

**PROGRAMMATIC AGREEMENT
AMONG THE U.S. DEPARTMENT OF AGRICULTURE RURAL DEVELOPMENT
PROGRAMS, RURAL UTILITIES SERVICE,
THE OSAGE NATION, AND
THE OKLAHOMA AND KANSAS STATE HISTORIC PRESERVATION OFFICES
REGARDING
THE RECONNECT PROGRAM KANOKLA SHIDLER, LLC PROJECT, CROSSING KAY AND
OSAGE COUNTY IN OKLAHOMA, AND SUMMNER AND COWLEY COUNTIES IN KANSAS**

WHEREAS, the United States Department of Agriculture’s (USDA) Rural Development (RD) Rural Utilities Service (RUS) plans to allocate funds for the Reconnect Program KanOkla Shidler, LLC project (Project) pursuant to the Rural Electrification Act of 1936, as amended; and the Consolidated Farm and Rural Development Act of 1961, as amended; the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act of 2000; the Agriculture Risk Protection Act of 2000, as amended; the Farm Security and Rural Investment Act of 2002, as amended; the Food, Conservation, and Energy Act of 2008; the Agricultural Act of 2014; the Food Security Act of 1985; the Housing Act of 1949, as amended; and 7 U.S.C. §§ 2008u, 8103, 8104, 8105, and 8107 to carry out 59 programs and services in support of its borrower or applicant’s (applicant) activities, by providing financial assistance in rural America that provides much-needed infrastructure or infrastructure improvements to rural communities, in the areas of business-cooperative services, housing, water and waste treatment, electric power, and telecommunications services; and

WHEREAS, the RUS has determined that the obligation of federal financial assistance for the Project constitutes an undertaking subject to review under Section 106 of the National Historic Preservation Act (NHPA), 54 U.S.C. § 300101 et seq., and its implementing regulations (36 CFR Part 800); and

WHEREAS, the RUS will assure the completion of the Section 106 process prior to any irreversible commitment of resources or prior to any action being taken that could affect historic properties or impeded completion of the Section 106 process; and

WHEREAS, the RUS has the authority to de-obligate funding prior to or after award or construction if certain conditions are not met in the RUS’s legally binding agreement documents; and

WHEREAS, the precise location and project timeline of the Project cannot be finalized prior to the obligation of funds; and

WHEREAS, the RUS applicants often do not have the financial wherewithal to fund Section 106 reviews, or the analysis of alternatives, without some level of confidence that RUS’s low interest funding or grants will be available to assist them; and

WHEREAS, the RUS applicants are legally bound to apply project funding as stipulated by the conditions of the loan or grant; and

WHEREAS, the current sequencing of the Section 106 process necessitates the RUS execute a Programmatic Agreement (PA) to obligate funds for borrower assurance prior to the completion of the Section 106 process; and

WHEREAS, RUS can more effectively fulfill its mission by taking a programmatic approach because specific information about the Project is not yet available.

WHEREAS, the PA defines the execution of RUS's Section 106 responsibilities to be completed after the obligation of funds and prior to the start of the Project's construction, which does not synchronize with the normal four step Section 106 process as set forth in 36 CFR Parts 800.3 through 800.7; and

WHEREAS, the Project consists of installation of aerial cable on existing poles, new buried cable plowed and bored along existing rights-of-way, upgrading or replacing buried cable through plowing and boring along existing rights-of-way and the installation of associated cabinets to be installed; and

WHEREAS, the RUS defines the APE, as an area that includes all Project construction and ground disturbing activity required to construct, modify, or improve, any facilities that it may potentially finance; any right-of-way or easement areas necessary for the construction and operation of the Project it may potentially finance; all construction staging areas, access routes, utilities, spoil areas, borrow pit areas, and stockpiling areas and at least a ½-mile radius outside the area of physical impacts for structures and other above ground resources that will cause a visual or auditory impact to historic districts or properties; and

WHEREAS, tribal lands are defined as all lands within the exterior boundaries of any Indian reservation and all dependent Indian communities; and

WHEREAS, non-tribal lands are defined as all state and private lands; and

WHEREAS, RUS is phasing identification and evaluation of historic properties and application of the criteria of adverse effects in accordance with 36 CFR Part 800.4(b)(2) and 36 CFR Part 800.5(a)(3), respectively, because the Project covers a large area; and

WHEREAS, the project contains tribal lands held in trust for the Osage Nation and RUS has consulted with the Osage Nation pursuant to 36 CFR Part 800, the regulations implementing Section 106 of the NHPA (54 U.S.C. § 306108) and has determined that the Project may have an adverse effect on historic properties and traditional cultural properties, which may be eligible for listing in the National Register of Historic Places and do hereby join in this PA as a signatory; and

WHEREAS, the project includes private lands in Kansas and RUS has consulted with the Kansas State Historic Preservation Office (KS SHPO) pursuant to Sec. 800.14b of the regulations (36 CFR 800) implementing Section 106 of the National Historic Preservation Act; (54 U.S.C. § 300101 et seq), [and Section 110(f) of the same Act (54 U.S.C. § 300101 et seq)]; and

WHEREAS, the project includes private lands in Oklahoma and RUS has consulted with the Oklahoma State Historic Preservation Office (OK SHPO) and Oklahoma Archeological Survey (OAS) pursuant to Sec. 800.14b of the regulations (36 CFR 800) implementing Section 106 of the National Historic Preservation Act; (54 U.S.C. § 300101 et seq), [and Section 110(f) of the same Act (54 U.S.C. § 300101 et seq)]; and

