

**MEMORANDUM OF AGREEMENT (MOA)**  
**AMONG**  
**THE FEDERAL COMMUNICATIONS COMMISSION (FCC),**  
**THE OKLAHOMA STATE HISTORIC PRESERVATION OFFICER (SHPO), and**  
**TILLMAN INFRASTRUCTURE, LLC**  
**REGARDING**  
**THE CONSTRUCTION OF A COMMUNICATIONS TOWER IN MIAMI, OTTAWA**  
**COUNTY, OKLAHOMA**  
**TCNS #243052**

**WHEREAS**, Tillman Infrastructure, LLC, proposes to construct the “SW Miami DT” Telecommunications Tower, a 230-foot self-support telecommunications tower, at 715 H Street NE in Miami, Ottawa County, Oklahoma (coordinates 36° 51' 51.252" N and -94° 52' 7.623" W) to support communications facilities for use by an FCC licensee (Project); and

**WHEREAS**, Tillman Infrastructure, LLC, is building the tower for a licensee of the FCC that 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**, Tillman Infrastructure, 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 NHPA (54 U.S.C. § 306108), as required by the FCC rules at 47 CFR §§ 1.1307(a)(4), 1.1320; and

**WHEREAS**, Tillman Infrastructure, 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 visual effect on the Miami Marathon Oil Company Service Station (NRIS #95000041) and the Miami Downtown Historic District (NRIS #09000357), which are listed in the National Register of Historic Places (NRHP), and the Cummins D-X Service Station, which has been previously determined eligible for the NRHP under Criteria A and C.

**WHEREAS**, Tillman Infrastructure, 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 Tillman Infrastructure, 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 *Miami News-Record* on January 18, 2022, 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 no comments were received; and

**WHEREAS**, Tillman Infrastructure, 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 the Apache Tribe of Oklahoma, Caddo Nation, Cherokee Nation, Cheyenne-Arapaho Tribes of Oklahoma, Eastern Shawnee Tribe of Oklahoma, Kiowa Indian Tribe of Oklahoma, Miami Tribe of Oklahoma, Modoc Tribe of Oklahoma, Northern Arapaho, Northern Cheyenne Tribe, Osage Nation, Ottawa Tribe of Oklahoma, Peoria Tribe of Indians of Oklahoma, Ponca Tribe of Indians of Oklahoma, Ponca Tribe of Nebraska, Quapaw Nation, Santee Sioux Nation, Seminole Nation of Oklahoma, Seneca-Cayuga Nation, Shawnee Tribe, Spirit Lake Nation, United Keetoowah Band of Cherokee Indians in Oklahoma, Wichita and Affiliated Tribes, and Wyandotte Nation, and none of the notified Tribal Nations have objected to the Project; and

**WHEREAS**, in accordance with Stipulation VII.D.2 of the NPA, Tillman Infrastructure, 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 MOA.

**NOW, THEREFORE**, the FCC, the SHPO, and Tillman Infrastructure, 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. Initiation of the Project may commence upon the execution of this MOA and implementation of the following measures.

## **STIPULATIONS**

The FCC, through coordination with Tillman Infrastructure, LLC, and its assignees, shall ensure that the following measures are carried out following execution of this MOA:

## **I. MITIGATION OF ADVERSE EFFECT**

Tillman Infrastructure, LLC, shall complete a NRHP nomination form for the Cummins D-X Service Station (218 South Main Street, Miami, OK), which has been previously determined eligible for the NRHP (Criteria A and C), and update photos for the Miami Marathon Oil Company Service Station (NRIS #95000041) and the Miami Downtown Historic District (NRIS #09000357). Measures involving historical or archeological expertise shall be completed by a professional meeting the applicable Secretary of the Interior's Professional Qualifications Standards.

