

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION APPROVING A MEMORANDUM OF AGREEMENT BETWEEN THE FEDERAL HIGHWAY ADMINISTRATION AND THE TENNESSEE STATE HISTORIC PRESERVATION OFFICER FOR THE PEDESTRIAN BRIDGE AT CENTENNIAL PARK AND AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT AND ALL OTHER DOCUMENTS NECESSARY AND PROPER TO EFFECTUATE THE PURPOSE OF THE AGREEMENT

WHEREAS, the city is in the process of working with the Federal Highway Administration and the Tennessee Department of Transportation to build a pedestrian bridge across the CSX railroad tracks at Centennial Park to connect downtown to the Brickyard Park development; and

WHEREAS, as a portion of the funding is administered by the Federal Highway Administration it is necessary to comply with the National Historic Preservation Act of 1966 concerning the Area of Potential Effects; and

WHEREAS, it is recommended that a Memorandum of Agreement be entered into with the Federal Highway Administration and Tennessee State Historic Preservation Officer for the project, which makes provision for documentation and interpretive signage at the site of the Clinchfield Railroad Station as well as an archaeological survey of the proposed area if human remains or cultural items are discovered.

Now therefore,

BE IT RESOLVED BY THE BOARD OF MAYOR AND ALDERMEN AS FOLLOWS:

SECTION I. That the Memorandum of Agreement with the Federal Highway Administration and the Tennessee State Historic Preservation Officer relative to the pedestrian bridge railroad crossing at Centennial Park, is approved.

SECTION II. That the mayor, or in his absence, incapacity, or failure to act, the vice-mayor, is authorized and directed to execute, in a form approved by the city attorney and subject to the requirements of Article X, Section 10 of the Charter of the City of Kingsport, the Memorandum of Agreement between the Federal Highway Administration and the Tennessee State Historic Preservation Officer regarding the Proposed Brickyard Park Bicycle-Pedestrian Bridge over CSX Railroad at Centennial Park, to deliver the agreement and take any and all action as may be required on the part of the city to carry out, give effect to, and consummate the transactions contemplated by the agreement and this resolution as set out below:

**MEMORANDUM OF AGREEMENT**  
between  
**THE FEDERAL HIGHWAY ADMINISTRATION**  
and  
**THE TENNESSEE STATE HISTORIC PRESERVATION OFFICER**  
regarding  
**THE PROPOSED BRICKYARD PARK BICYCLE-PEDESTRIAN BRIDGE OVER CSX RAILROAD**  
**AT CENTENNIAL PARK**  
***KINGSPORT, SULLIVAN COUNTY PURSUANT TO 36 CFR PART 800.6(b)(1)(iv)***

**WHEREAS**, the City of Kingsport proposes to construct a bicycle-pedestrian bridge over the CSX railroad tracks at Cherokee Street to connect the Brickyard Park development to Centennial Park and downtown Kingsport (UNDERTAKING) using Federal-Aid Highway Program funds administered by the Federal Highway Administration (FHWA) through the Tennessee Department of Transportation (TDOT);

**WHEREAS**, the UNDERTAKING is a federal undertaking and thus subject to compliance with Section 106 of the National Historic Preservation Act of 1966, as amended; and

**WHEREAS**, the Area of Potential Effects (APE) for architectural resources is defined as the proposed and existing ROW and easements within project area and a 500 foot buffer area surrounding the project area; and

**WHEREAS**, FHWA determined that the APE for the UNDERTAKING contains one resource listed in the National Register of Historic Places: Clinchfield

Railroad Station and one historic resource eligible for listing: Clinchfield Railroad; and

**WHEREAS**, TDOT on behalf of the FHWA filed a Documentation of Effect Report pursuant to 36 CFR § 800, regulations implementing Section 106 of the National Historic Preservation Act (16 U.S.C. § 470f) with the TN- SHPO; and

**WHEREAS**, the Documentation of Effect Report stated that the Project constitutes an adverse effect to the National Register-listed Clinchfield Railroad Station; and

**WHEREAS**, on F e b r u a r y 10, 2023 the TN-SHPO agreed with the adverse effect determination to the Clinchfield Railroad Station pursuant to 36 CFR § 800.5 (Appendix B); and

**WHEREAS**, TDOT and the City of Kingsport have participated in the consultation and have been invited to sign this MOA as “invited signatories”; and

**WHEREAS**, FHWA has consulted with Native American Tribes regarding the UNDERTAKING and has invited the Cherokee Nation to sign this MOA as “concurring parties” (Appendix B); and

**WHEREAS**, in accordance with 36 C.F.R. § 800.6(a)(1), FHWA has notified the Advisory Council on Historic Preservation (ACHP) of its adverse effect determination providing the specified documentation, and as of November 9, 2023, the ACHP chose not to participate in the consultation pursuant to 36 C.F.R. § 800 .6(a)(1 )(iii); and

**NOW THEREFORE**, the FHWA and the TN-SHPO agree that the undertaking shall be implemented in accordance with the following stipulations to take into account the effect of the undertaking on the historic property and these stipulations shall constitute full, complete, and adequate mitigation measures under the National Register of Historic Places and implementing regulations of the ACHP.

#### **STIPULATIONS**

TDOT, on behalf of FHWA, will ensure that the following measures are carried out:

##### ***I. Documentation***

Clinchfield Railroad Station was determined eligible for listing in the National Register under Criterion A for its association with development of Kingsport as an industrial hub in the early twentieth century. A consultant hired by the City of Kingsport will survey the resource and will document the features of the resource. TDOT will provide copies of the survey to members of public with an interest in preservation, including the City of Kingsport and the Tennessee Historical Commission.

