

**PROGRAMMATIC AGREEMENT BETWEEN THE RURAL UTILITIES SERVICE AND
THE OKLAHOMA STATE HISTORIC PRESERVATION OFFICE REGARDING THE
@LINK SERVICES LLC COMMUNITY CONNECT GRANT PROJECT IN MAYES AND
DELAWARE COUNTIES, OKLAHOMA**

WHEREAS, the United States Department of Agriculture's (USDA) Rural Development (RD) programs offer low interest loans, grants and loan guarantees to support essential services such as housing, economic development, health care, first responder services and equipment, and water, electric and telecommunications infrastructure; promote economic development by supporting loans to businesses through banks, credit unions and community-managed lending pools; and

WHEREAS, RD is authorized under 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 various programs and services in support of its borrower or applicant's (applicant) activities, by providing financial assistance ("undertaking") 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 Rural Utilities Service (RUS) administers programs that provide much-needed infrastructure or infrastructure improvements to rural communities. These include water and waste treatment, electric power and telecommunications services, as described in the following paragraphs; and

WHEREAS, the @Link Services LLC (@Link) has applied to the Agency for financial assistance for the construction of three 340' guyed telecommunications towers, one 200' self-supporting tower, collocations at various towers (see Attachment A), and the placement of a 36' x 24' mobile classroom for a community center near the water treatment facility owned by Kenwood Water District about 1.6 miles northeast of Kenwood, Oklahoma; and,

WHEREAS, RUS has determined that the obligation of federal financial assistance, pursuant to 7 CFR § 1737.91, would make this Project an undertaking subject to review under Section 106 of the National Historic Preservation Act (NHPA), 54 U.S.C. 306108, and its implementing regulations, "Protection of Historic Properties" (36 CFR Part 800); and,

WHEREAS, obligation of the Project makes federal funding available for use by @Link in the design and engineering of a loan contract, construction, and in the completion of any studies needed to comply with 36 CFR Part 800 (Section 106 review); and,

WHEREAS, in accordance with 36 CFR § 800.14(b)(1)(ii), execution of a Programmatic Agreement (PA) is appropriate for this undertaking because effects on historic properties cannot be fully determined prior to the obligation of funding for the Project; and,

WHEREAS, RUS will not release obligated funds for any Project construction contract until Section 106 review under the terms of this PA has been concluded for that contract; and,

WHEREAS, in consultation with the State Historic Preservation Office of the Oklahoma Historical Society, (SHPO), RUS has determined that providing financial assistance for the Project could have an adverse effect on historic properties, as defined pursuant to 36 CFR § 800.16(l); and,

WHEREAS, RUS has invited @Link to participate in consultation and sign this PA as an invited signatory; and,

WHEREAS, for logistical and budgetary reasons, the SHPO and the Oklahoma Archeological Survey (OAS) operate under a cooperative agreement (approved by the NPS) through which OAS formally participates in the Section 106 process. OAS maintains the site files for Oklahoma's archeological resources and provides professional expertise in prehistoric archeology to the SHPO. Therefore, federal agencies (or their designees/authorized representatives) submit their requests for comments on federal undertakings to both the SHPO and the OAS. OAS reviews projects for possible impacts of ground-disturbing activities on prehistoric archeological resources. Both the SHPO and OAS issue letters to the requesting agency and the language of the letters is coordinated to ensure the agency has documentation of its Section 106 consultation with the SHPO. Therefore, the OAS is an invited signatory to this agreement; and,

WHEREAS, as currently proposed, Project construction will not cross tribal lands; and,

WHEREAS, on February 8, 2018, RUS invited the Advisory Council on Historic Preservation (ACHP) to participate in consultation, in accordance with 36 CFR § 800.6(a)(1)(i)(C), providing the specified documentation; and the ACHP did not respond,

NOW, THEREFORE, RUS and the SHPO agree that the Project construction contracts will be implemented in accordance with the following stipulations in order to take into account their effect on historic properties.

STIPULATIONS

RUS will ensure that the following measures are carried out.

