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MAY 03 2004

MEMORANDUM OF AGREEMENT

BY AND BETWEEN THE CITY OF SOUTH BEND AND INDIANA DEPT. OF NATURAL RESOURCES

THE INDIANA STATE HISTORIC PRESERVATION OFFICER

SUBMITTED TO THE ADVISORY COUNCIL ON HISTORIC PRESERVATION

PURSUANT TO 36 C.F.R. § 800.6(b)(iv)

REGARDING THE DEMOLITION OF

THE FORMER OLIVER CHILLED PLOW WORKS #2 FORGE SHOP IN

SOUTH BEND, PORTAGE TOWNSHIP, SAINT JOSEPH COUNTY, INDIANA

**WHEREAS** the City of South Bend ("City") proposes to demolish the former Oliver Chilled Plow Works #2 Forge Shop in South Bend, Portage Township, Saint Joseph County, Indiana; and

**WHEREAS** the City, in consultation with the Indiana State Historic Preservation Officer ("Indiana SHPO"), has defined the former Oliver Chilled Plow Works #2 Forge Shop, as the term is defined in 36 C.F.R. § 800.16(d), to be in the St. Casimir Parish Historic District; and

**WHEREAS** the City, in consultation with the Indiana SHPO, has found that the former Oliver Chilled Plow Works #2 Forge Shop is within the area of potential effects; and

**WHEREAS** the City, in consultation with the Indiana SHPO, has determined pursuant to 36 C.F.R. § 800.49(c), that the former Oliver Chilled Plow Works #2 Forge Shop contributes to the St. Casimir Parish Historic District, which was listed in the National Register of Historic Places; and

**WHEREAS** with the City, in consultation the Indiana SHPO, has determined, pursuant to 36 C.F.R. § 800.5(a), that the demolition of the former Oliver Chilled Plow Works #2 Forge Shop will have an adverse effect on the St. Casimir Parish Historic District; and

**WHEREAS** the City has consulted with the Indiana SHPO in accordance with Section 106 of the National Historic Preservation Act (16 U.S.C. § 470f) and its implementing regulations (36 C.F.R. Part 800) to mitigate the adverse effect on the former Oliver Chilled Plow Works #2 Forge Shop; and

**WHEREAS**, the City in consultation with the Indiana SHPO, has invited Todd Zeiger, Director, Northern Regional Office, Historic Landmarks Foundation of Indiana, John Oxian, President, Historic Preservation Commission of South Bend & St. Joseph County and the South Bend Redevelopment Commission to participate in the consultation and to concur in this memorandum of agreement; and

**NOW, THEREFORE**, the City and the Indiana SHPO agree that, upon the submission of a copy of this executed memorandum of agreement, as well as the documentation specified in 36 C.F.R. § 800.11(e) and (f), to the Advisory Council on Historic Preservation ("Council" pursuant to 36 C.F.R. § 800.6[b][1][iv]) and upon the City's approval of the demolition, the City shall ensure that the following stipulations are implemented in order to take into account the effect of the demolition and removal of the former Oliver Chilled Plow Works #2 Forge Shop:

### Stipulations

#### 1. ADVERSE IMPACT MITIGATION

The former Oliver Chilled Plow Works #2 Forge Shop will be documented prior to the commencement of demolition activities. The activities to be conducted and materials provided include:

- A. A cover page with the name and street address of the property;
- B. A typed description of the property including:
  - i. A narrative description of the property's design and overall dimensions
  - ii. A map of South Bend showing the location of the property
- C. A typed history of the property and a statement of the property's significance to the community focusing on its history prior to 1950;
- D. Black and white 35mm photographs showing the property from various angles, labeled to indicate building name, address, direction and description of view, and name of photographer;
- E. Plan and elevation drawings of the structures.

