

**MEMORANDUM OF AGREEMENT
AMONG
THE FEDERAL COMMUNICATIONS COMMISSION (FCC),
THE OKLAHOMA STATE HISTORIC PRESERVATION OFFICE (SHPO), and BRT
GROUP, LLC REGARDING
THE US-OK-5136 GATE COMMUNICATIONS TOWER at US 64th, GATE, BEAVER
COUNTY, OKLAHOMA**

WHEREAS, BRT Group, LLC proposes to construct a 310-foot guyed telecommunications tower (including lightning rod) (“project”) at US 64th, Gate, Beaver County, Oklahoma (with Latitude 36.858095 and Longitude -100.058999) to support communications facilities for its FCC-licensed service and for use by other FCC licensees; and

WHEREAS, BRT Group, LLC is a licensee of the FCC and intends to use antennas on the tower in connection with the provision of its licensed service; and

WHEREAS, the proposed tower requires antenna structure registration with the FCC pursuant to 47 CFR 17.4(a); and

WHEREAS, the FCC has determined that the project is a federal undertaking subject to review under the National Historic Preservation Act (NHPA), as amended by Pub. L. No. 96-515 (54 U.S.C. § 306108); and

WHEREAS, BRT Group, LLC pursuant to delegation from the FCC, initiated review for the project pursuant to 36 CFR Part 800, the regulations implementing Section 106 of the National Historic Preservation Act (54 U.S.C. § 306108), as required by the FCC rules at 47 CFR §§ 1.1307(a)(4), 1.1320; and

WHEREAS, BRT Group, LLC has consulted with the SHPO pursuant to 36 CFR Part 800, as well as pursuant to the *Nationwide Programmatic Agreement for Review of Effects on Historic Properties for Certain Undertakings Approved by the Federal Communications Commission* (NPA), 47 CFR Part 1, App. C, and is a signatory to this MOA; and

WHEREAS, the FCC, in consultation with the SHPO, established the Area of Potential Effects (“APE”), consistent with Stipulation VI of the NPA, to include the area of potential ground disturbance and any property that will be physically altered or destroyed by the project, as well as the geographic area in which the project introduces new visual elements; and

WHEREAS, the FCC and the SHPO have determined that the proposed project may have an adverse effect on the Gate School, which is listed in the National Register of Historic Places; and

WHEREAS, BRT Group, LLC, consistent with the FCC’s requirements for environmental review, has considered and evaluated a number of alternatives for the project and concluded that these options are either unavailable to BRT Group, LLC or do not meet the technical requirements

necessary to satisfy the coverage needs of the telecommunications systems to be supported by the antennas; and

WHEREAS, members of the public were afforded a 30-day period to participate in and comment on this proceeding pursuant to a notice published in the *Herald Democrat* on November 15, 2018, and no objections pertaining to effects on historic properties were received; and

WHEREAS, local government officials were notified and afforded an opportunity to participate in and provide comments on this proceeding pursuant to Section V. of the NPA; and

WHEREAS BRT Group, LLC has made a reasonable and good faith effort to identify and notify Federally-recognized Tribal Nations that might attach religious and cultural significance to historic properties within the APE, including Spirit Lake Nation, Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, Santee Sioux Nation, Comanche Nation, Kiowa Indian Tribe, Wichita and Affiliated Tribes, Cheyenne-Arapaho Tribes of Oklahoma, Ponca Tribe of Indians of Oklahoma, Apache Tribe of Oklahoma, Northern Arapaho, Seminole Nation of Oklahoma, Cherokee Nation, Osage Nation, Wyandotte Nation, Mescalero Apache Tribe, and Northern Cheyenne Tribe, and none of the notified Tribal Nations have objected to this project; and

WHEREAS, in accordance with Stipulation VII.D.2 of the NPA, BRT Group, LLC has notified the Advisory Council on Historic Preservation (ACHP) of its adverse effect determination with the specified and required documentation and the ACHP has declined to participate in the consultation pursuant to 36 CFR § 800.6(a)(1)(iii);

NOW, THEREFORE, the FCC, the SHPO, and BRT Group, LLC agree that the project shall be implemented in accordance with the following stipulations in order to take into account the effects of the undertaking on historic properties; and agree that the following measures shall constitute full, complete and adequate mitigation under the NHPA, as amended, the implementing regulations of the ACHP, and the FCC's rules.