I. STANDARDS AND CONDITIONS

- A. In accordance with 7 CFR § 1970.5(b)(2) of the regulations, “Environmental Policies and Procedures” (7 CFR Part 1970), RUS has issued a blanket delegation to its borrowers to initiate and proceed through Section 106 review. Even though RUS has initiated Section 106 for this project, this blanket delegation allows @Link and its consultants to proceed through steps 2-3 of the Section 106 process on RUS’s behalf pursuant to 36 CFR 800.2(c)(4).
- B. @Link will not initiate construction for the Project until Section 106 review conducted in accordance with the terms of this PA has been satisfied for that contract.

II. IDENTIFICATION AND TREATMENT

- A. RUS will ensure that the requirements of 36 CFR § 800.3 through, and including, 36 CFR § 800.7 have been met for the Project before obligated funds are released for the construction under that contract.
 - 1. **Scope of Undertaking.** This PA shall be applicable to all new construction activities related to the proposed undertaking enumerated above, including maintenance of the completed projects. The area of potential effects (APE) will include all Project construction and excavation activity required to construct, modify, improve, or maintain any facilities; any right-of-way or easement areas necessary for of the construction, operation, and maintenance of the Project; all areas used for excavation of borrow material and habitat creation; all construction staging areas, access routes, utilities, spoil areas, and stockpiling areas; and at least a ½-mile radius for the visual APE for towers and other above

ground resources that will cause a visual impacts to historic districts or properties (Attachment 1).

2. Professional Standards: Studies required by RUS under the terms of this PA will be carried out by or under the direct supervision of a professional who, at a minimum, meets the Secretary of the Interior's Professional Qualification Standards (48 FR 44716, September 29, 1983) in the appropriate field; or by an individual who possesses the requisite knowledge and expertise, as confirmed by an Indian tribe, to identify historic properties of religious and cultural significance to that tribe.
 3. Confidentiality: During implementation of this PA, RUS will protect information about historic properties, including location information or information provided by Indian tribes to assist in the identification of such properties, to the extent allowable under Section 304 of the National Historic Preservation Act, 54 U.S.C. 306108, 36 CFR § 800.11(c) and other applicable legal requirements.
 4. Documentation: Reporting under this PA when applicable will follow the format established in conformance with the Guidelines for Developing Archeological Survey Reports in Oklahoma and Report Components (<http://www.okhistory.org/shpo/factsheets/fs16archreports.pdf>).
 - i. Prior to initiating a survey, @Link will ensure their contractor shall contact RUS who will then coordinate with the SHPO to confirm that all aspects of Section 106 will be considered and addressed satisfactorily.
- B. RUS initiated Section 106 review for Project, and will comply with the requirements of this PA in completing Section 106 review for this proposed construction.
- C. RUS will notify the following tribes: Alabama-Quassarte Tribal Town, Apache Tribe of Oklahoma, Caddo Nation of Oklahoma, Cherokee Nation, Cheyenne and Arapaho Tribes of Oklahoma, Muscogee Creek Nation, Osage Nation, Seneca-Cayuga Nation, Wichita and Affiliated Tribes of Keechi, Waco, and Tawakonie about the development of the PA.
- D. Coordination with the National Environmental Policy Act
1. In accordance with 36 CFR § 800.8(a), RUS will coordinate its National Environmental Policy Act (NEPA) procedures (7 CFR Part 1970) and the terms of this PA for the Project.

2. Pursuant to 36 CFR § 800.2(d)(3), RUS will use its NEPA procedures to meet requirements for public involvement in Section 106 review.

