for twenty (20) years from the date of its execution.

F. TERMINATION

If Stipulations 1 - 4 have not been implemented within twenty (20) years from the date of execution, this PA will be terminated. TVA and the City will then comply with procedures in 36 CFR §§ 800.3 through 800.7 with regard to each individual project.

G. ANNUAL REVIEW

The Signatories and Invited Signatories to this PA shall consult in February of each year to review implementation of the terms of this PA. TVA will coordinate meeting times and locations with the other Signatories and Invited Signatories.

H. DISPUTE RESOLUTION

Should a Signatory or 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 dispute. If TVA determines that the objection cannot be resolved, TVA, or the objecting party, may seek guidance from the ACHP pursuant to 36 CFR § 800(b)(2). TVA will take any ACHP comment provided in response to such a request into account in resolving any such dispute. The Signatories are responsible for carrying out all actions under this PA that are not the subject of the dispute.

I. AMENDMENT

If a Signatory or Invited Signatory to this PA determines that the terms of the PA cannot be or are not being carried out, the Signatories or Invited Signatories shall consult to seek a resolution of the issue. If, after due consultation, the issue is not resolved by amending the PA, then any Signatory or Invited Signatory may terminate the agreement after giving the other Signatories and Invited Signatories fifteen (15) days notice. If the agreement is so terminated, TVA shall ensure that historic properties within the APE for the Proposal are protected in accordance with Section 106 of the NHPA until such time that TVA may enter into a new PA with the Signatories or request the comments of the ACHP pursuant to 36 CFR § 800.7(a).

J. PUBLIC INVOLVEMENT

Any public involvement necessary in the implementation of this PA should be consistent with 36 CFR § 800.2(d), using mechanisms as may be agreed upon by the Signatories and the Invited Signatories.

K. CONFIDENTIALITY CONCERNS

The City, TVA, USACE, the TN SHPO, and Concurring Signatories shall withhold from disclosure to the public, to the extent permitted by Section 304 of the National Historic Preservation Act (*[16 U.S.C. 470w-3(a) — Confidentiality of the Location of Sensitive Historic Resource]*) and as applicable by law, any information about the location, character, or ownership of an archaeological Historic property located within the Proposal's APE as any such disclosure may risk harm to the historic property.

L. FUNDING

1. The Signatories and Invited Signatories understand and acknowledge that before the City may make any expenditure over \$25,000 in furtherance of the terms and conditions of this PA, said expenditure will have to be approved by the Knoxville City Council.
2. The City will not undertake any projects until appropriate funding is available to meet its obligations under the terms of this PA.

M. ENTIRE AGREEMENT

This PA forms the entire Agreement between the Signatories. Any prior representations, promises, agreements, oral or otherwise, between the Signatories, which are not embodied in this writing, will be of no force or effect.

Execution of this PA by the City, TVA, USACE, and TN SHPO, the submission of documentation and filing of this Agreement with the ACHP, and the implementation of its terms, demonstrate that TVA has, in accordance with Section 106 of NHPA, taken into account the effects of this Proposal on historic properties and afforded the ACHP an opportunity to comment.

SIGNATORY

TENNESSEE VALLEY AUTHORITY

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

Date: _____

SIGNATORY

THE TENNESSEE STATE HISTORIC PRESERVATION OFFICER

By: _____ Date: _____
E. Patrick McIntyre, Jr., Tennessee State Historic Preservation Officer

INVITED SIGNATORY

UNITED STATES ARMY CORPS OF ENGINEERS

By: _____
Lieutenant Colonel Anthony Mitchell, District Engineer

Date: _____

Appendix F

Programmatic Agreement for Archaeological Investigations

INVITED SIGNATORY

CITY OF KNOXVILLE, TENNESSEE

By: _____
Bill Haslam, Mayor, City of Knoxville

Date: _____

CONCURRENCE BY OTHERS

TENNESSEE DEPARTMENT OF ARCHAEOLOGY

By: _____
Mike Moore, State Archaeologist & Director

Date: _____

| CONCURRENCE BY OTHERS

UNITED KEETOOWAH BAND OF CHEROKEE INDIANS IN OKLAHOMA

By: _____
George G. Wickcliffe, Chief

Date: _____

| CONCURRENCE BY OTHERS

EASTERN BAND OF CHEROKEE INDIANS

By: _____
Michell Hicks, Principal Chief

Date: _____

| CONCURRENCE BY OTHERS

ALABAMA-COUSHATTA TRIBE OF TEXAS

By: _____
[_____]

Date: _____

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Appendix A

Knoxville South Waterfront Redevelopment Proposal
Vision Plan
&
Maps

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Appendix B
Consultation

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Cultural Resources Surveys

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Appendix D

Definitions

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