WHEREAS, The Oklahoma State Historic Preservation Office (SHPO) and the Oklahoma Archeological Survey (OAS) have entered into a cooperative agreement under which OAS provides special services to the SHPO in the Section 106 review process, and therefore, OAS has been invited to sign this agreement as an invited signatory. OAS maintains the inventory of Oklahoma's prehistoric resources and provides professional services to the SHPO in prehistoric archeology. OAS reviews federal undertakings for possible impacts on prehistoric archeological resources and provides written comments as the SHPO's official representative; and

WHEREAS, on November 18, 2019, the RUS notified the Advisory Council on Historic Preservation (ACHP), in accordance with 36 CFR Part 800.6(a)(1)(i)(C), and ACHP decided on December, 3, 2019, not to participate in the consultation pursuant to 36 CFR Part 800.6(a)(1)(iii)(Appendix F); and

WHEREAS, the RUS has invited KanOkla to sign this PA as an Invited Signatory; and

WHEREAS, the Consulting Parties are defined herein to be the Signatories, Invited Signatories, and Concurring Parties who have signed the Signatory Pages of this PA; and

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

NOW, THEREFORE, the RUS, the Osage Nation, KS SHPO, and OK SHPO agree that the undertaking shall be implemented in accordance with the following stipulations in order to take into account the effect of the Project on historic properties and complete the Section 106 review process.

STIPULATIONS

RD shall ensure that the following stipulations are met and carried out:

I. Purpose

- A. This PA establishes procedures for compliance with Section 106 of the NHPA. The PA provides procedures to effectively ensure that, historic properties, including traditional cultural properties, are thoroughly considered prior to the start of construction of the Project.
- B. The PA outlines cultural resource evaluation procedures to be followed in completion of the Section 106 process following the obligation of the RUS funds.

II. Applicability

- A. The PA sets forth the roles and responsibilities of the Consulting Parties to complete the Section 106 process for the Project following the obligation of the RUS funds

III. Roles and Professional Qualifications

- A. The RUS shall ensure that the terms of this PA, including Sections V, VI, and VII, are met and implemented prior to issuing notice to proceed for construction along any given phase or area of the Project. Notice to proceed may be given for a construction segment, or area of the Project, while the implementation and meeting of terms on other construction segments remains on-going. The RUS will not issue the notice to proceed until after consultation with the Consulting Parties.
- B. The archaeological and historical studies and work required under the terms of this PA shall be carried out by, or under the direct supervision of, a professional who, at a minimum, meets the Secretary of the Interior's Professional Qualifications Standards (i.e., SOI qualified; 48 Federal Register [FR] 44716, September 29, 1983) in archeology, history, cultural anthropology, architectural history, or historic landscape architecture, as appropriate.
 - 1. KanOkla will hire an archaeological consultant to carry out these archaeological and historical studies and that meets these professional requirements. KanOkla will have an archaeological consultant on retainer throughout the project to address inadvertent discoveries or monitoring needs, should they arise.
 - 2. As the project proponents, KanOkla is responsible for all costs associated with archaeological and historical studies, including monitoring.
- C. The RUS acknowledges that the Indian tribes, including the Osage Nation have special expertise in evaluating the eligibility of historic properties that may possess religious and cultural significance for them (36 CFR Part 800.4[c][1]). Thus, tribal representatives who may comment on or participate in the identification and evaluation of historic properties of religious and cultural significance will be determined by the Osage Nation Tribal Historic Preservation Officer and other tribes who have identified an interest in Kay and Osage Counties in Oklahoma and Sumner and Cowley Counties in Kansas.

- D. The RUS remains responsible for all consultation with the Osage Nation and all determinations of NRHP eligibility and effect. The RUS may not delegate consultation for findings and determinations to professional services consultants or the applicant.

IV. CONFIDENTIALITY

- A. RUS and the Consulting Parties shall protect confidential information about historic properties to the extent allowed by Section 304 of the NHPA (54 USC § 307103), 36 CFR Part 800.11(c), and other applicable state and local laws. This will include specifically protecting information on properties of traditional religious and cultural significance to Indian tribes to which the Consulting Parties may become privy, including protecting location information or information provided by Indian tribes to assist in the identification of such properties.
1. KanOkla will ensure that any archaeological consultant will prepare reports that segregate sensitive information that is easily redactable.
 2. Reports will be sent from KanOkla's consultant to RUS first and RUS will consult with the Osage Nation and any other Indian tribes, as appropriate, to ensure that any copies of the report provided to other Consulting Parties, including KanOkla, do not contain culturally sensitive information.
 3. RUS will work with Indian tribes to ensure that KanOkla receives the information needed to design and implement their project in a timely manner.
 4. RUS will work with the Indian tribes to ensure that the SHPOs receive the information needed to fulfill their roles under this PA and 36 CFR 800.

V. Compliance with Section 106 of the NHPA

- A. Identification: In accordance with 36 CFR Part 800.4(a) and (b)(1), the RUS will coordinate with the Consulting Parties to identify the appropriate scope and level of effort needed to identify historic properties including those to which the Osage attach traditional religious and cultural significance. The scope and level of effort including the timing needed for archaeological compliance and project completion for the identification effort shall meet the reasonable and good faith regulatory standard (36 CFR Part 800.4[b][1]).
1. In determining the level of effort for additional identification studies, the RUS shall be guided by:
 - a. The ACHP's guidance on conducting archaeology under Section 106 (January 1, 2009);
 - b. Applicable guidance from the Consulting Parties including state-specific guidelines for developing archaeological survey reports in Oklahoma and report components (Appendix A); and
 - c. The Secretary of the Interior's Standard and Guidelines for Archeology and Historic Preservation (48 FR 44716-44742, September 29, 1983); and

