

MEMORANDUM OF AGREEMENT
AMONG THE INDIAN NATIONS COUNCIL OF GOVERNMENTS,
THE CITY OF TULSA,
AND
THE OKLAHOMA STATE HISTORIC PRESERVATION OFFICER

**Regarding the Demolition of Property
Located at 106 North Harvard Avenue,
Tulsa, Tulsa County, Oklahoma**

WHEREAS, the City of Tulsa (City) had previously proposed the demolition of the building located at 106 North Harvard Avenue with Department of Housing and Urban Development (HUD) administered Community Development Block Grant funds; and

WHEREAS, through Section 106 consultation with the Oklahoma State Historic Preservation Office (SHPO) the building at 106 North Harvard Avenue was determined to be a Contributing Resource to the Harvard Hills Historic District, which is eligible for inclusion in the National Register of Historic Places under Criteria A and C, and the proposed demolition of the building had been determined to create an adverse effect on the historic property (File #1513-17); and

WHEREAS, after the declaration of the site as a Public Nuisance, the City proceeded with demolition of the building at 106 North Harvard Avenue using resources from the City's General Fund prior to execution of a Memorandum of Agreement; and

WHEREAS, Boomtown Development Company, an affiliate of Habitat for Humanity, intends to seek assistance from the funds provided to the City by HUD in order to purchase the properties located at 106 North Harvard Avenue, 116 North Harvard Avenue, and 3243 East Archer Street and construct apartments thereon; and

WHEREAS, in accordance with the Programmatic Agreement among the Oklahoma State Historic Preservation Officer (SHPO), the City, and the Indian Nations Council of Governments (INCOG), the INCOG's Qualified Staff Person has conducted an environmental review in accordance with 24 C.F.R. 58; and

WHEREAS, INCOG has defined the undertaking's area of potential effect (APE) as Lots 1, 2, 25, and 26 in Block 1 of the Lindell Park Subdivision within the Harvard Hills Historic District and within the boundaries of the Cherokee Nation; and

WHEREAS, INCOG has determined that the undertaking will have an adverse effect on these properties, which are located in the Harvard Hills Historic District, and has consulted with the SHPO pursuant to 36 C.F.R. § 800, the regulations implementing Section 106 of the National Historic Preservation Act (54 U.S.C. § 306108); and

WHEREAS, INCOG has consulted with the Tribal Historic Preservation Officer of the Cherokee Nation (THPO) to determine whether the site has any cultural or religious significance for the Cherokee Nation, and the THPO has decided to join the Memorandum of Agreement (MOA) as a concurring party, as the site is located within the reservation boundaries of the Cherokee Nation; and

WHEREAS, INCOG has consulted with the Tribal Historic Preservation Officer (THPO) of the Muscogee (Creek) Nation (MCN) to determine whether the project will impact any cultural sites or sites that hold religious significance to the MCN, as well as consideration of any implications of the decision in *McGirt v. Oklahoma*, and the MCN THPO has determined that the project is located outside of the MCN Reservation and MCN has chosen not to participate in the MOA; and

WHEREAS, in accordance with 36 C.F.R. § 800.6(a)(1), INCOG has notified the Advisory Council on Historic Preservation (ACHP) of the determination of adverse effect with specified documentation and the ACHP has chosen not to participate in the consultation pursuant to 36 C.F.R. § 800.6(a)(1)(iii);

NOW, THEREFORE, INCOG, the City, and the SHPO agree that the undertaking shall be implemented in accordance with the following stipulations in order to resolve the unmitigated adverse effect caused by the demolition of the building at 106 North Harvard Avenue, and to mitigate the adverse effect of the present undertaking on the historic property.

STIPULATIONS

INCOG shall ensure that the following measures are carried out:

I. DOCUMENTATION

Within five (5) years of the date of execution of the MOA, INCOG shall conduct a survey of the Harvard Hills Historic District in order to evaluate its boundaries and to identify the Contributing and Non-Contributing Resources in the district. Documentation shall include a map of the district with its current boundaries, a map of the district with any revisions of its boundaries, a map with the identification of the Contributing and Non-Contributing Resources, and two (2) photographs of each property.

II. DURATION

This MOA will expire if its terms are not carried out within five (5) years from the date of its execution. Prior to such time, INCOG may consult with the other signatories to reconsider the terms of the MOA and amend it in accordance with Stipulation V.

III. MONITORING AND REPORTING

Each year following the execution of this MOA until it expires or is terminated, INCOG shall provide all parties to this MOA a report detailing the work undertaken pursuant to its terms. Such report shall include any proposals for the adjustment of the schedule, any problems encountered, and any disputes and objections received in INCOG's efforts to carry out the terms of this MOA.

IV. 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, INCOG shall consult with such party to resolve the objection. If INCOG determines that such objection cannot be resolved, INCOG will:

A. Forward all documentation relevant to the dispute, including INCOG's proposed resolution, to the ACHP. The ACHP shall provide INCOG with its advice on the resolution of the objection within thirty (30) days of the receipt of adequate documentation. Prior to a final decision on the dispute, INCOG 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. INCOG will then proceed according to its final decision.

B. If the ACHP does not provide its advice regarding the dispute within thirty (30) days, INCOG may make a final decision on the dispute and proceed accordingly. Prior to its final decision, INCOG shall prepare a written response that takes into account any timely comments regarding the dispute from the signatories to the MOA and provide them and the ACHP with a copy of such written response.

C. INCOG'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.

V. AMENDMENTS

This MOA may be amended 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 signatories is filed with the ACHP.

VI. 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 V. If within thirty (30) days (or another period agreed to by all signatories) an amendment cannot be reached, any signatory may terminate the MOA upon written notification of the other signatories.

Once the MOA is terminated, INCOG must either (a) execute an MOA pursuant to 36 C.F.R. § 800.6 or (b) request, take into account, and respond to the comments of the ACHP under 36 C.F.R. § 800.7. INCOG shall notify the signatories as to the course of action it will pursue.

Execution of this MOA by INCOG, the City, and the SHPO and implementation of its terms evidence that INCOG has taken into account the effects of this undertaking on the historic property and afforded the ACHP an opportunity to comment.

SIGNATORIES:

CITY OF TULSA, OKLAHOMA



G. T. Bynum, Mayor
City of Tulsa

OCT 20 2021 Date

ATTEST:


_____ City Clerk



OCT 20 2021 Date

APPROVED:


_____ Assistant City Attorney

10-12-21 Date

INDIAN NATIONS COUNCIL OF GOVERNMENTS

Rich Brierre

Rich Brierre, Executive Director

9/23/2021 Date

OKLAHOMA STATE HISTORIC PRESERVATION OFFICER



Trait Thompson, State Historic Preservation Officer

9/30/21

Date

CONCURRING PARTY:

TRIBAL HISTORIC PRESERVATION OFFICER - CHEROKEE NATION

Elizabeth Toombs KSPF

Elizabeth Toombs, Tribal Historic Preservation Officer

09.30.21 Date