E. Identification of Historic Properties

1. Prior to the initiation of construction or maintenance activities, @Link shall, in consultation with the signatories, participating Tribes, and other Consulting Parties, make a reasonable and good faith effort to identify historic properties located within the APE. These steps may include, but are not limited to, background research including reviewing the files located at the OAS and SHPO online database for NRHP, Oklahoma Landmarks Inventory (OLI), Determination of Eligibility (DOE) website (Attachment 2), consultation, oral history interviews, sample field investigations, reconnaissance or intensive field survey, and investigations to evaluate eligibility for listing in the National Register of Historic Places (NRHP).
2. @Link shall ensure that all archaeological work is overseen by a Principal Investigator who meets or exceeds the Secretary of the Interior's Professional Qualification Standards (48 FR 44716, September 29, 1983) and has at least 12 months of professional regional field experience (i.e., southern Plains, Midwest, Southeastern U.S.), of which at least 3 months shall be in Oklahoma or adjoining state(s). If as-yet unevaluated cultural resources are identified within the APE, RUS and @Link, shall assess their eligibility for inclusion in the NRHP in accordance with the process described in 36 CFR 800.4(c) and criteria established in 36 CFR 60.
3. If unassessed archaeological resources identified within the APE are located on property owned by or under the control of the State of Oklahoma or any of its political subdivisions @Link shall coordinate with the State Archaeologist to determine if a State Archaeology Permit is required as per Oklahoma Statutes, Title 53, Chapter 20, Section 361(C) before completing investigations to evaluate the site's NRHP eligibility.
4. All draft cultural resource investigation reports shall be submitted to the signatories and participating Tribes for review and comment. The SHPO, OAS, and participating Tribes shall have 30 calendar days upon receipt in which to review the findings and provide a written response to @Link and RUS.

5. Failure of the SHPO and OAS to respond within 30 calendar days of receipt of the draft reports shall be considered agreement with the findings and recommendations.
6. Comments received by @Link from the RUS, SHPO, OAS or participating Tribes shall be addressed in the final reports, which shall be provided to all consulting parties.
7. If no historic properties are identified in the APE, @Link shall document this finding pursuant to 36 CFR 800.11(d), provide this documentation to the signatories, and retain this documentation in @Link files for at least 10 years or until the undertakings have been completed.

F. Assessment of Adverse Effects

1. @Link in consultation with RUS shall assess adverse effects to historic properties following the procedures outlined in 36 CFR 800.4- 36 CFR 800.7.
2. If no adverse effects to historic properties are identified in the APE, @Link shall document this finding pursuant to 36 CFR 800.11(e), provide this documentation to the signatories, and retain this documentation in @Link files for at least 10 years or until the undertakings have been completed.
3. If adverse effects to historic properties are identified in the APE, RUS shall in consultation with the SHPO follow the procedures outlined in 36 CFR 800.6 to resolve these effects.
4. Failure to resolve adverse effects shall follow the procedures outlined in 36 CFR 800.7.

G. Post-Review Discoveries

1. RUS will ensure that the Project incorporates procedures to protect a post-review discovery to comply with the requirements of 36 CFR § 800.13(b)(3) and (c).
2. When the discovery contains burial sites or human remains, RUS will ensure that the procedures in Stipulation II.E include provisions for meeting the requirements of the OK Statute, Title 21, Ch. 47, Section 1168.4 Duty to report discovered remains & Section 1168.7 Government agencies' discovery of remains-duties (Attachment 3), and provisions which are consistent with the

ACHP's Policy Statement Regarding Treatment of Burial Sites, Human Remains, or Funerary Objects (February 23, 2007). Work shall immediately cease within a 100 ft. radius of the area of discovery.

3. If cultural materials are encountered during construction, work shall immediately cease within a 50 ft. radius of the area of discovery. Work may continue in the project area where no cultural materials are present. The contractor shall immediately notify the consultant architect/engineer; Catharine M. Wood, SHPO Section 106 Program Coordinator/Historical Archaeologist, (405) 521-6381; Kary Stackelbeck, State Archaeologist, (405) 325-7213; and the RUS Environmental Protection Specialist Steve Polacek (202) 205-9805 Steve.Polacek@wdc.usda.gov; or Archaeologist Basia Howard at (202) 205-9756 or basia.howard@wdc.usda.gov.

- H. RUS will comply with 36 CFR § 800.9(c) whenever it determines that Section 110(k) of NHPA may be applicable.

III. DISPUTE RESOLUTION

- A. Should any party participating in Section 106 review (consulting party) object in writing at any time to any actions proposed or the manner in which the terms of this PA are implemented, RUS will consult with such party to resolve the objection. If RUS determines that the objection cannot be resolved, it will forward all documentation relevant to the dispute, including the resolution it proposes, to the ACHP.
- B. The ACHP will provide RUS with its advice pursuant to 36 CFR § 800.2(b)(2) on the resolution of the objection within thirty (30) days of receipt of adequate documentation.
 1. Prior to reaching a final decision on the dispute, RUS will prepare a written response that takes into account any timely advice received from the ACHP, the SHPO and other consulting parties regarding the dispute. RUS will provide these parties with a copy of its written response, and then proceed according to its final decision.
 2. 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 will prepare a written response that

takes into account any timely advice submitted by the SHPO and other consulting parties regarding the dispute. RUS will provide these parties with a copy of its written response, and then proceed according to its final decision.