- d. Applicable professional, state, and local laws, standards, and guidelines as recommended in ACHP's *Meeting the "Reasonable and Good Faith" Identification Standard in Section 106 Review* (2018); and
 - e. The Osage Nation Historic Preservation Office (ONHPO) Archaeological Survey Standards (Appendix B)
2. The RUS shall seek agreement with the Consulting Parties on the scope and level of effort of any proposed identification studies for phased identification and evaluation (36 CFR Part 800.4[b][2]). When the RUS determines in consultation with the Osage Nation, and, on non-tribal lands, the appropriate SHPO that a proposed identification study meets the reasonable and good faith regulatory standard, it shall advise KanOkla in writing to implement the approved study.
3. In addition, during the review of the scope of the project the Osage Nation may choose to provide on-site consultation when field investigations or construction occur if there are tribal concerns and/or potentially adverse effects warrant it. The Osage Nation will ensure that they identify to the best of their ability any segments where they may need to be on-site or any potential segments during the review of the scope. The Osage Nation will be responsible for any costs associated with on-site consultation, including per diem and mileage.
4. Upon completion of identification studies and analyses, KanOkla's consultant shall submit a series of draft survey reports to the RUS for review and approval. These reports shall pertain to previously identified and the RUS-approved phases or construction segments of the Project (pursuant to 36 CFR Part 800.4(b)(2), 36 CFR Part 800.5(a)(3), and 36 CFR Part 800.14. Reports shall describe the findings of each identification study. The report shall segregate sensitive information in a location that is easily redactable. The RUS may aggregate multiple reviews within one funding package and independently review each for Section 106 as information becomes available prior to construction.
 - a. The draft survey reports shall meet the minimum requirements outlined in the *ONHPO National Historic Preservation Act Section 106 Protocol and Standards* (Appendix C), follow the OK SHPO format (Fact Sheet #16: <https://www.okhistory.org/shpo/factsheet/fs16archreports.pdf>), and include a summary of investigations conducted as well as a map or maps showing the APE, the ROW along with the location of cultural resources, and investigations conducted. The draft reports shall also summarize identified cultural resources and contain evaluations and recommendations of eligibility for the NRHP for identified cultural resources; identify those resources for which additional study may be needed; evaluate the potential effects of the Project on historic properties; and make resource management recommendations, including measures for avoidance, mitigation, or treatment of potential adverse effects from the Project on historic properties.
 - i. Evaluations of NRHP eligibility shall include a description of the resource being evaluated, a description of the applicable historic context(s) and measures of significance within each context, an explanation of why the NRHP criteria are or are not met, and a

map or maps to show the geographic relationship between the resource and the APE.

b. If the RUS finds the draft survey reports acceptable, the RUS shall submit the identification report to the Consulting Parties via email except for the Osage Nation, the Oklahoma SHPO, and the OAS, who will receive both an email and hard copy. The Consulting Parties shall have thirty (30) days from receipt to provide written comments to the RUS on the draft report. The RUS shall ensure that written comments submitted in a timely manner are considered by RUS and KanOkla in preparation of the final identification report.

i. RUS will seek concurrence with the Consulting Parties that the results of the field investigation and identification of cultural resources are sufficient information to make a determination of effect.

5. The RUS, in recognition of tribal sovereignty and in consultation with the Osage Nation, agrees to maintain consultation and coordination with the Osage Nation on a government-to-government basis in accordance with the NHPA and implementing regulations, related authorities (including executive orders) regarding consultation with Federally-recognized Indian tribes, the RUS-specific cultural resources management or consultation guidance, and procedures set forth in 36 CFR Part 800 regulations.

6. If field investigations and the evaluation of effects conclude that the effects may be adverse, the RUS will consult with the Osage Nation and other tribes that have an interest in Kay, Osage, Sumner, and Cowley Counties, and, on non-Tribal land, the appropriate SHPO, regarding appropriate treatment of the resources. The RUS shall notify the ACHP of the adverse effect determination so that the ACHP may decide if it will be a consulting party during discussions of treatment options. When the Consulting Parties agree on treatment, the RUS will notify the Osage Nation and, on non-Tribal land, the appropriate SHPO. Mitigation of adverse effects and its agreed-on treatment options will be sent to the ACHP for review and comment, in accordance with the 36 CFR Part 800 regulations and all applicable federal and state laws, statutes, and regulations.

B. Evaluation: The Osage Nation, the SHPOs, and the RUS mutually agree on the following procedures for Section 106 cultural resource evaluations. These procedures shall comply with ONHPO survey and report standards (Appendix B and C), while following the OK SHPOs report format, and all federal and state laws, statutes, and regulations. KanOkla shall retain an archaeological contractor that will use the ONHPO survey and report standards but produce the report in the OK SHPOs format. The Osage Nation may consult with the RUS about tribal concerns at any stage of the review process.

1. Determination of Eligibility:

a. The RUS and the Consulting Parties may agree to treat a property, including an inadvertent discovery, as eligible for the NRHP pursuant to 36 CFR Part 800.4(c)(2). Should a Consulting Party disagree, the RUS shall:

- i. Elect to consult further with the objecting party until the objection is resolved;
- ii. If there is a dispute, the RUS will request a determination of eligibility from the Keeper of the NRHP in accordance with 36 CFR Part 63.2(d) and (e) and 36 CFR Part 800.4(c)(2). The Keeper's determination of eligibility shall be final.

