PROGRAMMATIC AGREEMENT
AMONG
THE UNITED STATES DEPARTMENT OF THE INTERIOR (NATIONAL PARK SERVICE),
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION, AND
THE MISSOURI STATE HISTORIC PRESERVATION OFFICER
REGARDING
IMPLEMENTATION OF THE WINNING DESIGN OF THE FRAMING A MODERN MASTERPIECE INTERNATIONAL DESIGN COMPETITON

WHEREAS, the United States Department of the Interior, National Park Service, Jefferson National Expansion Memorial (NPS) and the CityArchRiver 2015 Foundation (Foundation) propose to implement the winning design of the *Framing a Modern Masterpiece* International Design Competition (the Design Competition) by carrying out the physical and programmatic elements called for by that design in Appendix A (the Undertaking) and in doing so must meet the requirements of Sections 106 and 110(f) of the National Historic Preservation Act (16 U.S.C. 470f, 470h-2(f)); and

WHEREAS, the Design Competition was undertaken after being identified as the preferred alternative of the October 2009 General Management Plan/Environmental Impact Statement (GMP/EIS) for Jefferson National Expansion Memorial (the Park); and

WHEREAS, the Foundation sponsored the Design Competition focusing on the Park, a National Historic Landmark (NHL), to result in the selection of a design "to integrate the park, the east and west sides of the Mississippi River, the surrounding attractions and the downtown into a single and vibrant dynamic destination;" and

WHEREAS, the Federal Highway Administration (FHWA) has satisfied the requirements of Section 106 for transportation improvements associated with the Foundation's Design Competition (see Appendix A) including the proposed construction of a 300-foot wide landscaped 'lid' over the sunken lanes of I-70 between Market and Chestnut streets and associated road and ramp changes as demonstrated by a concurrence by the Missouri SHPO dated September 30, 2011 with FHWA's finding of a no adverse effect; and

WHEREAS, the NPS has identified the Area of Potential Effect (APE) and assembled a list of historic properties within the APE that have the potential to be affected by the Undertaking as indicated in Appendix B; and

WHEREAS, NPS has determined that effects on historic properties cannot be fully evaluated prior to approval of the undertaking, and has developed this Programmatic Agreement (PA) establishing a process to assess and resolve adverse effects in accordance with 36 CFR Part 800.14(b)(1)(ii); and

WHEREAS, the Secretary of the Interior has been invited to participate in recognition of the potential effects to two National Historic Landmarks (Jefferson National Expansion Memorial and Eads Bridge); and

WHEREAS, any portion of the winning design that extended beyond the referenced APE will not be implemented under this PA, except as noted herein or as amended pursuant to the terms herein; and

WHEREAS, the NPS acknowledges that removal of parking will create a demand for parking accommodation beyond the confines of the Park, and the connection to this Undertaking, if any, will be clarified and NPS agrees to undertake separate review of that action under 36 CFR Part 800, as appropriate; before the removal of the parking garage will commence; and

WHEREAS, the NPS, consulted with the Advisory Council on Historic Preservation (ACHP) and the ACHP will be a signatory to this PA; and

WHEREAS, the development and execution of this PA fulfills stipulation IV.H of the Memorandum of Agreement among the NPS, ACHP, Illinois and Missouri SHPOs and the Foundation executed July 13, 2010 to guide the design completion; and

WHEREAS, the NPS consulted with the Missouri and Illinois State Historic Preservation Officers (SHPO) and the Illinois SHPO declined to participate in negotiations to develop the PA or be a signatory to the PA; and

WHEREAS, the NPS consulted with the Absentee-Shawnee Tribe of Indians of Oklahoma, Delaware Nation of Oklahoma, Eastern Shawnee Tribe of Oklahoma, Iowa Tribe of Kansas and Nebraska, Iowa Tribe of Oklahoma, Kaw Nation, Kickapoo Tribe in Kansas, Miami Tribe of Oklahoma, Muscogee Creek Nation, Osage Nation, Ponca Tribe of Nebraska, Peoria Tribe of Oklahoma, Quapaw Tribe of Oklahoma, Sac and Fox Tribe of the Missouri in Kansas and Nebraska, Sac and Fox Tribe of the Mississippi in Iowa, Sac and Fox Nation of Oklahoma concerning the Undertaking and historic properties of cultural significance to them; and

WHEREAS, the Peoria Tribe of Oklahoma, Miami Tribe of Oklahoma, and Quapaw Tribe of Oklahoma (here after referred to as "other Interested Tribes") desire to continue participating in consultations and have been invited to sign the agreement as a Concurring Party (acknowledging that the Tribes have read and understand the PA and are in agreement with the terms of the PA); and

WHEREAS, the Osage Nation desires to continue participating in consultations and has been invited to execute this agreement; and

WHEREAS, the NPS has and continues to provide the public with information about the Undertaking and shall continue to seek and consider the views of the public regarding the Undertaking; and

WHEREAS, Missouri Preservation has participated in consultations and has been invited to sign this agreement as a Concurring Party; and

WHEREAS, the National Trust for Historic Preservation has participated in consultations and has been invited to sign this agreement as a Concurring Party;

NOW, THEREFORE, the NPS, the ACHP, and the Missouri SHPO agree that the Undertaking shall be implemented in accordance with the following stipulations in order to take into account the effects of the Undertaking on historic properties.

STIPULATIONS

Consistent with assurances contained in the GMP/EIS for the Park, the National Park Service will *not allow the implementation of a project that would cause impairment to the Memorial, and all of the enhancements would be required to be located in such a manner as to preserve the integrity of the National Historic Landmark and National Register Historic District.* In furtherance of this assurance, the National Park Service will ensure that the following measures are carried out.