##### ***II. Interpretive Signage:***

The City of Kingsport, in coordination with the TN-SHPO and consulting parties will install three to six interpretive signs at the site of the Clinchfield Railroad Station. The interpretive signage would provide historic context for the Clinchfield Railroad, the Kingsport Station, and the affected concrete loading platform, providing details concerning the architect and architectural style of the station, the historic function of the architectural resources associated with the station, and how the Clinchfield Railroad Station contributed to the development of Kingsport as a center of regional industry.

##### ***III. Notification of Inadvertent Post-Review Discovery***

No evidence has been found that Native American human remains, associated or unassociated funerary objects, sacred objects, or objects of cultural patrimony (collectively termed “cultural items”) are present within the area of potential effects. Should any cultural items be found during the undertaking activities, the following process will occur:

1. TDOT shall immediately halt construction and notify FHWA immediately of the initial inadvertent discovery of CULTURAL ITEMS at the SITE. The FHWA shall then notify the invited signatories, the representatives of Native American tribes who have expressed interest in Sullivan County, and other consulting parties within 24 hours. The FHWA shall report subsequent discoveries to the tribal representative(s), invited signatories, and other consulting parties via telephone, fax, email, or written notification on a weekly basis. This schedule notwithstanding, the FHWA or designated representative of the TDOT shall keep the consulting parties informed and answer questions regarding the progress and findings of the excavations.

2. Representatives of Native American tribes who have expressed interest in Sullivan County

shall be entitled to be present during fieldwork (all phases of the archaeological survey) at the SITE if CULTURAL ITEMS, as defined below (Appendix B), are encountered. A tribal representative is also entitled to be present for any subsequent analysis, whether in the field at the SITE or at a laboratory facility.

3. The tribal representative shall be reimbursed by the Project for travel, meals, or lodging in the amount of actual costs, subject to maximum amounts and limitations specified in the *Tennessee State Comprehensive Travel Regulations* which shall be provided as needed, as they are amended from time to time. These expenses will result from inspection visits to the site and/or to the archaeological laboratory facilities. In order to be reimbursed, each Native American consulting party must have a State of Tennessee vendor number, obtainable by filing a Vendor Request Form with the TDOT, which shall be provided upon request. Invoices must be supported by appropriate documentation in order to be reimbursed.

4. In the event that non-Native American human remains are discovered, TDOT will comply with applicable Tennessee state statutes concerning the treatment of human remains, including Tennessee State archaeological statutes T.C.A. §§ 11-6-107 and 11-6-119.

5. If non-mortuary archaeological resources that may be historically significant are discovered or unanticipated effects on historic properties found, the FHWA shall ensure the following steps are implemented:

a. All activities that may affect the newly identified resources will cease and the resources will be protected from additional disturbance until the requirements of Stipulation III(l) have been satisfied.

b. TDOT will notify the FHWA immediately and the FHWA shall then notify Signatories within 24 hours.

c. FHWA will notify Native American tribes with interest in Sullivan County, TN within 24 hours of the discoveries and will consult with tribes that may attach traditional cultural and religious significance to the resources. If non-Native American resources are discovered or found to be otherwise affected, TDOT, on behalf of FHWA, will consult with the SHPO.

d. FHWA, in consultation with the SHPO, shall make reasonable and good faith efforts to avoid or minimize adverse effects on NRHP-eligible archaeological resources. If adverse effects to previously unidentified NRHP-eligible archaeological resources cannot be avoided, the FHWA shall consult with the SHPO, the TDOA, and the TDOT to resolve these effects through the execution of an amendment to this MOA.

#### **IV. Duration of the Agreement Document:**

This MOA will remain in effect for five (5) years from the date of its execution or until all stipulations have been carried out. The MOA must be extended should a commitment contained herein not be completed by the end of the fifth year.

#### **V. Dispute Resolution**

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

a. Forward all documentation relevant to the dispute, including the FHWA's proposed resolution, to the ACHP. The ACHP shall provide FHWA 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, FHWA shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, signatories and concurring parties, and provide them with a copy of this written response. FHWA will then proceed according to its final decision.

b. If the ACHP does not provide its advice regarding the dispute within the thirty (30) days, FHWA may make a final decision on the dispute and proceed accordingly. Prior to reaching a final decision, FHWA 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 ACHP with a copy of the written response.

c. FHWA'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 agreement is agreed to in writing by all signatories. The amendment will be effective on the date that a copy signed by all signatories is filed with the ACHP.

#### **VII. Termination**

Pursuant to 36 CFR § 800.6(c)(8), any signatory may terminate this MOA by providing thirty (30) days notice to the other parties, provided that the parties shall consult during the period prior to termination to seek agreement on amendments or other actions that would avoid termination.

**VIII. Copies**

The Agency Official shall provide each signatory and consulting party with a copy of any Memorandum of Agreement executed for this project.

**EXECUTION** of this MOA by the FHWA and TN-SHPO and implementation of its terms evidence that FHWA has taken into account the effects of this undertaking on historic properties and afforded the ACHP an opportunity to comment.

[Acknowledgements Deleted for Inclusion in this Resolution]

SECTION III. That the mayor is further authorized to make such changes approved by the mayor and the city attorney to the agreement set out herein that do not substantially alter the material provisions of the agreement, and the execution thereof by the mayor and the city attorney is conclusive evidence of the approval of such changes.

SECTION IV. That the board finds that the actions authorized by this resolution are for a public purpose and will promote the health, comfort and prosperity of the citizens of the city.

SECTION V. That this resolution shall take effect from and after its adoption, the public welfare requiring it.

ADOPTED this the 6th day of February, 2024.

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PATRICK W. SHULL, MAYOR

ATTEST:

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ANGELA MARSHALL, DEPUTY CITY RECORDER

APPROVED AS TO FORM:

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RODNEY B. ROWLETT, III, CITY ATTORNEY