2. Findings:

- a. If the investigations conclude that one of the following situations is appropriate: 1) no historic properties are found, or historic properties are identified, but will be avoided by excluding the location from the APE, 2) historic properties are identified but will not be physically impacted, or 3) cultural resources are identified, but they do not meet the National Register criteria for eligibility, RD will make a determination of "No Historic Properties Affected."
- b. If additional study is not required and identified National Register properties or National Register eligible properties will be minimally impacted, such that they remain eligible for the National Register, in consultation and concurrence with the Consulting Parties RD will make a determination of "No Adverse Effect" and proceed.
- c. The RUS shall notify the Consulting Parties of its finding of "No Historic Properties Affected," and provide supporting documentation in accordance with 36 CFR Part 800.11(d). Unless a Consulting Party objects to the finding within thirty (30) calendar days, Section 106 review of the undertaking will have concluded.
- d. If a Consulting Party objects to a finding of "No Historic Properties Affected," the RUS shall work with that Consulting Party to resolve the disagreement.
- e. If the objection is resolved, the RUS either may proceed with the Project in accordance with the resolution, or reconsider effects on the historic property by applying the criteria of adverse effect.
- f. If the RUS is unable to resolve the disagreement, it will forward the finding and supporting documentation to the ACHP and request that the ACHP review the RUS's finding in accordance with 36 CFR Part 800.4(d)(1)(iv)(A) through 36 CFR Part 800.4(d)(1)(iv)(C). The RUS shall consider the ACHP's recommendation in making its final determination. If the RUS's final determination is to reaffirm its "No Historic Properties Affected," or "No Adverse Effect," finding, Section 106 review of the Project will have concluded with written notification to the Signatories. Otherwise, the RUS will proceed to application of the criteria of adverse effect.

- g. If the RUS finds the Project may adversely affect historic properties, the RUS shall encourage KanOkla to revise the scope of work to avoid or minimize adverse effects for NRHP-listed or eligible properties.
- h. If KanOkla modifies the scope of work to avoid the adverse effect(s), the RUS shall notify the Consulting Parties and provide supporting documentation. Unless a Consulting Party objects in thirty (30) calendar days, the RUS shall proceed with its “no adverse effect(s)” determination, including any conditions, and conclude the Section 106 review.
- i. A Monitoring Plan (MP) shall be developed for each applicable construction segment of the Project, as identification and evaluation occurs, as appropriate, and as needed, in consultation with the Osage Nation and, on non-tribal land, the appropriate SHPO.
- j. If the Project is not or cannot be modified to avoid the adverse effect(s), the RUS shall initiate consultation with the Consulting Parties to resolve the adverse effect(s).
- k. Resolution of Adverse Effect(s):

If the RUS determines that the Project may adversely affect a historic property, it shall resolve the effect(s) of the Project in consultation with the Consulting Parties in the process that follows.

- i. The RUS shall provide written notice of the potential adverse effect to the Osage Nation and other tribes who have identified interest in Kay, Osage, Sumner, and Cowley Counties, on non-tribal lands, the appropriate SHPO who will have thirty (30) calendar days to provide comment on the development and implementation of treatment measures to resolve the adverse effect. The RUS will consider all comments submitted in a timely manner regarding preferred treatment measures.
- ii. The RUS shall propose in writing the implementation of a specific treatment measure or a combination of treatment measures as to resolve adverse effect(s), and provide documentation as required by 36 CFR Part 800.11(e), and subject to the confidentiality provisions of 36 CFR Part 800.11(c). Unless a Consulting Party or the ACHP objects within thirty (30) calendar days of receipt of the RUS’s proposal, the RUS shall proceed with the implementation of the treatment measure(s) and will conclude the Section 106 review.
- iii. If any of the Consulting Parties or the ACHP objects within thirty (30) calendar days, the RUS shall resolve the adverse effect(s) using a Memorandum of Agreement (MOA).

- a. The RUS shall provide the ACHP with an adverse effect(s) notice in accordance with 36 CFR Part 800.6(a)(1) if it has not already provided such.
 - b. The RUS, the Consulting Parties, and the ACHP (if participating) shall develop a MOA in accordance with 36 CFR Part 800.6(c) to agree upon treatment measures to avoid, minimize, and/or mitigate adverse effect(s) on NRHP listed or eligible properties.
- C. Resolution of Adverse Effect(s): RUS shall consult with the Consulting Parties in accordance with 36 CFR Part 800.6(a) to identify the appropriate measures that are in the public interest to avoid, minimize, or mitigate adverse effects to historic properties. Resolutions of adverse effect do not have to be limited to data recovery.
 - 1. Avoidance: the RUS, in working with the Consulting Parties, shall use the information contained in identification studies to identify measures that would avoid adverse effects to historic properties. Avoidance of adverse effects to historic properties shall be the preferred treatment. The RUS will seek agreement with the Consulting Parties on avoidance measures. KanOkla shall incorporate those avoidance measures deemed prudent and feasible by the Consulting Parties into the Project plans and specifications for, and implementation of, Project construction and development.
 - 2. Data Recovery: When agreement between the RUS and the Consulting Parties can be reached on how to resolve a finding of adverse effect that requires data recovery, KanOkla's consultant shall prepare a Treatment Plan describing the measures to be carried out, the manner in which they will be carried out, and a schedule for their implementation.
 - a) When mitigation will consist of or include data recovery, the Treatment Plan will identify the specific research questions to be addressed by data recovery with an explanation of their relevance, the archaeological or other research methods to be used, and any provisions for public interpretation and education subject to restrictions established by 36 CFR Part 800.6(a)(5).
 - b) KanOkla shall submit the Treatment Plan to the RUS and the Consulting Parties, as appropriate, for review.
 - c) Prior to granting approval, the RUS shall submit the Treatment Plan to the appropriate SHPO, the Osage Nation, and any other interested tribes for review. The reviewing parties shall have thirty (30) calendar days from their receipt of the Treatment Plan to submit written comments. The RUS shall ensure that timely comments and recommendations submitted by the reviewing parties are considered in the Treatment Plan.
 - d) Considering timely comments and recommendations by reviewing parties, KanOkla will revise and submit a finalized Treatment Plan to the RUS as appropriate, for approval. When approval without further request for revision is reached by the RUS, the RUS shall distribute the final Treatment Plan to all Consulting Parties for concurrence. Consulting Parties are to

provide comments to the final Treatment Plan within thirty (30) calendar days, after which point the Treatment Plan development process will be concluded.