I. APPLICABILITY AND SCOPE

This PA applies to the design and construction of the Undertaking defined in Appendix A. The NPS is the lead federal agency for fulfilling the Section 106 requirements in accordance with this PA.

II. PROFESSIONAL QUALIFICATIONS AND STANDARDS

A. The NPS will ensure that all work performed on the Site that has the potential to have an effect, directly or indirectly, on contributing structures and/or landscape features is performed or supervised by qualified individuals and/or teams that meet the *Secretary of the Interior's Historic Preservation Professional Qualification Standards*, 62 Fed. Reg. 33,707 (June 20, 1997), for history, architectural history, architecture, historic architecture and conservation, landscape architecture and/or archeology, as appropriate. Nothing in this stipulation may be interpreted to preclude NPS or any agent or contractor thereof from using the properly supervised services of persons who do not meet the professional qualification standards.

B. Any testing, inventory or documentation of potential or known historic properties pursuant to implementation of the PA shall conform to the provisions of the Secretary of the Interior's *Standards and*

Guidelines for Archeology and Historic Preservation (48 FR. 44716-44740) and applicable standards and guidelines for historic preservation established by the Missouri SHPO.

III. IDENTIFICATION AND EVALUATION OF HISTORIC PROPERTIES

A. **Historic Structures, Buildings, Objects and Landscapes.** Through its management of the Park, the NPS has compiled extensive documentation on the presence and significance of historic properties as documented on the park's CAR2015 Design Center web site at http://www.nps.gov/jeff/parkmgmt/cardocuments.htm. This documentation includes analysis of the existing contributing features and contributing landscape features of the Memorial and identification of known historic properties and their qualifying characteristics within the APE (Appendix B). NPS will ensure that this documentation is fully taken into account. Additionally, NPS will ensure that this documentation is available to all consulting parties and the public except for sensitive archeological documentation, which may be kept private in accordance with stipulation III.F below. In carrying out the components of the Undertaking identified in Appendix A, the NPS will not need to undertake any additional studies to identify at grade historic properties, unless otherwise set forth in this PA.

B. **Archeological Resources - Identification.** Implementation of the Undertaking may result in damage to previously unknown archeological resources. Accordingly, the NPS will consult with the Missouri SHPO and Osage Nation and carry out needed archeological surveys to determine if any such archeological sites are present and whether such sites are eligible for inclusion in the National Register. Although NPS files indicate that large amounts of sediments were imported from another location during monument landscape construction, the source and degree of integrity at specific locations within the park is currently unknown. Before any ground disturbing activities take place, all locations that may be impacted by these activities will be tested and evaluated for potential to contribute archeological information during the course of each project component. The NPS will conduct identification and assessment of archeological resources consistent with the following measures.

1. *Survey Scope.* The NPS, in consultation with the Missouri SHPO and the Osage Nation, will identify all surface areas that may be altered in any way by construction activities, to include any areas subject to temporary disturbance due to construction activities, lay-down areas, access roads, etc. An archeological identification effort will be carried out for these areas with the exception of any areas for which sufficient archeological information is already known or there is clear evidence that an area has been disturbed by previous activity to the extent that the presence of significant archeological deposits is highly unlikely.
2. *Survey Timing.* The NPS will schedule survey activities to reflect the sequential nature of construction activities and to ensure that survey activities and consultation on the identification, effects, and resolution of any adverse effects are completed well in advance of any construction related soil disturbance activities.
3. *Survey Methodology.* The NPS will consult with the Missouri SHPO and the Osage Nation and develop an efficient and effective survey methodology, ensuring that it is sufficient to generate information necessary to apply the National Register Criteria to any identified sites. The NPS shall ensure that the determinations of eligibility are consistent with the National Register Bulletin: *How to Apply the National Register Criteria for Evaluation* and follow the format consistent with the *State of Missouri, Department of the Natural Resources, Preliminary National Register of Historic Places Eligibility Assessment* (http://www.dnr.mo.gov/forms/780-1878-f.pdf) or another format mutually agreed upon by the NPS and Missouri SHPO.
4. *Outcome.* Based on its analysis of survey results and further consultation with appropriate signatories to this PA, NPS will apply the National Register Criteria and determine what, if any, identified archeological sites are eligible for inclusion in the National Register.

C. **Archeological Resources – Treatment.** For identified archeological properties determined to be eligible for the National Register, the NPS, in consultation with the Missouri SHPO and the Osage Nation, will develop treatment measures. Priority will be given to avoidance alternatives, to include burying sites under fill or incorporating them into the Undertaking, provided that the long-term protection of the archeological site can be assured by such measures. If avoidance options are not practical, NPS will undertake a data recovery plan for the recovery of archeological data from the site. Archeological

treatment plans and/or data recovery plans will be developed during the Design Development phase of design once options to avoid sites have been explored. Data recovery will be guided by a scope of work that includes:

1. Research questions to be addressed through the data recovery or through other research means.
2. Methods to be used, with an explanation of their relevance to the research questions.
3. Methods to be used in the analysis, data management, and dissemination of data, including a schedule.
4. Proposed disposition of recovered materials and records. And,
5. Proposed methods for involving the public and disseminating results of the work to the public.

The NPS will ensure that the data recovery plan is carried out and the signatories to the PA notified of the results.

D. **Consultation Protocols.** In carrying out the measures set forth in stipulation V. B, the NPS will ensure that consultation with the Missouri SHPO and the Osage Nation is conducted in a manner in which:

1. Meaningful input and opportunity for resolving disagreements is encouraged;
2. Any reviewing party for any scopes of work, National Register evaluations, treatment plans, and data recovery plans is provided 30 calendar days from the time of receipt to conduct review and submit comments unless otherwise negotiated; and,
3. Comments received are taken fully into account and the commenting party is notified of how the NPS responded to its comments.

