

**PROGRAMMATIC AGREEMENT
BETWEEN THE OKLAHOMA STATE HISTORIC PRESERVATION OFFICER,
THE CITY OF TULSA, AND THE INDIAN NATIONS COUNCIL OF GOVERNMENTS FOR
HOUSING ACQUISITION, ACQUISITION/REHABILITATION,
OWNER-OCCUPIED REHABILITATION,
AND DEMOLITION PROGRAMS
FUNDED BY THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

WHEREAS, the U.S. Department of Housing and Urban Development (HUD) provides formula grant funding to the City of Tulsa (City); and

WHEREAS, the City and the Indian Nations Council of Governments (INCOG) have executed a Memorandum of Understanding (MOU) whereby effective January 1, 2019, INCOG will provide services previously performed by the City's Planning Department (See Appendix B); and

WHEREAS, due to the City's acceptance of the federal environmental review responsibility, in accordance with Section 104(g) of the Housing and Community Development Act of 1974 [42 U.S.C. 5104(g)], the City assumes federal agency responsibility for compliance with the National Historic Preservation Act of 1966 as amended, 54 U.S.C. 306108 and INCOG agrees to discharge that responsibility on behalf of the City; and

WHEREAS, the City, by and through its Division of Grants Administration, proposes to administer its property acquisition, acquisition/rehabilitation, owner-occupied rehabilitation, and demolition programs funded from a portion of its grant awards from the HUD Community Development Block Grant (CDBG) Program, and its Home Investment Partnerships (HOME) Program (collectively, Program); and

WHEREAS, pursuant to this Programmatic Agreement, only single-family and multi-family properties will be acquired or be acquired and rehabilitated within three (3) years of the date of the acquisition or undergo repair pursuant to the City's criteria for owner-occupied rehabilitation programs or be demolished pursuant to criteria listed in Section III.C.1; and

WHEREAS, due to the Program's timing constraints, the City's HUD Grant property acquisition, acquisition/rehabilitation, owner-occupied rehabilitation, and demolition programs can operate more efficiently and effectively through execution of this Programmatic Agreement, under statutes that authorize HUD to provide for the assumption of environmental review responsibilities by recipients in accordance with HUD's Environmental Review Procedures as set forth in 24 CFR 58; and

WHEREAS, INCOG has determined that the administration of the Program may have an effect on properties included in or eligible for inclusion in the National Register of Historic Places (NRHP) and has consulted with the Oklahoma State Historic Preservation Officer (SHPO), the Oklahoma Archeological Survey (OAS), and the Advisory Council on Historic Preservation (ACHP) pursuant to 36 CFR §800.14(b) of the regulations implementing 54 U.S.C. 306108 of the National Historic Preservation Act as amended through December 19, 2014 and Codified in Title 54 of the United States Code and 54 U.S.C. 306101-14 of the same Act; and

WHEREAS, SHPO and OAS have entered into a cooperative agreement under which OAS provides special services to SHPO in the Section 106 review process, as OAS maintains the inventory of Oklahoma's prehistoric resources and provides professional services to SHPO in prehistoric archeology and as OAS reviews federal undertakings for possible impacts on prehistoric archeological resources and provides written comments to federal agencies and their authorized applicants/designees, accordingly, OAS (State Archeologist) has been invited to sign this Programmatic Agreement; and

WHEREAS, pursuant to §800.14(b)(3) and §800.6(a)(1)(i)(c), INCOG notified ACHP of its intention to prepare a programmatic agreement under §800.14(b)(3) by providing the documentation specified in §800.11(e); and

WHEREAS, INCOG has consulted in accordance with §800.6(b)(1), "Resolution without ACHP", with SHPO; and

WHEREAS, the City's Division of Grants Administration, Working in Neighborhoods Department, and Tulsa Preservation Commission (TPC) staffs have participated in consultation and have been invited to concur in this Programmatic Agreement (Agreement); and

WHEREAS, INCOG will continue to conduct outreach and will actively seek and request the comments and participation of Indian tribes that attach religious and cultural significance to historic properties that may be affected by undertakings funded under the terms of this Agreement; and

WHEREAS, INCOG acknowledges that Indian tribes possess special expertise in assessing the National Register eligibility of properties with tribal religious and cultural significance; and

WHEREAS, the definitions given in Appendix A are applicable throughout this Agreement; and

WHEREAS, this Agreement supersedes the Programmatic Agreement between the City and SHPO entered into on June 3, 2014; and

WHEREAS, in accordance with §800.6(b)(1)(iv), this Agreement will become final upon submitting a copy of the executed Agreement, along with the documentation specified in §800.11(f), to ACHP prior to approving any undertaking in order to meet the requirements of 54 U.S.C. 306108 and §800.6(b)(1);

NOW, THEREFORE, INCOG and SHPO agree that the Program shall be administered in accordance with the following stipulations to satisfy the City's responsibilities under 54 U.S.C. 306108 for all individual undertakings of the program.