- e) RUS shall ensure that KanOkla implement the approved Treatment Plan prior to beginning any construction activities in areas with the potential to adversely affect NRHP eligible or NRHP listed properties.
3. The RUS will condition obligation in the RUS program's legally binding agreement documents, to ensure that no federal funds for construction are released prior to completion of Section 106 review.
 4. The RUS Retains the ability to de-obligate the RUS funding and withdraw the RUS awards for the undertaking until completion of the Section 106 review.
- D. **Monitoring:** Should the RUS and the Consulting Parties agree that monitoring is necessary, SOI-qualified monitors may be employed. A MP must be developed by KanOkla's consultant for review and comment by the RUS and the Consulting Parties prior to the implementation of monitoring. The MP will be developed, as appropriate, for each applicable construction segment as identification and evaluation occurs at that segment and as needed. The MP must include steps for reinitiating the Section 106 process in the event of inadvertent discoveries.
1. During monitoring the RUS and the Consulting Parties will receive a daily report from KanOkla's consultant for review via email using the ONHPO's daily monitoring report template (Appendix D).

VI. Inadvertent Discoveries

- A. The following procedure refers only to inadvertent discoveries of cultural materials and not to human remains. These procedures will be a condition of the RUS obligated funding in the RUS's legally binding agreement documents: should KanOkla or their consultant fail to report a post-review discovery of cultural material the RUS retains the right to deobligate funding or withdraw the RUS awards. In the event of an inadvertent discovery of an archaeological site, i.e. cultural materials or features, the RUS shall do the following:
1. Inadvertent discoveries on state and private land shall comply with applicable state notification standards, federal laws, 36 CFR Part 800.13, and the ACHP's Policy Statement Regarding Treatment of Burial Sites, Human Remains, or Funerary Objects (February 23, 2007). KanOkla shall ensure that their cultural resource and construction contractors maintain a copy of the inadvertent discoveries plan onsite for review.
 2. In the event that previously unidentified archaeological resources are discovered during ground disturbing activities, cultural resource monitors, or if monitors are not on site, the RUS personnel or if the RUS personnel are not on site, then the applicant, shall halt immediately all work within a one hundred (100) foot radius buffer zone of the discovery and in the surrounding area where further subsurface archaeological resources can reasonably be expected to occur. Cultural resource monitors, the RUS, or the applicant will implement interim measures to protect the discovery from looting and vandalism.

3. If cultural resource monitors are not present, the RUS personnel or the applicant will immediately contact the RUS National Office cultural resources staff.
4. During Project construction and development, personnel working on site will be directed, informed, and authorized by the KanOkla to protect discoveries following the procedures of this PA.
5. If the inadvertent discovery appears to be a consequence of illegal activity, the RUS staff will call the Osage Nation Police or if on non-Tribal land the appropriate County Sheriff and Medical Examiner immediately if the applicant or their contractor have not already done so and follow the procedures in Stipulation VII.
6. Within twenty-four (24) hours of receipt of notification of the discovery, the archaeological contractor and/or the RUS local staff in cooperation with KanOkla's archaeological contractor shall:
 - a. Inspect the work site and determine the extent of the affected archaeological resource and ensure that construction activities have halted;
 - b. Clearly mark the area of the discovery by means of flagging or fencing to protect the area from looting and vandalism; and
 - c. Notify by phone the RUS cultural resources staff, the Osage Nation and the appropriate SHPO if on non-Tribal land.
 - d. The RUS staff will ensure the work site is inspected, including that vehicular traffic, has ceased, and to protect the area of discovery from looting and vandalism.
7. Work may continue in other areas of the undertaking where no historic properties, burial sites, or human remains are present.
8. All archaeologists or other specialists, as appropriate, employed in response to inadvertent discoveries will be SOI-qualified, meet the state requirements for treatment of burials (as appropriate), and have the knowledge to assess the resources within the Project's APE.
9. Within fourteen (14) working days of the original notification of discovery the RUS cultural resources staff, in consultation with the Osage Nation and appropriate SHPO if on non-Tribal land, will make a preliminary determination of the National Register eligibility of the resource. The Osage Nation, appropriate SHPO if on non-Tribal land, or the RUS may extend this fourteen (14)-day working period one time by an additional seven (7) working days, with the party requesting extension providing written notice to the other parties prior to the expiration date of the said fourteen (14)-day working period.
10. If the resource is determined eligible for the National Register, the RUS cultural resources staff, in consultation with the Osage Nation and the appropriate SHPO if the discovery is on non-tribal land, shall develop a plan for its avoidance, protection, or recovery of information through the established Section 106 process. Said plan will be submitted to the Osage Nation and the appropriate SHPO (if the discovery is

on private land) for comment within fourteen (14) working days of a determination of eligibility and shall be approved by the RUS in consultation with the Osage Nation and the appropriate SHPO (if the discovery is on non-tribal land), prior to implementation.