E. **Review Materials.** At a minimum, the Missouri SHPO and the Osage Nation will be provided with the following items for their information and/or review:

1. Scopes of work and/or survey methodologies;
2. Draft and final archeological reports and memorandums at each stage of archeological investigation;
3. Archeological treatment and/or data recovery plans; and,
4. Responses to comments.

F. **Site Disclosure.** All archeological resources identified in carrying out the terms of this PA are subject to the provisions of section 304 of the National Historic Preservation Act, relating to the disclosure of archeological site information and NPS will ensure that all actions and documentation prescribed by this PA are consistent with said sections.

IV. OUTREACH TO AND INVOLVEMENT OF TRIBES

A. The NPS is committed to working with the Osage Nation and other Interested Tribes to assist in identifying and minimizing project impacts on important cultural resources, graves, and isolated human remains and recognizes that tribal monitoring is a vital contributing element in this effort.

B. Other Interested Tribes, as identified in the whereas clause of this PA, will receive all notifications and review materials stipulated in this PA for informational purposes.

C. Tribal monitoring will follow protocols and procedures established through consultation as set forth in Appendix C.

D. **Unanticipated Discovery of Human Remains or Graves.**

1. In the case of an unanticipated discovery of human remains or graves on Federal land, the NPS shall follow the procedures outlined by the Native American Graves Protection and Repatriation Act, as amended (43 C.F.R. 10, Subpart B), and pursuant to the Archeological Resources Protection Act of 1979 (43 C.F.R. 7) and as clarified in Appendix D.
2. If remains are found not to be Native American and not associated with a crime scene, every effort will be made to avoid impacting burial areas and graves. NPS will attempt to consult with individuals and groups linked by demonstrable ties of kinship or culture to potentially identifiable human remains. Reinterment at the same park may be permitted or another agreement reached

as to their treatment. If no consulting groups are identified, NPS will consult with the Missouri SHPO to determine an appropriate course of action.

V. DESIGN DEVELOPMENT

The Undertaking will be designed consistent with design objectives expressed in the outcome of the winning design. Implementation of the design and development of design documents and specifications for the various component parts of the Undertaking will present overlapping and demanding schedules to meet construction schedules. To accommodate these factors while ensuring that there is adequate opportunity for input from consulting parties, NPS will implement the following measures.

A. **Design Standards.** The NPS and Foundation will ensure that all design contractors working on the Undertaking are provided design standards, to include at a minimum, the following:

1. The Secretary of the Interior's *Standards for the Rehabilitation of Cultural Landscapes.*
2. The Secretary of the Interior's *Standards for the Treatment of Historic Properties.*
3. Formatting and content consistent with the NPS Denver Service Center Design Workflows guidelines for schematic, design, and construction documents http://www.nps.gov/dscw/designbidbuild.htm.
4. A copy of this executed PA. And,
5. Other design standards recommended by signatories to this PA as deemed appropriate by the NPS and Foundation.

The NPS and the Foundation will ensure that the design contractors adhere to these standards in the development of all design documents including change orders necessitated after award of any construction contracts implementing the Undertaking or part thereof.

B. **Establishment of Collaborative Design Review Team.** To ensure that signatories and consulting parties to this PA have opportunity to assist the NPS in meeting its design goal that the Undertaking preserve the integrity of this historic setting, the NPS, with assistance from the Foundation, will establish and provide administrative support to a Collaborative Design Review Team.

1. *Membership.* Membership on the team will consist of a representative of the NPS, the Foundation, the Missouri SHPO, and Missouri Preservation. Additional members would be added to this team at the discretion of its members and based on the nature of the particular component of the Undertaking being reviewed. Consulting parties wishing to participate in design review of specific components of the Undertaking will let their interest be known by notification to the NPS. The NPS shall notify the National Trust for Historic Preservation as early as possible in advance of all Collaborative Design Review Team meetings to help ensure that it has an opportunity to request participation by joining the meeting.
2. *Team Mission.* The primary purpose of the team will be to review draft schematic and design documents and evaluate how project design and specifications may affect qualifying characteristics of properties included in or eligible for inclusion in the National Register and to make recommendations on how relationships between the design and historic properties might be improved and/or adverse effects avoided.
3. *Team Support.* The NPS, with assistance from the Foundation, will facilitate the function of this Team by providing for regularly scheduled meetings during the design process, ensuring that Team members are provided all appropriate construction documents in a timely fashion, and documenting the outcome of team meetings. At its initial meetings, the Collaborative Design Review Team will establish its general operating procedures and the NPS will ensure that these procedures are distributed consistent with stipulation V.B.4. below.
4. *Consulting Party and Public Notification of Team Activities.* Through use of appropriate websites or other notification techniques, the NPS will ensure that consulting parties and the public are provided information about the purposes of the Collaborative Design Review Team and its general schedule of activities, along with the schedule of design review process for the Undertaking as it may relate to the activities of the Collaborative Design Review Team. Upon

request, the NPS, on behalf of the Collaborative Design Review Team, will respond to consulting party and/or the public inquiries about how comments were taken into account in the decision making process.

5. *Team Outcome and Dispute Resolution.* The members of the Team will strive diligently to work toward mutually agreeable outcomes on design issues addressed by the Team. If, during the course of Team review of a design proposal an impasse is reached, any member of the Team can take steps to have the dispute resolved through the provisions set forth in stipulation X of this PA.
6. *Team Duration.* The Team will remain in place until the close of the design process, to include development of pertinent design construction documents and specifications, for the components of the Undertaking or sooner if mutually agreed to by all of the Team members.

