

**MEMORANDUM OF AGREEMENT**

**AMONG**

**THE UNITED STATES DEPARTMENT OF INTERIOR, BUREAU OF INDIAN AFFAIRS-MIDWEST REGION, THE FOND DU LAC BAND OF LAKE SUPERIOR CHIPPEWA TRIBAL HISTORIC PRESERVATION OFFICE, THE MINNESOTA STATE HISTORIC PRESERVATION OFFICE AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION**

**REGARDING**

**THE DEMOLITION OF THE CARTER HOTEL, CITY OF DULUTH, SAINT LOUIS COUNTY, MINNESOTA  
AS OUTLINED IN THE**

***APPLICATION TO PLACE LAND IN TRUST FOR THE FOND DU LAC BAND OF LAKE SUPERIOR CHIPPEWA – FORMER CARTER HOTEL PROPERTY***

**WHEREAS**, the Fond du Lac Band of Lake Superior Chippewa (Band) purchased, in fee, the Carter Hotel Property located at 17-27 North Second Avenue East, in the City of Duluth, MN 55802 ; and

**WHEREAS**, the Band resolved to apply pursuant to Section 5 of the Indian Reorganization Act of 1934 to the US Department of Interior, Bureau of Indian Affairs- Midwest Region (BIA-MR) for transfer of the Carter Hotel Property into trust status; and

**WHEREAS**, the BIA-MR has determined that taking the Carter Hotel property into trust is an undertaking subject to review by BIA-MR under Section 106 of the National Historic Preservation Act (NHPA) and its implementing regulations at 36 CFR 800; the Band intends to remove the existing structure and to the extent necessary for public safety, remove and replace any decaying paving.

**WHEREAS**, the BIA-MR has defined the undertaking's area of potential effect (APE) as the boundaries of the Duluth Commercial Historic District (Historic District) which is listed in the National Register of Historic Places (NRHP); and

**WHEREAS**, the BIA-MR has determined the undertaking will have an adverse effect on historic properties as it includes demolition of the Carter Hotel which is a contributing resource within the (Historic District); and

**WHEREAS**, the BIA-MR has consulted with the Band's Tribal Historic Preservation Office (THPO), the Minnesota State Historic Preservation Office (SHPO), and the Advisory Council on Historic Preservation (ACHP) (collectively "*Signatories*" as defined in 36 CFR 800.6 (C)(1)) pursuant to 36 CFR 800; and

**WHEREAS**, the BIA-MR has consulted with the City of Duluth (City) and the Duluth Heritage Preservation Commission (DHPC) regarding the effects of the undertaking on historic properties and has invited them to sign this Agreement as *Concurring Parties* as defined as "*Concurrence by others*" in 36 CFR 800.6 (C)(3); and

**NOW, THEREFORE,** the *Signatories* agree the undertaking shall be implemented in accordance with the following stipulations in order to take into account the effect of the undertaking on historic properties.

## **STIPULATIONS**

The BIA-MR shall ensure the following measures are implemented:

### **I. Documentation: Level II Minnesota Historic Property Record (MHPR)**

Prior to demolition of the Carter Hotel, the Band will complete a Level II Minnesota Historic Property Record (MHPR) pursuant to the standards of the *Minnesota Historic Property Record Guidelines* (revised 2009). The documentation shall be completed by a historian who meets the Secretary of Interior's Professional Standards for historian. The BIA-MR will submit a draft copy of the completed documentation to the SHPO for review and comment. The SHPO will have thirty (30) days to review and comment. Once the documentation is finalized, and SHPO comments have been addressed, it will be accepted by the SHPO and incorporated into the Minnesota Historical Society's Manuscript Collection.

### **II. Interpretation: Website Documenting the History of the Band from the Band's perspective.**

The Band shall establish a publicly accessible website within two years of the signed MOA that documents the Band's history from the Band's perspective. The content will include pre European contact and post contact culture and history of native populations and non-native immigration in the geographical areas including, but not limited to, the Historic District and the City of Duluth. The SHPO shall be notified when the website is finalized and has been launched.

### **III. Preservation: Clayton Jackson McGhie Memorial**

The Band shall ensure the Clayton Jackson McGhie Memorial is protected from physical damage cause by the proposed demolition of the Carter Hotel. Protective measures shall include, but not be limited to, covering the Memorial for protection against air borne demolition debris and erecting a barrier around the Memorial for protection against damage by construction equipment. These protective measures shall be submitted to the SHPO by the BIA-MR for review and concurrence and incorporated into final construction documents and specifications for the proposed demolition. The SHPO will have thirty (30) days to review and comment.