11. Following consultation and seeking concurrence with the Osage Nation and the appropriate SHPO if on non-Tribal land, work in the affected area may not resume until:
 - a. Development and implementation of an appropriate data recovery plan or other recommended mitigation procedures;
 - b. Determination that the located site is not eligible for inclusion on the National Register; and
 - c. The RUS has issued a notice to proceed. The RUS will not issue the notice to proceed until it has determined that the appropriate state and local protocols have been satisfied and Consulting Parties have been consulted.
12. Upon request, the Consulting Parties shall be able to visit the site with the RUS local staff.

VII. Special Conditions for Human Remains and Burials

- A. Inadvertent Discoveries of Human Remains: Prior to the start of archaeological surveys and construction, the RUS will inform the applicant, in writing, of the procedures they are to perform. Should the applicant fail to report a post-review discovery of human remains, they will be subject to penalties under the Osage Grave Protection Act (ONCA 15-75), the Oklahoma Burial Law (OSA 21 §1161-1168.7), the Kansas Unmarked Burial Sites Preservation Act (1989) (K.S.A. § 75-2741 through 75-2754)et seq.), and the RUS retains the right to deobligate the funds or withdraw the award. The Osage Grave Protection Act and Oklahoma Burial Law, and other laws, protect and provide consultation procedures for addressing impacts to, and discoveries of, human remains and graves on Osage tribal lands and non-tribal lands within the States of Oklahoma and Kansas. The respectful treatment of human remains, and burial furniture is a paramount concern to all Consulting Parties. The purpose of these procedures is to ensure the respectful treatment of human remains and burial furniture and to ensure that the Osage Nation's or other claimant tribe's concerns are fully considered, in the decision-making process. In the event of an inadvertent discovery of human remains, the RUS shall do the following, even if such remains are in fragmentary form.
 1. If the applicant knows or has reason to believe that the undertaking has inadvertently discovered human remains and/or burial furniture during ground disturbing activities, then the applicant must provide immediate telephone notification of the inadvertent discovery to the RUS. The RUS local staff will immediately call the RUS cultural resources staff at the National Office.
 2. The RUS local staff and/or the RUS cultural resources staff will ensure that the applicant immediately stops work within a one hundred (100) foot radius buffer zone around the point of discovery. The RUS and/or cultural resource monitors, or KanOkla's archaeological contractor will assume responsibility for implementing

additional measures, as appropriate and in line with the ONHPO Procedures for Handling Human Remains during Authorized Intentional Excavations or during Inadvertent Discoveries of Human Remains (Appendix E), to protect the discovery from looting and vandalism until the requirements of the Osage Grave Protection Act, Oklahoma Burial Law, and/or Kansas Unmarked Burial Act Burial Sites Preservation Act have been completed, but must not remove or otherwise disturb any human remains or other items in the immediate vicinity of the discovery.

3. The RUS local staff, cultural resource monitors or KanOkla's archaeological contractor will immediately notify the Osage Nation Police, and the appropriate County Sheriff and Medical Examiner if on non-Tribal land, by telephone of the discovery of unmarked human remains and/or burial furniture and accompany local law enforcement personnel during all field investigations.
4. If the discovery is on non-Tribal land and the County Sheriff in collaboration with the Medical Examiner determines it is not a crime scene, the RUS local staff will notify the Osage Nation's Tribal Historic Preservation Officer, the RUS Federal Preservation Officer, the RUS Cultural Resource Staff in the National Office, the State Archaeologist, and the SHPO, by telephone and email within twenty-four (24) hours of the discovery of human remains and/or burial furniture.
5. The RUS local staff and the cultural resource monitors or archaeological contractor will take immediate steps, if necessary, to further secure and protect inadvertently discovered human remains and/or burial furniture, including, as appropriate, stabilization or covering using natural materials, i.e. canvas.
6. If a tribe does not claim the remains, there is a lack of evidence to suggest a cultural affiliation, or if the Consulting Parties request, the RUS National Office cultural resources staff and KanOkla's archaeological contractor, in consultation with the Osage Nation and other interested tribes or parties such as living descendants, the OK SHPO, the KS SHPO and the OAS, 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.
7. If the evidence suggests an ancestral Osage or other tribal affiliation, and/or in consultation with the Consulting Parties, other than for crime scene investigation, no excavation, examination, photographs, or analysis of human remains will be conducted by the RUS staff or any other professional without first consulting with the Osage Nation and, in the instance of human remains suspected of being Native American, securing permission from the Osage Nation or claimant tribe.
8. If the evidence suggests that the remains are non-Indian, and in consultation with the Consulting Parties, the Oklahoma Burial Law or Kansas Unmarked Burial Preservation Act, if on non-tribal lands, will be followed. If non-Indian remains are found on tribal lands, all applicable tribal laws and policies will be followed including the Osage Grave Protection Act, if the remains are on Osage tribal lands.
9. If upon investigation, the Osage Nation Police, if on Osage tribal lands, and the appropriate County Sheriff and Medical Examiner, if on non-Tribal land, determines that the remains are not involved in a legal investigation, the protocol implementing

the Osage Grave Protection Act, the Oklahoma Burial Law, or Kansas Unmarked Burial Preservation Act if on non-Tribal land, will apply and, should the evidence suggest an ancestral Osage affiliation, all photographs taken of human remains for forensic purposes will be destroyed and confirmation sent to the Osage Nation Historic Preservation Office.