VI. PUBLIC OUTREACH

Until such time as the Undertaking is completed, the NPS, with assistance from the Foundation, will take necessary steps to ensure that the public is provided timely information on the status of the Undertaking and steps taken to meet the terms of the PA. At a minimum, these efforts will include use of relevant websites to update the public and solicit ongoing input and suggestions as it may relate to the relationship of the Undertaking to historic properties. Information to be exchanged with the public will include project design and construction schedules, the activities of the Collaborative Design Review Team, as discussed in stipulation V.B.4, the results of further historic property identification efforts, as discussed in stipulation III.A, new interpretive features, and component design plans. Throughout this outreach effort, the NPS will encourage input from the consulting parties to this PA and other groups, organizations, and individuals that did not participate in consultation leading to this PA.

VII. DOCUMENTATION

A. The NPS shall prepare Historic American Landscape Survey (HALS) recordation of the NHL prior to alterations in the Design Competition's rehabilitation of or introduction of new features into the historic landscape. HALS documentation will be completed prior to the commencement of any construction activities.

B. Following implementation of the Undertaking the NPS shall update the NHL documentation to reflect modifications that resulted from the Undertaking, and to include more information about the significance of the historic landscape to the overall NHL designation.

VIII. INADVERTANT DISCOVERIES AND UNANTICIPATED EFFECTS

In the event that previously unreported and unanticipated historic properties or unanticipated effects to already known historic properties are found during activities conducted by or on behalf of the NPS, the NPS will ensure that the procedures set forth in Appendix E are fully carried out.

IX. INTERPRETIVE TREATMENTS

A. The NPS will seek to interpret for future visitors to the Jefferson National Expansion Memorial the changes that have occurred at the Park as a consequence of the Design Competition and implementation of the Undertaking. The NPS will consider a wide range of options for how best to achieve this interpretive program, including a permanent exhibit within the Museum, explaining the Design Competition and resulting changes to the appearance and character of the JNEM, using models, documents, etc. from the Competition and/or other electronic media, waysides or exhibits.

B. In the development of this interpretive program the NPS will consult with the signatories to this PA and examine possible techniques and interpretive techniques that will provide visitors with information on historic properties known to have existed prior to construction of the Arch and Grounds and archeological features preserved in place in carrying out the Undertaking unless pursuant to stipulation III.F. above the nature and location of a remaining archeological site(s) should be kept confidential.

X. DISPUTE RESOLUTION

A. Should the signatories executing this PA at any time object in writing to the manner in which the terms of this PA are implemented, to any action carried out or proposed with respect to implementation of this

PA, or to any document prepared in accordance with and subject to the terms of this PA, the objecting party shall notify the other signatories, and the signatories shall consult within seven calendar days to resolve the objection.

B. If the objection is resolved through consultation, the NPS may proceed with the disputed action in accordance with the terms of such resolution.

C. If, after initiating consultation, the NPS determines that the objection cannot be resolved through consultation, or if the duration of the consultation has exceeded 15 days from the commencement of consultation to resolve the dispute, the NPS shall forward all documentation relevant to the objection to the ACHP, including the NPS's proposed resolution of the objection, with the expectation that the ACHP shall within 30 days after receipt of such documentation:

1. Advise the NPS that the ACHP concurs in the NPS's proposed resolution of the objection, whereupon the NPS shall notify the signatories executing this PA, and NPS shall resolve the objection accordingly; or
2. Provide the NPS with recommendations, which the NPS shall take into account in reaching a final decision to resolve the objection. The NPS shall notify the signatories executing this PA of its final decision.

D. The procedures outlined in stipulations X.A to X.C, above, shall apply only to the subject of the objection. The NPS's responsibility to carry out all actions under this PA that are not the subjects of the objection, and which do not foreclose the consideration of alternatives to resolve the objection, shall remain unchanged.

XI. ADMINISTRATIVE PROVISIONS

A. Amendments. Any signatory executing this PA may propose that this PA be amended, whereupon the NPS and other executing signatories shall consult to consider such amendment. This PA may be amended only upon the written agreement of the executing signatories. The amendment shall be effective on the date a copy signed by all of the signatories is filed with the ACHP by the NPS.

B. Termination. If any signatory executing this PA proposes termination of the PA, the party proposing termination shall, in writing, notify the other signatories executing this PA, explain the reasons for proposing termination, and consult to seek alternatives to termination. Should such consultation fail, the signatory proposing termination may terminate this PA by promptly notifying in writing the other executing signatories. Termination shall render this PA without further force or effect. Should this PA be terminated, the NPS shall consult regarding the Undertaking with the executing signatories in accordance with 36 CFR Part 800.

C. Duration of the PA. Unless terminated pursuant to stipulation XI.B, the duration of this PA is five years from the date of its execution. NPS may initiate consultation with the signatories executing this PA approximately one (1) year prior to the expiration date of this PA to reconsider its terms. Reconsideration may include the continuation or revision of this PA by amendment or termination.

D. Effective date of the PA. This PA shall take effect on the date that it has been signed by the last executing signatory.

E. Anti-deficiency Act. Any requirement for the payment or obligation of funds by the Government established by the terms of this PA shall be subject to availability of appropriated funds. No provision in this PA shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 USC Section 1341. If the availability of funds and compliance with the Anti-Deficiency Act impair the NPS' ability to perform under this PA, then the NPS shall consult in accordance with stipulation XI.B of this PA.

Execution of this PA and implementation of its terms evidence that the NPS has taken into account the effects of this Undertaking on historic properties and has afforded the ACHP an opportunity to comment on the Undertaking and its effect on historic properties.