STIPULATIONS

INCOG shall ensure that the following measures are carried out:

I. APPLICABILITY

This Agreement shall be limited to property acquisitions, acquisition/rehabilitation, owner-occupied rehabilitation, and demolition projects funded through the following HUD programs:

- A. Community Development Block Grant (CDBG)
- B. Home Investment Partnerships Program (HOME)

II. QUALIFIED PERSONNEL

A. INCOG shall employ staff person(s) or contract with Consultants having professional qualifications in anthropology, archaeology, architectural history, history, historic architecture, historic preservation, planning or related fields, as appropriate (INCOG's QSP), and as specified in the *Secretary of the Interior's Historic Preservation Professional Qualification Standards* (48 FR 44738-39, September 29, 1983). INCOG QSP will be responsible for administering those terms of this Agreement that require their particular expertise and for coordinating with appropriate City departments, authorities and agencies regarding programs assisted for property acquisition, acquisition/ rehabilitation, owner-occupied rehabilitation, or demolition.

1. If there is a change in INCOG's QSP, INCOG shall notify SHPO within 15 days of the change and shall provide SHPO with documentation of the new staff person's qualifications in anthropology, archaeology, architectural history, history, historic architecture, historic preservation, planning or related fields, as specified in the *Secretary of the Interior's Historic Preservation Professional Qualification Standards* (48 FR 447 16, September 29, 1983).

2. If INCOG determines that it cannot either employ or contract for qualified staff to administer the terms of this Agreement, it will follow the standard procedures for 54 U.S.C. 306108, which include forwarding documentation to SHPO for review on a case-by-case basis.

III. IDENTIFICATION AND EVALUATION OF HISTORIC PROPERTIES

A. INCOG's QSP shall identify districts and individual properties that are listed in or meet the criteria for listing in the National Register of Historic Places (NRHP) (hereinafter historic properties) within the Area of Potential Effects (APE) of program-assisted property acquisitions, acquisition/rehabilitations, owner-occupied rehabilitations, including minor emergency repairs, or demolitions.

B. When a house or residential property proposed for acquisition, acquisition/rehabilitation, owner-occupied rehabilitation or demolition is less than forty-five (45) years old, not individually listed in nor determined eligible for listing in the NRHP, nor is a contributing resource to a district that is listed in or eligible for the NRHP, INCOG's QSP shall document this fact in the individual project file, notify the City which may proceed with the property acquisition, acquisition/rehabilitation, owner-occupied rehabilitation or demolition. The City's work shall be completed within three (3) years of the date of approval of INCOG's QSP, or consultation with INCOG's QSP or SHPO shall be reinitiated.

C. When the house or residential property proposed for demolition is less than forty-five (45) years old and is located within a district that is listed in or eligible for the NRHP, INCOG's QSP shall evaluate the house or residential property and provide their opinion as to its degree of integrity within ten (10) working days from the date of an adequately documented request from the City. INCOG's QSP shall request SHPO's determination of its individual eligibility for the NRHP. City shall be notified of all requests to and responses from SHPO.

D. Properties forty-five (45) years of age or older that may be affected by projects covered under this Agreement will be evaluated by INCOG's QSP to determine if the property proposed for acquisition, acquisition/rehabilitation, owner-occupied rehabilitation, or demolition is a historic property. INCOG's QSP shall provide their opinion within ten (10) working days after receipt of an adequately documented request for minor emergency repairs and demolitions or within thirty (30) working days for all other submissions on forms developed by the City for this purpose.

1. If INCOG's QSP determines that the property proposed for acquisition, acquisition/rehabilitation, owner-occupied rehabilitation or demolition is not eligible for or is not listed in the NRHP, INCOG shall notify the City and the City may proceed with the acquisition, acquisition/rehabilitation, owner-occupied rehabilitation or demolition. Notice to the City shall be in writing and occur within ten (10) working days from the date of receipt of the City's request for evaluation. The City's work shall be completed within three (3) years of the date of approval by INCOG's QSP, or consultation with INCOG's QSP or SHPO shall be reinitiated.