10. RD National Office cultural resources staff and KanOkla's archaeological contractor, in consultation with the Osage Nation, other interested tribes and the State Archaeologist if in Oklahoma or Kansas and the appropriate SHPO if on non-Tribal land, 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) working days, whichever comes first, the RUS National Office cultural resources staff will notify the Osage Nation, other interested tribes, and the State Archaeologist if in Oklahoma or Kansas and the appropriate SHPO if on non-Tribal land, of its findings. This notification must include pertinent information as to kinds of human remains and/or burial furniture discovered inadvertently, their condition, and the circumstances of their inadvertent discovery.
 11. The Osage Nation, other interested tribes and State Archaeologist if in Oklahoma or Kansas and the appropriate SHPO if on non-Tribal land, will have seventy-two (72) hours to respond verbally followed by written response via U.S. mail and email. The response should specify the Osage Nation's, other tribes, and if applicable the appropriate SHPO and State Archaeologist's if in Oklahoma or Kansas, intention to conduct or decline further consultation.
 12. If the evidence suggests and in consultation with the Consulting Parties, the remains are associated with the Osage Nation or other interested tribe, the RUS National Office cultural resources staff will consult with the Osage Nation or claimant tribe 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:
 13. If the Osage Nation claims cultural affiliation with the human remains, the consulting expert will be allowed to draw and measure the exposed remains and associated burial furniture. No photographs or digital images will be permitted. Drawings and other records will be curated at a State-approved curation facility. 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.
 14. 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.
- B. The RUS Assistance and Jurisdiction: the RUS reserves the right to deobligate funds and withdraw awards from the Project if the applicant does not cooperate with agency procedures and regulations. Neither KanOkla, nor the RUS has authority over cultural material encountered on private property, all recovered cultural materials are the legal property of the landowner, agency, or group having jurisdiction over the land on which the site is located.

Curation procedures or preservation treatments of such materials are at the discretion of the landowner. However, the RUS, the Osage Nation, and the appropriate SHPO will provide assistance in coordinating with the landowner in developing acceptable curation or treatment measures.

1. All human remains and associated funerary objects are not the legal property of the landowner, the RUS, KanOkla, or the group having jurisdiction over the land on which burials are located. Intentional disturbance of human remains and associated funerary objects will not be tolerated by the RUS or the Osage Nation, and will be reported to the Osage Nation Police and appropriate County Sheriff and Medical Examiner in compliance with the Osage Grave Protection Act, the Native American Graves Protection and Repatriation Act, if the remains are found on tribal lands, and the Oklahoma Burial Law or Kansas Unmarked Burial Sites Preservation Act, as appropriate. All Native American human remains and associated funerary objects will be repatriated or reburied in consultation with the Osage Nation and/or other claimant tribe/s.
- C. At all times, human remains must be treated with the utmost dignity and respect, and in a manner consistent with the ACHP's *Policy Statement on the Treatment of Human Remains, Burial Sites and Funerary Objects* (February 23, 2007).
- E. KanOkla shall ensure that the requirements of Section V.A.1, V.A.2, and V.A.3 are incorporated into all construction contracts and are in keeping with confidentiality restrictions imposed by the RUS, 36 CFR 800.11(c), Section 304, the Osage Nation, other tribes that have an interest in Osage County, and the SHPOs, if the discovery is on non-tribal lands.

VIII. Items Not Covered in this PA

- A. RUS, the SHPOs, and the Osage Nation agree that all matters not discussed in this PA will be handled in accordance with 36 CFR 800, Executive Order 13084, Executive Order 13007, and other appropriate authorities and agreements between the United States Government and sovereign Federally-recognized Indian nations.

IX. Duration of PA

- A. The PA becomes effective when fully executed by all parties and shall remain in effect until the completion of the Project, which is projected to be in the year 2025.

X. Dispute Resolution

- A. Should any Signatory to this PA object at any time to any actions proposed or the manner in which the terms of this PA are implemented, the RUS shall consult with such party to resolve the objection. If the RUS determines that such objection cannot be resolved, the RUS will:
1. Forward all documentation relevant to the dispute, including the RUS's proposed resolution, to the ACHP. The ACHP shall provide the RUS with its advice on the resolution of the objection within thirty (30) calendar days of receiving adequate documentation. Prior to reaching a final decision on the dispute, the RUS shall prepare a written response that takes into account any timely advice or comments

regarding the dispute from the ACHP and Signatories and provide them with a copy of this written response.

2. The RUS will then proceed according to its final decision.
3. The RUS's responsibility to carry out all other actions subject to the terms of this PA that are not the subject of the dispute remain unchanged.

XI. Amendment

- A. Any Signatory to this PA may propose to the RUS that the PA be amended, whereupon the RUS shall consult with the other party to the PA to consider such amendment. The execution of any such amendment to the PA shall be governed by 36 CFR § 800.6(c)(1). The signatures of all the Signatories shall be required for any amendment to take effect.

XII. Termination

- A. If the RUS determines that the terms of the PA cannot be implemented as stipulated or a Signatory that signs the PA determines that the PA is not being properly implemented, such party may propose to the other Signatories to the PA that it be terminated in accordance with 36 CFR § 800.6(c)(1) and (8).
- B. The Signatory proposing to terminate this PA shall notify all Signatories to the PA, explaining the reasons for termination and affording the Signatories at least thirty (30) calendar days to consult and seek alternatives to termination.
- C. If, after the expiration of thirty (30) calendar days an agreement to avoid termination cannot be reached, the RUS or other Signatory that signs the PA may terminate the PA by notifying all Signatories in writing.
- D. Should the PA be terminated, the RUS shall:
 1. Consult with all Signatories in accordance with 36 CFR § 800.6 to develop a new PA or;
 2. Request the comments of the ACHP pursuant to 36 CFR § 800.7.