### **A. Draft NRHP Nomination Form for the Cummins D-X Service Station:**

1. Tillman Infrastructure, LLC will review background information and conduct any necessary research through online resources, the SHPO and the Research Center at the Oklahoma History Center in Oklahoma City, and any resources available in Ottawa County.
2. Within 90-days of the effective date of this MOA, Tillman Infrastructure, LLC will complete field documentation (photographs and notes) for the Cummins D-X Service Station.
  - a. Field documentation will include both the interior and exterior of the resource.
3. Within 90-days of fieldwork completion, Tillman Infrastructure, LLC will electronically submit to the SHPO the draft NRHP nomination forms for review and comment.
4. The SHPO shall have 45 days to review and comment on the draft NRHP nomination forms.
5. If the SHPO does not respond with comments by the end of the review period, Tillman Infrastructure, LLC can assume concurrence.

### **B. Final NRHP Nomination Form Cummins D-X Service Station:**

1. Within 45-days of receiving comments from the SHPO, Tillman Infrastructure, LLC will revise the NRHP nomination forms for the resource and submit the revisions for a final review.
2. The SHPO shall review the revised NRHP nomination forms within 10 days of receipt and will notify Tillman Infrastructure, LLC of whether further technical revisions or edits are needed. If the SHPO does not respond with comments by the end of this review period, Tillman Infrastructure LLC can

assume concurrence. One final digital copy of the NRHP nomination, including the form, continuation sheets, maps, photographs, and any supplemental materials, will be sent to the SHPO via email.

C. Updated Photographs to Complete NRHP Resources for the Miami Marathon Oil Company Service Station and the Miami Downtown Historic District:

1. Within 90-days of the effective date of this MOA, Tillman Infrastructure, LLC will complete field documentation (updated photographs) for the Miami Marathon Oil Company Service Station (NRIS #95000041) and the Miami Downtown Historic District (NRIS #09000357).
  - a. This will include exterior photos of the listed and contributing structures.
2. Within 90-days of fieldwork completion, Tillman Infrastructure, LLC will prepare and submit to the SHPO the updated photos for the NRHP resources.
3. The photo prints and storage disc will be sent to the SHPO via certified mail.

D. Mitigation measures shall be prepared in accordance with:

1. Oklahoma Historical Society's NRHP Nomination and Submittal Requirements for Photography and Documentation (Appendix A).
2. National Register Bulletin 23: *How to Improve the Quality of Photographs for National Register Nominations* (Appendix B).
3. Oklahoma Historical Society's Architectural/Historic Resources Survey Field Guide (Appendix C).
4. Oklahoma Historical Society's Historic Preservation Resource Identification Form (Appendix D).

## II. REPORTING

Following the execution of this MOA and until it expires or is terminated, Tillman Infrastructure, 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 Tillman Infrastructure, LLC abandons the facilities at the Project site, Tillman Infrastructure, 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. Tillman Infrastructure, 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 expire if its terms are not carried out within a period of five (5) years. from the date of its execution. Prior to such time, 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 Tillman Infrastructure, LLC discovers a previously unidentified site within the APE that may be a Historic Property that would be affected by the Project, Tillman Infrastructure, LLC shall promptly stop work and notify the FCC, the SHPO and any potentially affected Indian tribes.

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

If Tillman Infrastructure, 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 Tillman Infrastructure, 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 Tillman Infrastructure, LLC discovers any human or burial remains during implementation of the Project, Tillman Infrastructure, 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. Tillman Infrastructure, LLC shall cease work immediately and notify local law enforcement. If the discovered human remains are not of forensic interest, Tillman Infrastructure, LLC shall contact the State Archeologist (OAS), the 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 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.

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**SIGNATORY:**

**Federal Communications Commission**

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*Paul D'Ari*

3/6/2023

Paul D'Ari

Date

Senior Legal Counsel, Competition, and Infrastructure Policy Division

Wireless Telecommunications Bureau

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**SIGNATORY:**

**State Historic Preservation Office**



Trait Thompson

State Historic Preservation Officer

Oklahoma State Historic Preservation Office

2/8/23

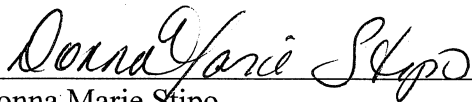
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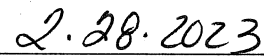
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**SIGNATORY:**

**Tillman Infrastructures, LLC**



Donna Marie Stipo  
National Director-Regulatory Compliance  
Tillman Infrastructure LLC



Date