STIPULATIONS

The FCC, through coordination with BRT Group, LLC and its assignees, will ensure that the following measures are carried out following the effective date of this MOA pursuant to Stipulation IX:

I. MITIGATION OF ADVERSE EFFECT

A. BRT Group, LLC shall contract a Secretary of the Interior qualified historic preservation professional (Consultant) to prepare and/or update Historic Preservation Resource Identification (HPRI) forms and complete a summary report documenting nine (9) Works Progress Administration (WPA) structures located in Beaver County. These structures include:

1. Community Center (215 Ave. E, Beaver, OK)
2. Beaver School Gym/Auditorium (5th and Douglas, Beaver, OK)

3. Ag. Exhibit Building (11th and Douglas, Beaver, OK)
4. Beaver County Fairgrounds Stadium (11th and Douglas, Beaver, OK)
5. Forgan School Gym (Main and Indian, Forgan, OK)
6. Gate School (4th and Texas, Gate, OK)
7. Balko School (T2N, R22E, S16, Balko, OK)
8. Rotary Park (Main and Ave. C, Beaver, OK)
9. Gate Community Park (West Highway 69, Gate, OK)

B. The following tasks will be completed as part of the mitigation:

1. Draft HPRI Survey and Summary Report
 - a. Consultant will review background information and conduct research at the SHPO office in Oklahoma City.
 - b. Within 90-days of the effective date of this MOA, Consultant will complete field documentation (photographs and notes, per the Oklahoma Survey Standards; which can be referenced at <https://www.okhistory.org/shpo/surveyrequirements.htm>) for each of the nine resources.
 - c. Within 30-days of fieldwork completion, Consultant will prepare and submit to SHPO draft HPRI forms, per the Oklahoma Survey Standards, for each of the nine resources, including photographs and location map.
 - d. Consultant will prepare a summary report of the investigation to accompany the HPRI Survey forms. A draft report will be submitted to SHPO within 30-days of the completion of fieldwork. One hard copy will be sent via US mail and one digital copy will be sent via e-mail.
2. Within 30-days of receipt, the SHPO shall review the HPRI forms and report and provide comments to the Consultant.
3. Final HPRI Survey and Report
 - a. Within 30-days of receiving comments, Consultant will revise the HPRI forms for each of the nine resources. One final digital copy, including photographs and location map will be sent to SHPO via e-mail.
 - b. Consultant will concurrently submit a revised final summary report of the investigation to accompany the HPRI Survey forms. One (archival?) hard copy will be sent via USPS mail and one (pdf?) digital copy sent via e-mail.

II. REPORTING

Following the execution of this MOA and until it expires or is terminated, BRT Group, LLC shall provide all parties to this MOA an annual summary report and a final report when the tower proponent completes the mitigation, detailing work undertaken pursuant to its terms. Such report shall include any scheduling changes proposed, any problems encountered, and any disputes and/or objections received in carrying out the terms of this MOA.

III. DISPUTE RESOLUTION

Should any signatory to this MOA object at any time to any actions proposed or the manner in

which the terms of this MOA are implemented, the FCC shall consult with such party to resolve the objection. If the FCC determines that such objection cannot be resolved, the FCC will:

A. Forward all documentation relevant to the dispute, including the FCC's proposed resolution, to the ACHP. The ACHP's policy is to provide the FCC with its advice on the resolution of any objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, the FCC 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. The FCC will then proceed according to its final decision.

B. If the ACHP does not provide its advice regarding the dispute within the thirty (30) day time-period, the FCC may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, the FCC 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 such written response.