- C. 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.
- D. If, at any time during the implementation of the terms of this PA, an objection should be raised by the public, RUS will notify the signatories and consult with the objecting party to seek resolution. If RUS determines that the objection cannot be resolved, it will seek the advice or comment of ACHP in accordance with Stipulation III.A.

IV. TERM OF AGREEMENT

- A. The term of this PA will expire on January 1, 2022 unless the signatories agree to extend its term. If the terms of the PA have not been carried out, and prior to work continuing on the Project, RUS will either (a) execute another agreement pursuant to 36 CFR Part 800, or request and take into account the comments of the ACHP pursuant to 36 CFR § 800.7.
- B. Six (6) months prior to January 1, 2022, @Link will notify the other signatories of the impending expiration. The signatories will consult to reconsider the terms of the PA and amend it in accordance with Stipulation V.

V. AMENDMENT

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

VI. TERMINATION

- A. If any signatory determines that the terms of the PA will not, or cannot be carried out, that party will immediately consult with the others to attempt to develop an amendment in accordance with Stipulation V. If within thirty (30) days an amendment cannot be reached, any signatory may terminate the PA upon written notification to the others.

- B. Once the PA has been terminated, and prior to work continuing on the Project, RUS must either (a) execute an agreement pursuant to 36 CFR Part 800, or (b) request, take into account, and respond to the comments of ACHP pursuant to 36 CFR § 800.7. RUS will notify the SHPO and @Link of the course of action it will pursue.

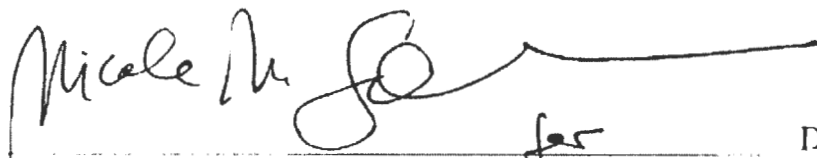
EXECUTION of this PA by RUS and the SHPO, and implementation of its terms evidence that RUS has taken into account the effects of the Project on historic properties and afforded ACHP a reasonable opportunity to comment.

Signatory pages follow.

**SIGNATORY PAGE PROGRAMMATIC AGREEMENT AMONG THE RURAL UTILITIES SERVICE AND
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SIGNATORY:

U.S. Department of Agriculture Rural Utilities Service

By:  Date: 3/29/18
Kellie M. Kubena, Director

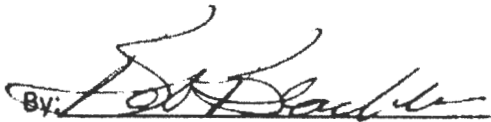
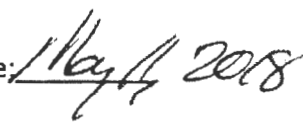
Engineering and Environmental Staff

Water and Environmental Programs

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SIGNATORY:

Oklahoma State Historic Preservation Office

By:  Date: 

Bob L. Blackburn

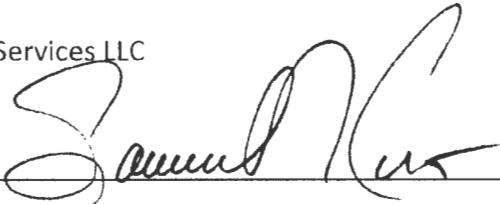
State Historic Preservation Officer

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INVITED SIGNATORY:

@Link Services LLC

By: _____



Date: _____

9-4-2018

Samual T. Curtis

Managing Member

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INVITED SIGNATORY:

Oklahoma Archaeological Survey

By: Kary L. Stackelbeck Date: 5/10/2018

Kary L. Stackelbeck

State Archaeologist

Attachment 1

Project Maps

Attachment 2

Oklahoma Online Databases Referenced in the Programmatic Agreement

1. Oklahoma Landmarks Inventory: <http://www.okhistory.org/shpo/oli.htm>
2. Properties determined eligible for the NRHP: <http://www.okhistory.org/shpo/doesearch.php>
3. National Register of Historic Places: <http://nr.shpo.okstate.edu/>
4. Fact Sheets #12 & #16 on recording historic period archaeological sites and developing Section 106 archaeological reports: <http://www.okhistory.org/shpo/factsheets.htm>
5. Review & Compliance Manual (Section 106) and information on how to complete a Historic Properties Identification Form (HPRIF): <http://www.okhistory.org/shpo/106/rcmanual2015.pdf>

Attachment 3

Oklahoma Title 21 Crimes and Punishments

Oklahoma Statutes Citationized

Title 21. Crimes and Punishments

Chapter 47 - Human Remains and Tissue, Burial, Cemeteries, and Funerals

Section 1168.4 - Duty to Report Discovered Remains - Penalty for Failure to Report - Persons to Notify

A. All persons who encounter or discover human skeletal remains or what they believe may be human skeletal remains or burial furniture thought to be associated with human burials in or on the ground shall immediately cease any activity which may cause further disturbance and shall report the presence and location of such human skeletal remains to an appropriate law enforcement officer.

B. Any person who willfully fails to report the presence or discovery of human skeletal remains or what they believe may be human skeletal remains within forty-eight (48) hours to an appropriate law enforcement officer in the county in which the remains are found shall be guilty of a misdemeanor.

C. Any person who knowingly disturbs human skeletal remains or burial furniture other than a law enforcement officer, registered mortician, a representative of the Office of the Chief Medical Examiner, a professional archaeologist or physical anthropologist, or other officials designated by law in performance of official duties, shall be guilty of a felony.

D. Anyone other than a law enforcement officer, registered mortician, a representative of the Office of the Chief Medical Examiner, a professional archaeologist or physical anthropologist, or other officials designated by law in performance of official duties, who disturbs or permits disturbance of a burial ground with the intent to obtain human skeletal remains or burial furniture shall be guilty of a felony.

E. The law enforcement officer, if there is a reason to believe that the skeletal remains may be human, shall promptly notify the landowner and the Chief Medical Examiner. If remains reported under this act are not associated with or suspected of association with any crime, the State Archaeologist and the State Historic Preservation Officer shall be notified within fifteen (15) days. If review by the State Archaeologist and the State Historic Preservation Officer of the human skeletal remains and any burial furniture demonstrates or suggests a direct historical relationship to a tribal group, then the State Archaeologist shall:

1. Notify the State Historic Preservation Officer; and
2. Consult with the tribal leader, designated by the Oklahoma Indian Affairs Commission, within fifteen (15) days regarding any proposed treatment or scientific studies and final disposition of the materials.

Historical Data

Laws 1987, HB 1110, c. 204, § 16, emerg. eff. July 1, 1987; Amended by Laws 1997, HB 1213, c. 133, § 304 (effective date amended to July 1, 1999, by Laws 1998, 1st Extr. Sess., HB 1002, c. 2, §§ 23-26, emerg. eff. June 19, 1998) (superseded document available).

Oklahoma Statutes Citationized

Title 21. Crimes and Punishments

Chapter 47 - Human Remains and Tissue, Burial, Cemeteries, and Funerals

Section 1168.7 - Government Agencies' Discovery of Remains - Duties

A. Any federal or state department or agency which, in the performance of its duties, discovers a burial ground, human skeletal remains or burial furniture shall immediately cease any activity which may cause further disturbance of the site and shall report the presence and location of any skeletal remains to an appropriate law enforcement officer as required by Section 1168 et seq. of Title 21 of the Oklahoma Statutes and shall comply with all other provisions of said sections.

B. If it is determined that the burial ground, human skeletal remains or burial furniture is not directly related to a tribal group, the State Historic Preservation Officer shall work with the director of the federal or state department or agency until disposition of the burial ground, human skeletal remains or burial furniture has been completed to the satisfaction of the State Historic Preservation Officer.

Historical Data

Laws 1992, HB 2231, c. 214, § 2, eff. September 1, 1992.