### **IV. Design Review: New construction on the Carter Hotel parcel**

Following demolition of the Carter Hotel, subsequent new construction on the parcel will be designed in a context sensitive way to minimize additional adverse effects to the Historic District. Plans will be developed in accordance with the Secretary of the Interior's Standards for the Treatment of Historic Properties (Standards), specifically pertaining to new construction in historic districts – "New additions, exterior alterations, or related new construction" as defined in 36 CFR 67.7 (b) (9) as follows:

(9) New additions, exterior alterations, or related new construction shall not destroy historic materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the massing, size, scale, and architectural features to protect the historic integrity of the property and its environment.

The BIA-MR will submit the project design documents at the 30% (schematic), 60% (design development), and 90% (construction) to the SHPO for a 30 day review and comment at each stage. If no comments are received within this period, the BIA-MR may assume no comment. The BIA-MR will incorporate comments from SHPO at each design development stage, as feasible, into the next set of design plans along with a written explanation of how these comments have been incorporated. If there are any instances where it is not feasible to incorporate comments from SHPO, the BIA-MR will provide a written explanation.

## **V. Dispute Resolution**

Should any *Signatories* to this MOA object at any time to any actions proposed or the manner in which the terms of this MOA are implemented, BIA-MR shall consult with said party to resolve the objection. If BIA-MR determines the objection cannot be resolved, BIA-MR will:

A. Forward all documentation relevant to the dispute, including the BIA-MR's proposed resolution, to the ACHP. The ACHP shall provide BIA-MR with its advice on the resolution of the objection within 30 days of receiving adequate documentation. Prior to reaching a final decision on the dispute, BIA-MR shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP and other *Signatories*, and provide them with a copy of this written response. BIA-MR will then proceed according to its final decision.

B. If the ACHP does not provide its advice regarding the dispute within the 30 day time period, BIA-MR may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, BIA-MR shall prepare a written response taking 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. BIA-MR's responsibility to carry out all other actions subject to the terms of this MOA not the subject of the dispute remain unchanged.

## **VI. Amendment**

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 of the signatories is filed with the ACHP.

## **VII. DURATION**

This MOA shall be null and void if its terms are not carried out within 5 years from the date of its execution, unless the *Signatories* agree in writing to an extension for carrying out its terms.

At such time, and prior to work continuing on the undertaking, BIA-MR shall either (a) execute a 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. Prior to such time, BIA-MR may consult with other *Signatories* to reconsider the terms of the MOA and amend it in accordance with Stipulation VI below. BIA-MR shall notify the signatories as to the course of action it will pursue.

### **VIII. Termination**

Any *Signatories* to this Agreement may terminate it by providing sixty (60) days written notice to the BIA-MR and other *Signatories*, provided the BIA-MR and the other *Signatories* consult during the period prior to termination agree on amendments or other actions that would avoid termination.

### **IX. Reporting**

The Band shall provide a written report to the *Signatories* with respect to all actions taken in fulfillment of this MOA within ninety (90) days of such actions, including a report on actions taken in fulfillment of the Band's obligations under Stipulation IV, which report the *Signatories* expressly understand may occur beyond the two-year term of this MOA.

Execution of this Agreement and implementation of its terms evidences that the BIA-MR has taken into account the effects of the undertaking on historic properties and has afforded the ACHP a reasonable opportunity to comment on the undertaking.

*Signatories:*

**US DOI BUREAU OF INDIAN AFFAIRS-MIDWEST REGION**

By: Diane K. Rosen

Date: 5/16/14

*Signatories:*

**TRIBAL HISTORIC PRESERVATION OFFICE  
FOND DU LAC BAND OF LAKE SUPERIOR CHIPPEWA**

By: Leah Savage

Date: 5/28/14

*Signatories:*

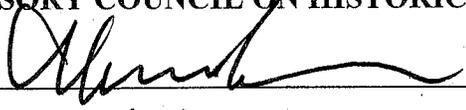
**MINNESOTA STATE HISTORIC PRESERVATION OFFICE**

By: Barbara Howard

Date: May 21, 2014

*Signatories:*

**ADVISORY COUNCIL ON HISTORIC PRESERVATION**

By: 

Date: 7/18/14