C. The FCC'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.

IV. REMOVAL

In the event that BRT Group, LLC abandons the facilities at this site, BRT Group, LLC will remove all of its antennas and equipment and restore the project area to the same condition as existed prior to commencement of the project. BRT Group, LLC will notify the SHPO and the SHPO will be given an opportunity to verify that the site has been restored.

V. DURATION

This MOA will be null and void if the Stipulations are not carried out within a period of five (5) years from the date of its execution. Prior to termination of the MOA, the FCC may consult with the other signatories to reconsider the terms of the MOA and amend it in accordance with Stipulation VII below.

VI. POST-REVIEW DISCOVERIES

In the event that an Applicant discovers a previously unidentified site within the APE that may be a Historic Property that would be affected by the project, the BRT Group, LLC shall promptly stop work and notify the FCC, the SHPO and any potentially affected Indian tribe.

If the BRT Group, LLC and SHPO concur that the discovered resource is eligible for listing in the NRHP, the BRT Group, LLC will consult with the SHPO, and Indian tribes as appropriate, to evaluate measures that will avoid, minimize, or mitigate adverse effects. Upon agreement regarding such measures, the BRT Group, LLC shall implement them and notify the FCC of its action.

If the BRT Group, LLC and SHPO cannot reach agreement regarding the eligibility of a post-review discovery, the matter will be referred to the FCC for review. If the BRT Group, LLC and the SHPO cannot reach agreement on measures to avoid, minimize, or mitigate adverse effects, the matter shall be referred to the FCC for appropriate action.

If the BRT Group, LLC discovers any human or burial remains during implementation of the project, the Applicant shall follow the recommendations set forth in Oklahoma Title 21 (1168.4 and 1168.7) and any Federal laws regarding the treatment of human or burial remains. BRT Group, LLC shall cease work immediately and notify local law enforcement. If the discovered human remains are not of forensic interest, the BRT Group, LLC shall contact the State Archeologist (OAS), SHPO, any interested Tribes who may assert affiliation with the remains, and the FCC for further direction.

VII. AMENDMENTS

This MOA may be amended prior to its expiration when such an amendment is agreed to in writing by all signatories. The amendment will be effective on the date a copy signed by all of the signatories is filed with the ACHP.

VIII. OTHER REQUIREMENTS

The BRT Group, LLC will file with the FCC an application and Environmental Assessment (EA) within thirty (60) days of the date this MOA is executed.

IX. TERMINATION

If any signatory to this MOA determines that its terms will not or cannot be carried out, that party shall immediately consult with the other parties to attempt to develop an amendment per Stipulation VII above. If within thirty (30) days (or another time period agreed to by all signatories) an amendment cannot be reached, any signatory may terminate the MOA upon written notification to the other signatories.

Once the MOA is terminated, and prior to work continuing on the project, the FCC must either (a) execute an MOA pursuant to 36 CFR Section 800.6 or (b) request, take into account, and respond to the comments of the ACHP under 36 CFR Section 800.7. The FCC shall notify the signatories as to the course of action it will pursue.

Execution of this MOA and implementation of its terms evidence that the FCC has taken into account the effects of this project on historic properties and afforded the ACHP an opportunity to comment. The applicability of this MOA is contingent upon the filing of an EA by BRT Group, LLC and, following review of the EA, a Finding of No Significant Impact (FONSI) by the FCC. If the FCC issues a FONSI, this MOA will be effective on the date it is issued by the FCC, and the parties to this agreement will be notified within 15 days of its release.

SIGNATORIES:

Federal Communications Commission

Paul D'Ari

6-3-19

Paul D'Ari,

Date

Senior Legal Counsel, Competition and Infrastructure Policy Division
Wireless Telecommunications Bureau

State Historic Preservation Office



Dr. Bob Blackburn
State Historic Preservation Officer
Oklahoma State Historic Preservation Office

May 21, 2019
Date

BRT Group, LLC



5/31/19

Chad Harwell
Project Manager
BRT Group, LLC

Date