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REGARDING
IMPLEMENTATION OF THE WINNING DESIGN OF THE FRAMING A MODERN MASTERPIECE INTERNATIONAL DESIGN COMPETITON

SIGNATORY

NATIONAL PARK SERVICE

Tom Bradley

Thomas A. Bradley
Superintendent, Jefferson National Expansion Memorial

Date: 9/18/12

PROGRAMMATIC AGREEMENT
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SIGNATORY

MISSOURI STATE HISTORIC PRESERVATION OFFICER

Sara Parker Pauley

Date: 10/26/12

Sara Parker Pauley
Director, Department of Natural Resources and State Historic Preservation Officer

SIGNATORIES

NATIONAL PARK SERVICE

_____ Date: _____

Thomas A. Bradley
Superintendent, Jefferson National Expansion Memorial

MISSOURI STATE HISTORIC PRESERVATION OFFICER

_____ Date: _____

Sara Parker Pauley
Director, Department of Natural Resources and State Historic Preservation Officer

ADVISORY COUNCIL ON HISTORIC PRESERVATION

John M. Fowler Date: 11/15/12

John M. Fowler
Executive Director

Invited Signatories:

OSAGE NATION

_____ Date: _____

John D. Red Eagle
Principal Chief

CITYARCHRIVER 2015 FOUNDATION

_____ Date: _____

Maggie Hales
Executive Director

PROGRAMMATIC AGREEMENT
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Invited Signatory:

OSAGE NATION

John D. Red Eagle
Principal Chief

Date: 10/19/12

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Invited Signatory:

CITYARCHRIVER 2015 FOUNDATION

Maggie Hales

Maggie Hales
Executive Director

Date: 9/18/2012

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Concurring Party:

NATIONAL TRUST FOR HISTORIC PRESERVATION

Barbara Pahl

Date: 9-19-12

Barbara Pahl
Vice-President of Western Field Offices

Concurring Parties:

MISSOURI PRESERVATION

_____ Date: _____

Karen Bode Baxter
President

NATIONAL TRUST FOR HISTORIC PRESERVATION

_____ Date: _____

Barbara Pahl
Vice-President of Western Field Offices

PEORIA TRIBE OF OKLAHOMA

_____ Date: _____

John Froman
Chairman

MIAMI TRIBE OF OKLAHOMA

_____ Date: _____

Thomas Gamble
Chief

QUAPAW TRIBE OF OKLAHOMA

_____ Date: _____

John Berrey
Chairman

APPENDIX A

THE UNDERTAKING

The overall concept of the Undertaking is informed by the goals established in the Framing a Modern Masterpiece: The City + The Arch + The River competition, as well as extensive stakeholder and public input. The overall design approach of the Undertaking was guided by the 2009 Final Jefferson National Expansion Memorial General Management Plan/Environmental Impact Statement (GMP) and the analysis and treatment recommendations included in the Jefferson National Expansion Memorial Cultural Landscape Report (CLR). The Undertaking includes the following project areas:

- The West Gateway project includes a new park landscape at Luther Ely Smith Square, a new park landscape spanning the depressed lanes of I-70, and new landscaping associated with the Museum of Westward Expansion.
- The Museum of Westward Expansion project renovates existing facilities and exhibits at the visitor center and museum, as well as provides a new universally accessible entrance and lobby facility.
- The North Gateway project includes the removal and replacement of the existing parking garage with an open landscape, and construction of a shared pedestrian/bicycle path between the Arch grounds, city, and riverfront.
- The East Slopes project comprises the east side slopes that surround the railroad open cut walls and tunnels. An accessible connection would be created between the Arch Grounds and the Mississippi riverfront via new pedestrian pathways, and a more sustainable planting strategy will be implemented.
- The Reflecting Ponds project comprises the areas surrounding and including the Reflecting Ponds located between I-70 and the Processional Walks. New, accessible pedestrian pathways through these areas will be created and new planting, grading, and drainage strategies to improve the water quality of the Reflecting Ponds implemented.
- The Processional Walks project area includes the existing system of pedestrian walkways and allées of trees. Existing ash trees, currently threatened by the invasive emerald ash borer, will be replaced with a more suitable but compatible species. The soil, irrigation and drainage network that support the allées will be improved. The walks will be resurfaced or replaced as required with exposed aggregate concrete.
- The Old Courthouse project will renovate selected gallery spaces and develop new exhibits. ADA access improvements will be provided to the first and second floors through ramp and elevator improvements.

Further explanation of the Undertaking's project elements can be found in the environmental assessment prepared for the project which, when completed, will be available on the NPS Planning, Environment and Public Comment web site at http://parkplanning.nps.gov/projectHome.cfm?projectID=37612 and archived on the park CAR2015 Design Center web site at http://www.nps.gov/jeff/parkmgmt/cardocuments.htm.

Design Competition Elements Not Covered by this PA

Several design elements of the Foundation's Design Competition will be carried out independently of the NPS and with little or no control by the NPS or are largely undefined and thus Section 106 compliance for these elements will not covered by this PA. Should cumulative impacts associated with these project elements be identified by the Collaborative Design Review Team, the cumulative impacts will be considered during Section 106 review of other project components as designs proceed. These elements are listed below.

Transportation Improvements

MoDoT has initiated a separate undertaking for transportation needs associated with the Foundation's Design Competition. The MoDoT undertaking is not covered by this PA. It includes the following elements:

- Closure of Memorial Drive northbound between Walnut Street and Washington Avenue and southbound between Chestnut Street and Market Street;

- Construction of a park over the highway spanning the geographically depressed section of I-70 between Market Street and Chestnut Street;
- Changes to ramps on I-70 at Washington Avenue;
- Connection of two sections of Third Street by "punching" through the existing concrete island barrier at the MLK Bridge;
- Connection to downtown from eastbound I-70 at Tucker Boulevard;
- Removal of bridges at Walnut, Market, Chestnut, and Pine Street;
- Construction and reconfiguration of a new Walnut Street bridge ;
- Construction of a new land bridge from Market to Chestnut Street.

