

**PROGRAMMATIC AGREEMENT
BETWEEN
THE RURAL UTILITIES SERVICE,
AND
THE OKLAHOMA STATE HISTORIC PRESERVATION OFFICE
REGARDING
THE AMERICAN RECOVERY AND REINVESTMENT ACT
BROADBAND INITIATIVES PROGRAM PROJECT #7468 IN
COAL, HUGHES, JOHNSTON, MCINTOSH, MURRAY, MUSKOGEE, OKFUSKEE,
OKMULGEE, PITTSBURG AND POTTAWATOMIE COUNTIES IN OKLAHOMA**

WHEREAS, the Rural Utilities Service (RUS) is authorized to provide financial assistance in the development of infrastructure in Rural America under its Broadband Initiatives Program (BIP) authorized by the American Recovery and Reinvestment Act (ARRA) passed by Congress on February 13, 2009; and

WHEREAS, Atlink Services (Atlink) applied to BIP seeking financial assistance to construct twenty-two (22) telecommunication towers in Coal, Hughes, Johnston, McIntosh, Murray, Muskogee, Okfuskee, Okmulgee, Pittsburg and Pottawatomie Counties in Oklahoma; and

WHEREAS, RUS has determined that BIP Project #7468 is an undertaking subject to review under Section 106 of the National Historic Preservation Act (NHPA), 16 U.S.C. § 470f, and its implementing regulations, "Protection of Historic Properties" (36 CFR Part 800); and

WHEREAS, under the terms of the *Nationwide Programmatic Agreement Among the U.S. Department of Agriculture Rural Utilities Service, the National Telecommunications and Information Administration, the National Conference of State Historic Preservation Officers and the Advisory Council on Historic Preservation for the Broadband Technology Opportunities Program and the Broadband Initiatives Program* executed on November 25, 2009, RUS conducts review under 36 CFR §§ 800.3 through 800.7 for BIP projects post-award; and

WHEREAS, in accordance with ARRA deadlines, construction of BIP Project #7468 must begin within 180 days following execution of loan/grant obligation documents; and

WHEREAS, all of the twenty-two (22) towers proposed for construction by BIP Project #7468 will use spectrum regulated by the Federal Communications Commission (FCC); and

WHEREAS, because the twenty-two (22) new towers will use FCC regulated spectrum, Section 106 review of BIP Project #7468 will be conducted in accordance with the program comment titled, *Program Comment for Streamlining Section 106 Review for wireless Communication Facilities Construction and Modification Subject to Review*

Under the FCC Nationwide Programmatic Agreement and/or the Nationwide Programmatic Agreement for the Collocation of Wireless Antennas, issued on November 20, 2009; and

WHEREAS, RUS is using a Programmatic Agreement (PA) to enable the phasing of Section 106 review in order to meet the 180-day deadline for the initiation of BIP Project #7468 construction; and

WHEREAS, in accordance with 36 CFR § 800.14(b)(1)(ii), execution of a PA is appropriate because effects on historic properties cannot be fully determined prior to start of construction for BIP Project #7468; and

WHEREAS, RUS, in consultation with the Oklahoma State Historic Preservation Office (SHPO), has determined that construction of BIP Project #7468 may have an adverse effect on properties which are listed in or eligible for listing in the National Register of Historic Places (NRHP); and

WHEREAS, in August 2010, RUS notified the following nineteen (19) Indian tribes about BIP Project #7468 – the Kiowa Indian Tribe of Oklahoma, the Wichita and Affiliated Tribes, the Cheyenne-Arapaho Tribes of Oklahoma, the Citizen Potawatomi Nation, the Apache Tribe of Oklahoma, the Osage Nation, the United Keetoowah Band of Cherokee Indians, the Mescalero Apache Tribe, the Absentee-Shawnee Tribe of Indians of Oklahoma, the Kickapoo Tribe of Oklahoma, the Chickasaw Nation, the Quapaw Tribe of Oklahoma, the Choctaw Nation of Oklahoma, the Seminole Nation of Oklahoma, the Cherokee Nation, the Muscogee (Creek) Nation, the Peoria Tribe of Oklahoma, the Thlopthlocco Tribal Town and the Caddo Nation; and

WHEREAS, because of their interest, on January 18, 2011, RUS notified the Caddo Nation, the Choctaw Nation of Oklahoma, the Muscogee (Creek) Nation, the Cherokee Nation, the Osage Nation and the United Keetoowah Band of Cherokee Indians that FCC will conduct Section 106 review for all components of BIP Project #7468; and

WHEREAS, Atlink has participated in consultation and has been invited by RUS to sign this PA as an invited signatory; and

WHEREAS, in accordance 36 CFR § 800.6(a)(1), on January 13, 2011, RUS invited the Advisory Council on Historic Preservation (ACHP) to participate in consultation; and

WHEREAS, on January 21, 2011, the ACHP declined to participate in consultation; and

WHEREAS, the terms used in this PA are defined in 36 CFR § 800.16;

NOW, THEREFORE, RUS and the Oklahoma SHPO agree that this undertaking shall be implemented in accordance with the following stipulations in order to take into account the effect of the undertaking on historic properties.

STIPULATIONS

RUS shall ensure that the following stipulations are carried out.