#### 2. OBJECTION RESOLUTION PROVISION

Disagreements and misunderstanding about how this memorandum of agreement is or is not being implemented shall be resolved in the following manner:

- A. If the Indiana SHPO or any invited signatory to this memorandum of agreement should object in writing to the City regarding any action carried out or proposed with respect to the demolition of the former Oliver Chilled Plow Works #2 Forge Shop or implementation of this memorandum of agreement, then the City shall consult with the objecting party to resolve the objection. If after initiating such consultation the City determines that the objection cannot be resolved through consultation, then the City shall forward all documentation relevant to the objection to the Council, including the City's proposed response to the objection. Within 45 days after receipt of all pertinent documentation, the Council shall exercise one of the following options:
  - Provide the City with a staff-level recommendation, which the City shall take into account in reaching a final decision regarding its response to the objection; or
  - ii. Notify the City that the objection will be referred for formal comment pursuant to 36 C.F.R. § 800.7(c), and proceed to refer the object and comment. The City shall take into account the Council's comments in reaching a final decision regarding its response to the objection.
- B. If comments from the Council are provided in accordance with Stipulation A of this memorandum of agreement, then the City shall take into account any Council comment provided in accordance with 36 C.F.R. § 800.7(a)(4) with reference only to the subject of the objection. The City's responsibility to carry out all actions under this memorandum of agreement that are not the subjects of the objection shall remain unchanged.

### 3. POST REVIEW DISCOVERY

In the event that one or more historic properties, other the former Oliver Chilled Plow Works #2 Forge Shop, are discovered or that unanticipated effects on historic properties are found during the implementation of this memorandum of agreement, the City shall follow the procedure specified in 36 C.F.R. § 800.13.

### 4. AMENDMENT

Any signatory to this memorandum of agreement may request that it be amended, whereupon the parties shall consult to consider the proposed amendment. 36 C.F.R. § 800.6(c)(7) shall govern the execution of any such amendment.

### 5. TERMINATION

- A. If the terms of this memorandum of agreement have not been implemented by January 1, 2007, then this memorandum of agreement shall be considered null and void. In such an event, the City shall so notify the parties to this memorandum of agreement and, if it chooses to continue with the demolition, then it shall reinstate review of the demolition of the former Oliver Chilled Plow Works #2 Forge Shop in accordance with 36 C.F.R. §§ 800.3 through 800.7.
- B. Any signatory to the memorandum of agreement may terminate it by providing thirty (30) days notice to the other parties, provided that the parties shall consult during the period prior to termination to seek agreement on amendments or other actions that would avoid termination.
- C. In the event of termination, the City shall comply with 36 C.F.R. §§ 800.3 through 800.7 with regard to the review of the demolition. In the event that the City does not carry out the terms of this memorandum of agreement, the City shall comply with 36 C.F.R. §§ 800.3 through 800.7 with regard to the review of the demolition of the former Oliver Chilled Plow Works #2 Forge Shop.

### 6. OTHER NECESSARY ACTS

Each Party shall execute and deliver to the other all such other further instruments and documents as may be reasonably necessary to accomplish the activities contemplated by this Agreement and to provide and secure to the other Party the full and complete enjoyment of its rights and privileges hereunder.

### 7. RECORDATION

This Memorandum of Agreement may be recorded in the office of the St. Joseph County Recorder subsequent to its execution.

The execution of this memorandum of agreement by the City and the Indiana SHPO, the submission of a copy of it to the Council with the appropriate documentation specified in 36 C.F.R. § 800.11(e) and (f), and the implementation of its terms evidence that the City has afforded the Council an opportunity to comment on the demolition of the former Oliver Chilled Plow Works #2 Forge Shop and its effects on historic properties and that the City has taken into account the effects of the demolition of the former Oliver Chilled Plow Works #2 Forge Shop on historic properties.

**SIGNATORIES (Required):**

City of South Bend, Indiana  
Board of Public Works

Date: 4-26-04

Signed by: Gary A. Gilot Printed Name: Gary A. Gilot

Signed by: Donald E. Jaks Printed Name: Donald E. Jaks

Signed by: Carl P. Littell Printed Name: Carl P. Littell

**INDIANA STATE HISTORIC PRESERVATION OFFICER**

Signed by: [Signature]

Date: 5-7-04

Name and title: [Signature]  
(Typed or printed)

**CONCURRING PARTIES:**

HISTORIC LANDMARKS FOUNDATION OF INDIANA  
NORTHERN REGIONAL OFFICE

Signed by: [Signature]

Date: 4-20-04

Name and title: Todd Zeiger, Director

HISTORIC PRESERVATION COMMISSION OF  
SOUTH BEND & ST. JOSEPH COUNTY

Signed by: John Oxian

Date: 4-29-2004

Name and title: John Oxian, President

SOUTH BEND REDEVELOPMENT COMMISSION

Signed by: [Signature]

Date: April 16, 2004

Attest: Philip J. Faconda

Date: April 16, 2004