Central Riverfront Improvements
Great Rivers Greenway and the City of St. Louis will undertake improvements along Leonor K. Sullivan Boulevard from Chouteau Avenue to Biddle Street to promote economic development along the riverfront. The project may receive funding from the Federal Transit Authority, Federal Highway Department, and National Park Service. It may need federal permits from the Army Corps or additional federal agencies and will affect land owned by the National Park Service. NEPA compliance for this project will be folded into NEPA compliance for the Design Elements on NPS land. Section 106 will be done separately with the Lead Federal Agency to be determined. Elements of the undertaking may include:

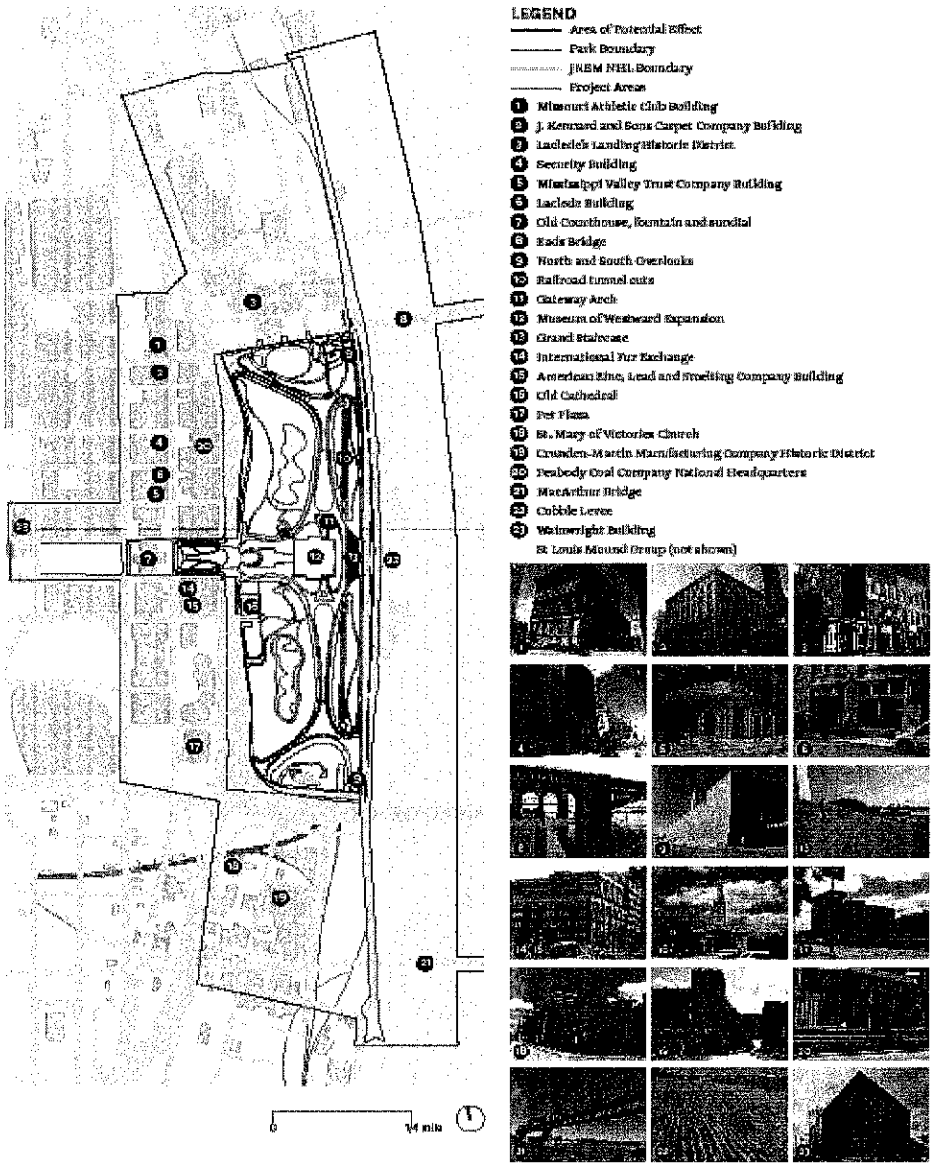
- Raising the elevation of Leonor K. Sullivan Boulevard an average of 2.9 feet across the project site, varying between one foot and 4.5 feet, to reduce the frequency and impact of flood events;
- Establishing a new multi-modal greenway/roadway, providing a critical link in the regional system of bike trails;
- Conversion of the existing two-lane roadway into a narrower two-lane roadway section with a two-way bike path separated from the vehicle travel lanes;
- Establishment of designated areas for bus drop-off/pick-up lanes.

Kiener Plaza Improvements
Redevelopment of Kiener Plaza will be undertaken by the City of St. Louis using city and private funds. No federal permitting, funding or involvement is expected.

Illinois Design Elements
The Design Competition called for the development of a park on the Illinois side of the Mississippi River and construction of a gondola to promote connections between the new park and the Memorial. This project would likely involve the National Park Service and other federal permitting and funding agencies. This undertaking is currently relatively undefined. It will be covered under separate compliance if and when it becomes feasible.

APPENDIX B

AREA OF POTENTIAL EFFECTS



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APPENDIX C

TRIBAL MONITORING PLAN

A. The NPS is committed to working with the Osage Nation (the Tribe) to assist in identifying and minimizing the Undertaking's impacts on important cultural resources, graves, and isolated human remains.

