

**MEMORANDUM OF AGREEMENT
AMONG
THE FEDERAL COMMUNICATIONS COMMISSION (FCC),
THE OKLAHOMA STATE HISTORIC PRESERVATION OFFICER (SHPO), and
VERTICAL BRIDGE DEVELOPMENT, LLC
REGARDING
THE US-OK-5091 OKEMAH TELECOMMUNICATIONS TOWER at COUNTY ROAD
3770 NORTH, OKEMAH, OKFUSKEE COUNTY, OKLAHOMA
TCNS # 214929**

WHEREAS, Vertical Bridge Development, LLC proposes to construct a 265-foot self-support telecommunications tower (including lightning rod) at County Road 3770 North, Okemah, Okfuskee County, Oklahoma (with Latitude 35.43618 and Longitude -96.29837) to support communications facilities for its FCC-licensed service (Project); and

WHEREAS, Vertical Bridge Development, 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, Vertical Bridge Development, 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, Vertical Bridge Development, 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 following Historic Properties, Okemah Armory (visual effect) and Okfuskee County Courthouse (visual effect), which are listed in the National Register of Historic Places (NRHP); and

WHEREAS, Vertical Bridge Development, 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 Vertical Bridge Development, 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 *Okemah News Leader* on September 3, 2020, 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, Vertical Bridge Development, 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, Santee Sioux Nation, Kiowa Indian Tribe, Wichita and Affiliated Tribes, Cheyenne-Arapaho Tribes of Oklahoma, Apache Tribe of Oklahoma, Northern Arapaho, Kialegee Tribal Town, Seminole Nation of Oklahoma, Cherokee Nation, Muscogee (Creek) Nation, Osage Nation, Wyandotte Nation, Alabama Quassarte Tribal Town, Thlopthlocco Tribal Town, and Northern Cheyenne Tribe, and none of the notified Tribal Nations have objected to the Project; and

WHEREAS, in accordance with Stipulation VII.D.2 of the NPA, Vertical Bridge Development, 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);

WHEREAS, upon transfer of any ownership interest in the aforementioned project, any and all assignees shall be subject to all terms and conditions of this agreement.

NOW, THEREFORE, the FCC, the SHPO, and Vertical Bridge Development, LLC agree that the Project shall be implemented in accordance with the following stipulations in order to take into account the effects of the project 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 Vertical Bridge Development, LLC and its assignees, shall ensure that the following measures are carried out following execution of this MOA:

I. MITIGATION OF ADVERSE EFFECT

Vertical Bridge Development, LLC shall complete updated NRHP nomination forms for both the Okemah Armory (NRHP #98000734) and Okfuskee County Courthouse (NRHP #84003377).

Measures involving historical or archeological expertise shall be completed by a professional meeting the applicable Secretary of the Interior's Professional Qualifications Standards.

A. Vertical Bridge Development, LLC shall contract a Secretary of the Interior qualified historic preservation professional (Consultant) to prepare updated NRHP nomination forms for two structures located in Okfuskee County. These structures include:

1. Okemah Armory (405 N. 6th Street, Okemah, OK) (NRHP #98000734)
2. Okfuskee County Courthouse (209 N. 3rd Street, Okemah, OK) (NRHP #84003377)

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

1. Draft Updated NRHP Nomination Forms
 - a. Consultant will review background information and conduct any necessary research through online resources, the SHPO office in Oklahoma City, and any resources available in Okfuskee County.
 - b. Within 90-days of the effective date of this MOA, Consultant will complete field documentation (photographs and notes) for the two resources. This will include both the interior and exterior of each resource (if accessible) to note any changes to the resource from the original NRHP nomination.
 - c. Within 30-days of fieldwork completion, Consultant will prepare and submit to SHPO draft updated NRHP nomination forms for the two resources. The forms will be sent to SHPO via e-mail.
2. Within 30-days of receipt, the SHPO shall review the updated NRHP nomination forms and provide comments to the Consultant. If the SHPO does not respond with comments by the end of the review period, the Consultant can assume concurrence.
3. Final Updated NRHP Nomination Forms
 - a. Within 30-days of receiving comments from the SHPO, Consultant will revise the updated NRHP nomination forms for the two resources. One final digital copy, including nominations, maps, and photographs, will be sent to SHPO via e-mail.

II. REPORTING

Following the execution of this MOA and until it expires or is terminated, Vertical Bridge Development, 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 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 Vertical Bridge Development, LLC abandons the facilities at the Project site, Vertical Bridge Development, 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. Vertical Bridge Development, 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 the termination or expiration 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 Vertical Bridge Development, LLC discovers a previously unidentified site within the APE that may be a Historic Property that would be affected by the project, Vertical Bridge Development, LLC shall promptly stop work and notify the FCC, the SHPO and any potentially affected Indian tribe.

If Vertical Bridge Development, LLC and the SHPO concur that the discovered resource is eligible for listing in the National Register, Vertical Bridge Development, 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, Vertical Bridge Development, LLC shall implement them and notify the FCC of its action.

If Vertical Bridge Development, LLC and the SHPO cannot reach agreement regarding the eligibility of a post-review discovery, the matter will be referred to the FCC for review. If Vertical Bridge Development, 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 Vertical Bridge Development, LLC discovers any human or burial remains during implementation of the project, Vertical Bridge Development, LLC 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. Vertical Bridge Development, LLC shall cease work immediately and notify local law enforcement. If the discovered human remains are not of forensic interest, Vertical Bridge Development, 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 or termination 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. 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 a MOA pursuant to 36 CFR § 800.6 or (b) request, take into account, and respond to the comments of the ACHP under 36 CFR § 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.

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**SIGNATORY:
Federal Communications Commission**

Paul D'Ari

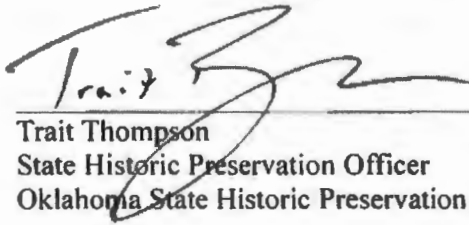
March 23, 2021

Paul D'Ari
Senior Legal Counsel, Competition and Infrastructure Policy Division
Wireless Telecommunications Bureau

Date

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**SIGNATORY:
State Historic Preservation Office**



Trait Thompson
State Historic Preservation Officer
Oklahoma State Historic Preservation Officer

3/15/21

Date

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**SIGNATORY:
Tower proponent**



Chad Harwell
Project Manager
Vertical Bridge Development, LLC

3/9/2021

Date