I. **CONDITIONS**

- A. Atlink will not initiate construction of a proposed new tower until Section 106 review for that tower has been concluded in accordance with the terms of this PA, and approved by RUS.
- B. If Atlink initiates any construction prior to fulfilling the terms of this PA for that component of BIP Project #7468, RUS will review that action in accordance with 36 CFR § 800.9(c) to determine if Section 110(k) of NHPA is applicable.
- C. RUS may advance funding to Atlink for performance of the engineering and environmental studies that must be completed prior to the initiation of construction of a proposed new tower.
- D. RUS may advance funding to Atlink for the construction of any proposed tower(s) for which Section 106 review has been completed in accordance with the terms of this PA.

II. **REVIEW CONDUCTED BY THE FEDERAL COMMUNICATIONS COMMISSION**

- A. FCC will conduct Section 106 for the proposed construction of twenty-two (22) new towers subject to the terms of the November 20, 2009 Program Comment.
- B. Atlink and the Oklahoma SHPO agree that the proposed installation of equipment on those towers previously subject to Section 106 review is exempt from Section 106 review under the terms of the November 20, 2009 Program Comment. Following the execution of this PA, RUS may approve and advance funds for those co-locations so that PVT may initiate construction.
- C. Atlink will provide written documentation to RUS describing the conclusion of Section 106 review for the twenty-two (22) proposed new towers, and the ten (10) co-locations conducted under the terms of the November 20, 2009 Program Comment. RUS will review this documentation, and if it demonstrates that Section 106 has been successfully completed, RUS may approve and advance funds for that tower or co-location so that PTC may initiate construction.
- D. In those instances where under the terms of the November 20, 2009 Program Comment construction of a proposed new tower will result in an adverse effect to historic properties, RUS will participate in consultation conducted by FCC with Atlink, the Oklahoma SHPO and other consulting parties to identify measures to resolve the adverse effect.
- E. Unanticipated Discoveries: The unanticipated discovery of historic properties during construction of the proposed towers and co-locations will be resolved by FCC under the terms of the November 2009 Program Comment.

III. REPORTING REQUIREMENTS

- A. AtLink will report to RUS and the SHPO every four (4) months from the date of execution of this PA until all construction for BIP Project #7468 is complete, describing the status of Section 106 review for each tower, the status of project construction, including a list of project components where construction has been completed, and any changes to the undertaking that are proposed.
- B. The report will be submitted by AtLink in the format described in Appendix A to the contacts listed in Appendix B.

IV. DISPUTE RESOLUTION

- A. Should any signatory to this PA object in writing at any time to any actions proposed or the manner in which the terms of this PA are implemented, RUS, within the limits of its authority, will consult with such party to resolve the objection. If RUS determines that the objection cannot be resolved, that agency will forward all documentation relevant to the dispute, including the resolution proposed by the agency, to the ACHP. The ACHP will:
 - 1. Provide RUS with its advice, pursuant to 36 CFR § 800.2(b)(2), on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, RUS will 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. RUS will then proceed according to its final decision.
 - 2. Notify RUS that it will comment pursuant to 36 CFR § 800.7(c), and proceed to comment. Any ACHP comment provided in response to such a request will be taken into account by RUS in accordance with 36 CFR § 800.7(c)(4).
 - 3. If the ACHP does not provide its advice regarding the dispute within thirty (30) days, RUS may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, RUS shall prepare a written response that takes into account any timely comments regarding the dispute from the signatories and concurring parties to the PA, and provide them and the ACHP with a copy of such written response.
- B. The responsibility of RUS to carry out all other actions subject to the terms of this PA that are not the subject of the dispute remain unchanged.

V. TERM OF AGREEMENT

- A. The term of this PA will be four (4) years from the date of execution by the signatories unless the signatories agree to extend its term. If its

stipulations have not been carried out, and prior to work continuing on BIP Project #7468, RUS will either (a) execute another agreement pursuant to 36 CFR § 800.6, or (b) request, take into account and respond to the comments of the ACHP pursuant to 36 CFR § 800.7.

- B. Six (6) months prior to expiration, RUS will notify the other signatories of the impending expiration. RUS will consult with the other signatories to reconsider the terms of the PA and amend it in accordance with Stipulation VI. RUS will notify the signatories as to the course to be pursued.

VI. AMENDMENT

- A. This PA may be amended when such an amendment is agreed to in writing by all signatories.
- B. The amendment will be effective on the date it is executed by all of the signatories and filed with ACHP.

VII. TERMINATION

- A. If any signatory to this PA 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 in accordance with Stipulation VI. If within thirty (30) days an amendment cannot be reached, any signatory may terminate the PA upon written notification to the other signatories.
- B. Once the PA is terminated, and prior to work continuing on BIP Project #7468, RUS must either (a) execute an agreement pursuant to 36 CFR § 800.6, or (b) request, take into account, and respond to the comments of ACHP under 36 CFR § 800.7. RUS shall notify the other signatories as to the course of action it will pursue.

EXECUTION of this PA by RUS and the Oklahoma SHPO, and implementation of its terms evidence that RUS has taken into account the effects of this undertaking on historic properties and afforded ACHP a reasonable opportunity to comment.

Signatories:

Rural Utilities Service

By: Mark S. Plank

Mark S. Plank, Director
Engineering and Environmental Staff
Water and Environmental Programs

Date: 2/9/11

Oklahoma State Historic Preservation Office

By: Bob Blackburn
Dr. Bob L. Blackburn
State Historic Preservation Officer

Date: 2-10-11

Invited Signatory

Atlink Services

By: _____ Date: _____

APPENDIX B

Reporting Contacts

Laura Dean, PhD
Federal Preservation Officer
Rural Utilities Service
1400 Independence Avenue, SW
Room No. 2227, Mail Stop 1571
Washington, D.C. 20250

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