B. In general, tribal monitors are hired by the Tribe to monitor areas during the historic property identification and evaluation process and ground disturbing activities related to construction. The NPS will reimburse the Tribe at an agreed upon daily rate. The monitors are required to have adequate training and must follow strict protocols while in the field. The tribal monitors shall be selected by the Tribe. There will be clear lines of communication among the tribal monitors, the Tribe, and the NPS representatives and their consultants and contractors. Reports will be shared with the NPS, other tribes, and other consulting parties that will be identified through the consultation process.

C. The Osage Nation and interested tribes will be apprised of the scopes of work and scheduling of identification efforts. Pending the results of these initial identification efforts, NPS will consult with the Tribe to determine where tribal monitoring may be necessary and appropriate. Tribal monitoring will be considered in areas where initial identification efforts have indicated that historic properties of importance to the Osage Nation may be affected by the Undertaking.

D. The objective of the tribal monitoring program is to develop a reasonable monitoring process while minimizing the potential for adverse effects from identification and project activities to historic properties and sites of religious and cultural significance. This plan provides guidelines to assist in the decision-making process when consulting with the Tribe and to implement an effective communication system.

E. Tribal Monitors Position Description

1. During ground-disturbing activities the tribal monitor will provide assistance with the identification of traditional cultural resources of significance to the Tribe.
2. Tribal monitors may not direct construction personnel or equipment.
3. It is the responsibility of the tribal monitor to actively observe and report any cultural artifact or human remains found either on the surface or subsurface within the project boundaries to the NPS representative.
4. The tribal monitor is required to adhere to the PA and report to the NPS if an archaeological or cultural resource is discovered.
5. Monitors must abide by all safety rules and wear protective equipment at all times while on site.
6. NPS representatives will seek the advice and input of tribal monitors when unanticipated discoveries are encountered.
7. Only if the tribal monitor feels that extremely sensitive materials, such as human remains, are in immediate danger of being damaged or destroyed, they may notify the operator and request that they cease operations in that area until their respective Tribe and the NPS representative can be notified.

F. Credentials and qualifications of the tribal monitors shall be within the purview of the individual Tribe. The individuals selected will be officially recognized by the Tribe as having the capabilities to perform the duties as described in the job description. The NPS will coordinate the activities of the monitors according to the survey, evaluation, or construction schedule. It is anticipated that the Tribe will administer the activities of the monitors from a tribal perspective. The Osage Nation can also contract out monitoring work to other Native

American Tribes who have qualified staff provided that each tribe officially delegates such authority in writing, stating that they endorse the candidate.

G. The NPS and the Tribe will agree, through the consultation process, upon the extent of and locations of tribal monitoring. Tribal monitoring will be conducted on areas identified by the Tribe as having significance to that Tribe and areas identified by the Tribe during the Section 106 process.

H. Tribal monitors will work together with the NPS representative to assist in cultural resource identification and perform monitoring activities in areas targeted for survey, evaluation, or construction. If a cultural resource is discovered, NPS representatives will follow the terms of the PA, as well as all local, state, and federal laws governing the protection and discovery of archaeological and cultural resources. Tribal monitors will communicate with the NPS representative and will not direct construction personnel or equipment. The authority to stop work will rest on the NPS representative except as is outlined in E.7.

I. It will be the responsibility of the NPS representative to contact, in person, or via email, text, or telephone, the tribal monitor(s) and notify them of emergencies or potential emergencies affecting the entire project areas, such as inclement or violent weather.

J. The tribal monitor will not remove cultural material unless directly instructed to do so by the NPS representative. Should they be instructed to move the cultural material, they will place the material in an appropriate container and properly label the container to preserve the provenience of the material and deliver it directly to the NPS representative. Transfer of the cultural material to the NPS representative's custody will be documented within a report provided by the monitor or their represented Tribe.

K. Disputes arising out of this agreement will be resolved in the most efficient manner appropriate to the dispute. If an agreement cannot be reached in this manner, the parties shall engage a mutually agreed-upon mediator. The mediator's decision shall be binding upon the parties. The parties shall share the cost of mediation.

APPENDIX D
UNANTICIPATED DISCOVERY OF HUMAN REMAINS AND NAGPRA ITEMS

Procedures for Inadvertent Discoveries of Human Remains, Funerary Objects, Sacred Objects, and Objects of Cultural Patrimony as Defined by 43 CFR Part 10.1(b)(iii)92) During Cultural Resources Investigation Efforts, Construction, and Maintenance:

A. Any contractor or applicant or their agents, representatives, or employees who knows or has reason to know that he or she has discovered inadvertently human remains, funerary objects, sacred objects, or objects of cultural patrimony must provide immediate telephone notification of the inadvertent discovery, with written confirmation, to the superintendent.

B. Upon encountering human remains, funerary objects, sacred objects, or items of cultural patrimony during ground disturbing activities, the NPS will ensure that the cultural resource investigator or construction contractor immediately stops work within the ninety (90) meter radius buffer zone around the point of discovery. The NPS will assume responsibility for implementing additional measures, as appropriate, to protect the discovery from looting and vandalism until the requirements of the Native American Graves Protection and Repatriation Act (NAGPRA) have been completed, but must not remove or otherwise disturb any human remains or other items in the immediate vicinity of the discovery.

C. The NPS will immediately notify law enforcement by telephone of the discovery of unmarked human remains.

D. The NPS will notify the Osage Nation by telephone and email within forty-eight (48) hours of the discovery of human remains, funerary objects, sacred objects, or items of cultural patrimony. This step is not intended to satisfy the requirements of 43 CFR 10.4(d)(iii).