XIII. Severability

- A. In the event any one or more of the provisions contained in the PA shall for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and the PA shall be construed as if such invalid, illegal, or unenforceable provisions had never been contained herein.

NOW THEREFORE, Execution of this PA by RUS, the Osage Nation, the Oklahoma State Historic Preservation Office, and the Kansas State Historic Preservation Office and implementation of its terms evidence that RUS has taken into account the effects of this undertaking on historic properties and afforded the ACHP an opportunity to comment.

Signatory pages follow.

PROGRAMMATIC AGREEMENT

**AMONG THE U.S. DEPARTMENT OF AGRICULTURE RURAL DEVELOPMENT
PROGRAMS, RURAL UTILITIES SERVICE,
THE OSAGE NATION, AND
THE OKLAHOMA AND KANSAS STATE HISTORIC PRESERVATION OFFICES**

**REGARDING
THE RECONNECT PROGRAM KANOKLA SHIDLER, LLC PROJECT, CROSSING KAY AND
OSAGE COUNTY IN OKLAHOMA, AND SUMMNER AND COWLEY COUNTIES in KANSAS**

SIGNATORY:

UNITED STATE DEPARTMENT OF AGRICULTURE-RURAL UTILITIES SERVICE

By: *Barbara R. Britton*
Barbara R. Britton, Director,
Environmental and Engineering Staff
Rural Utilities Service

Date: *February 28, 2000*

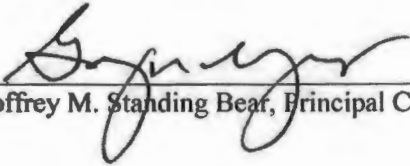
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PROGRAMS, RURAL UTILITIES SERVICE,
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**REGARDING
THE RECONNECT PROGRAM KANOKLA SHIDLER, LLC PROJECT, CROSSING KAY AND
OSAGE COUNTY IN OKLAHOMA, AND SUMMNER AND COWLEY COUNTIES in KANSAS**

SIGNATORY:

OSAGE NATION

By 

Geoffrey M. Standing Bear, Principal Chief

Date: 3-2-20

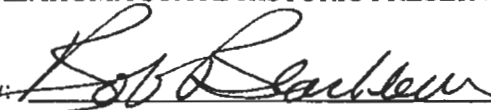
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PROGRAMS, RURAL UTILITIES SERVICE,
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**REGARDING
THE RECONNECT PROGRAM KANOKLA SHIDLER, LLC PROJECT, CROSSING KAY AND
OSAGE COUNTY IN OKLAHOMA, AND SUMMNER AND COWLEY COUNTIES in KANSAS**

SIGNATORY:

OKLAHOMA STATE HISTORIC PRESERVATION OFFICE

By: 
Dr. Bob Blackburn, State Historic Preservation Officer

Date: March 2, 2020

PROGRAMMATIC AGREEMENT

**AMONG THE U.S. DEPARTMENT OF AGRICULTURE RURAL DEVELOPMENT
PROGRAMS, RURAL UTILITIES SERVICE,
THE OSAGE NATION, AND
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**REGARDING
THE RECONNECT PROGRAM KANOKLA SHIDLER, LLC PROJECT, CROSSING KAY AND
OSAGE COUNTY IN OKLAHOMA, AND SUMMNER AND COWLEY COUNTIES in KANSAS**

SIGNATORY:

KANSAS STATE HISTORIC PRESERVATION OFFICE

By: Patrick Zollner
Patrick Zollner, Deputy State Historic Preservation Officer

Date: 3-11-20


PROGRAMMATIC AGREEMENT

**AMONG THE U.S. DEPARTMENT OF AGRICULTURE RURAL DEVELOPMENT
PROGRAMS, RURAL UTILITIES SERVICE,
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**REGARDING
THE RECONNECT PROGRAM KANOKLA SHIDLER, LLC PROJECT, CROSSING KAY AND
OSAGE COUNTY IN OKLAHOMA, AND SUMMNER AND COWLEY COUNTIES in KANSAS**

INVITED SIGNATORY:

OKLAHOMA ARCHAEOLOGICAL SURVEY

By: 
Kary L. Stackelbeck, Ph.D., State Archaeologist

Date: 3/11/20

PROGRAMMATIC AGREEMENT

**AMONG THE U.S. DEPARTMENT OF AGRICULTURE RURAL DEVELOPMENT
PROGRAMS, RURAL UTILITIES SERVICE,
THE OSAGE NATION, AND
THE OKLAHOMA AND KANSAS STATE HISTORIC PRESERVATION OFFICES**

**REGARDING
THE RECONNECT PROGRAM KANOLKA SHIDLER, LLC PROJECT, CROSSING KAY AND
OSAGE COUNTY IN OKLAHOMA, AND SUMNER AND COWLEY COUNTIES in KANSAS**

INVITED SIGNATORY:

KANOLKA SHIDLER LLC

By:

Jill Kuehny, CEO

Date:

2-28-20

PROGRAMMATIC AGREEMENT

**AMONG THE U.S. DEPARTMENT OF AGRICULTURE RURAL DEVELOPMENT
PROGRAMS, RURAL UTILITIES SERVICE,
THE OSAGE NATION, AND
THE OKLAHOMA AND KANSAS STATE HISTORIC PRESERVATION OFFICES**

**REGARDING
THE RECONNECT PROGRAM KANOKLA SHIDLER, LLC PROJECT, CROSSING KAY AND
OSAGE COUNTY IN OKLAHOMA, AND SUMMNER AND COWLEY COUNTIES in KANSAS**

CONCURRING PARTY:

PAWNEE NATION

By: *Matt Reed*

Date: 3-11-2020