E. The NPS will take immediate steps, if necessary, to further secure and protect inadvertently discovered human remains, funerary objects, sacred objects, or items of cultural patrimony, including, as appropriate, stabilization or covering.

F. Other than for crime scene investigation, no excavation, examination, or analysis of human remains will be conducted without first securing permission from the Osage Nation.

G. If upon investigation, the local enforcement officer determines that the remains are not involved in a legal investigation, the protocol implementing NAGPRA applies.

H. The NPS, in consultation with the Osage Nation, will have seven (7) working days to determine if the skeletal remains are human, the degree to which they were disturbed, and, if possible, assess their potential age, cultural affiliation, and identity, if possible, without any further disturbance. Upon making their determination or at the end of the seven (7) days, whichever comes first, the NPS will notify the Osage Nation and other Interested Tribes of its findings. This notification must include pertinent information as to kinds of human remains, funerary objects, sacred objects, or items of cultural patrimony discovered inadvertently, their condition, and the circumstances of their inadvertent discovery. If it is determined that the skeletal remains are not Native American, then the provisions in stipulation IV.D.2. will apply.

I. The Osage Nation will have seventy-two (72) hours to respond verbally followed by written response via U.S. mail or electronic mail. The response should specify the Osage Nation's intention to conduct or decline further consultation.

J. The NPS will consult with the Osage Nation or identified lineal descendant regarding additional measures to avoid and protect or mitigate the adverse effect of the project on the human remains and grave site. These measures may include:

   1) formal archeological evaluation of the site;

   2) visits to the site by the Osage Nation and/or interested Tribes;

   3) exploration of potential alternatives to avoid the human remains or grave;

4) implementation of a mitigation plan by the NPS in consultation and concurrence with the Osage Nation, including procedures for disinterment and re-interment; and

5) implementation of the mitigation plan.

K. The NPS or its agents, in consultation with the Osage Nation, Interested Tribes, and other interested parties such as living descendants, may consult with a qualified physical anthropologist, forensic scientist, or other experts as may be needed to examine and assess the inadvertent discovery. Unless the remains were inadvertently removed, the evaluation will be conducted at the site of discovery. The consulting expert will be allowed to draw and measure the exposed remains and associated funerary objects. No photographs or digital images will be permitted. Drawings and other records will be curated at a state-approved curation facility in Missouri. Drawings cannot be published in any form or shown as part of scholarly presentations without the written permission of the Osage Nation or nearest living descendant.

L. A report of findings describing the background history leading to and immediately following the reporting and resolution of an inadvertent discovery will be prepared within thirty (30) calendar days of the resolution of each inadvertent discovery. This report must meet the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation (49 FR 44716) guidelines.

APPENDIX E
INADVERTENT DISCOVERY OF HISTORIC PROPERTIES

A. Objectives: The following procedures shall be used in the event that previously unreported and unanticipated historic properties are found during activities conducted by or on behalf of the NPS.

B. Pending the results of initial identification and evaluation efforts, NPS will consult with the Missouri SHPO, Osage Nation to determine whether archeological monitoring during construction will be necessary and appropriate. Monitoring will be considered in areas where initial identification and evaluation efforts have indicated that significant historic properties may exist. If deemed necessary, archeological monitors meeting the standards outlined in stipulation II.A. of this PA will be on call to help with the identification and evaluation of historic properties that may be inadvertently discovered during the course of excavation.

C. The construction contractor must immediately stop all work activity within a ninety (90) meter radius buffer zone, notify the NPS of the discovery, and implement interim measures to protect the discovery from looting and vandalism. Construction may continue outside the buffer zone. Within forty-eight (48) hours of receipt of this notification of the discovery, the NPS shall:

   1) inspect the work site to determine the extent of the discovery and ensure that work activities have halted within the ninety (90) meter radius buffer zone;
   2) clearly mark the area of the discovery;
   3) implement additional measures, as appropriate, to protect the discovery from looting and vandalism;
   4) notify the Missouri SHPO, Osage Nation of the discovery; and
   5) recommend revisions to the construction buffer zone depending upon the nature of the resource discovered.

D. The NPS, in consultation and concurrence with the Missouri SHPO, and Osage Nation shall have seven (7) business days following notification to determine the National Register of Historic Places eligibility of the discovery. The NPS may assume the newly discovered property to be eligible for the National Register for the purposes of Section 106 pursuant to 36 CFR §800.13(c).

E. If the find is National Register eligible, the NPS shall consult with the Missouri SHPO and Osage Nation regarding appropriate measures for site treatment pursuant to 36 CFR §800.6(a). The Missouri SHPO, Osage Nation shall have seven (7) business days to provide their objections or concurrence on the proposed actions. Concurrence on the part of the Missouri SHPO and Osage Nation is required for all adverse effect resolution measures. These measures may include:

   1) formal archeological evaluation of the site;
   2) visits to the site by the Missouri SHPO, Osage Nation;
   3) exploration of potential alternatives to avoid the site;
   4) preparation of a mitigation plan by the NPS in consultation and concurrence with the Osage Nation for approval by the Missouri SHPO; and
   5) implementation of a mitigation plan.

F. If the find is determined to be isolated, discrete, or completely disturbed by construction activities, the NPS shall consult with the Missouri SHPO and Osage Nation prior to resuming construction within the ninety (90) meter radius buffer zone.

G. The buffer zone radius may be lessened if conditions warrant. Missouri SHPO and Osage Nation, shall have seven (7) business days to comment on the lessening of a buffer zone, but shall be encouraged to respond more quickly in the case of isolated, discrete or completely disturbed resources. In the case of historic resources, the Osage Nation will be notified, but the construction radius may be lessened with just the approval of the Missouri SHPO. In the case of resources with associations to Native American culture, the Osage Nation must also be consulted.