2. If INCOG's QSP determines that the property proposed for acquisition, acquisition/rehabilitation, owner-occupied rehabilitation, or demolition is a historic property, INCOG shall proceed pursuant to Section IV.

E. If INCOG's QSP cannot immediately determine the NRHP eligibility of a property, INCOG's QSP shall submit documentation to SHPO regarding the eligibility of the property proposed for acquisition, acquisition/rehabilitation, owner-occupied rehabilitation, or demolition. SHPO shall provide written comments within thirty (30) days following the receipt of adequate documentation. As provided in 36 CFR 800.3 (c)(4), if no response is received by INCOG or City from SHPO within thirty (30) days following the receipt of adequate documentation, the proposed action by the City will be deemed approved, and the City may proceed with the project.

1. Documentation of individual properties submitted to SHPO for review will include a completed SHPO "Historic Preservation Resource Identification Form", photographs of the property as well as streetscape views, and a map indicating the property's exact location in accordance with requirements and instructions in SHPO's *Review and Compliance Manual*.

2. Documentation for NRHP eligible districts will include maps, photographs, a statement of significance, a physical description, a listing of all addresses of the properties within the district, and their status as contributing or non-contributing resources.

F. If INCOG and SHPO disagree about the NRHP eligibility of a property, the City shall request a formal determination of eligibility in accordance with 36 CFR § 800.4(c)(2).

IV. TREATMENT OF HISTORIC PROPERTIES

The City shall treat all historic properties under its Program as follows:

- A. Upon the acquisition or acquisition/rehabilitation of a historic property using Program funds, the City will secure, stabilize, and preserve that historic property pending its transfer. The methods used to secure and stabilize properties shall adhere to The Secretary of the Interior's *Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings (Standards)* and *Preservation Brief 31: Mothballing Historic Buildings* (Technical Preservation Services, National Park Service, U.S. Department of the Interior, September 1993).

- B. Prior to the transfer or lease of historic properties acquired with Program funds, INCOG shall consult with SHPO to determine the appropriate mechanism for protecting the historic property, including, but not limited to, a preservation easement or restrictive covenant. If it is determined that a preservation easement or restrictive covenant is necessary, INCOG shall submit the proposed preservation easement or restrictive covenant in the case of the sale of the property or lease agreement to SHPO for review and approval. If the City and SHPO cannot agree on an appropriate preservation mechanism, INCOG shall request ACHP's comments in accordance with 36 CFR §800.5 on behalf of the City.

C. If funds for rehabilitation of a historic property are provided through the City's program, INCOG shall provide documentation to SHPO for comment on the effect of the proposed work in accordance with The Secretary of the Interior's *Standards and Guidelines for Rehabilitating Historic Buildings* and the standard case-by-case review process outlined in 36 CFR §800.

D. If the historic property has been determined to be uninhabitable, having fallen into a state of partial or complete disrepair due to lack of maintenance, deliberate acts of destruction, accidents, or natural disasters, INCOG will consult SHPO and OAS pursuant to 36 CFR §800.5 and 800.6 when demolition of a historic property must occur.

V. PUBLIC PARTICIPATION

A. The City will include information about its property acquisition, acquisition/rehabilitation, owner-occupied rehabilitation and demolition programs each year when it notifies the public of the City's current HUD Grant Program activities and make available for public inspection documentation about the City's Programs in an Annual Report. Available in this documentation will be general information on the type(s) of activities undertaken with HUD funds; information on identified historic properties in communities which might be affected by these activities; the amount of funds available in the current program year; how interested persons can advise the City of any comments or concerns they may have about the federal grant program and its effect on historic properties. A copy of said notice shall be provided to TPC, SHPO, OAS, and INCOG at least.

B. At any time during the implementation of the measures stipulated in this Agreement, should an objection to any such measure or its manner of implementation be raised by a member of the public, INCOG shall take the objection into account and consult as needed with the objecting party, the City, SHPO, or ACHP to resolve the objection.

VI. TECHNICAL ASSISTANCE AND TRAINING

SHPO shall provide training opportunities for INCOG's staff responsible for implementation of the terms of this Programmatic Agreement, and these training opportunities shall be scheduled at mutually convenient times. SHPO shall consult with INCOG as may be necessary to facilitate the effective implementation of the Programmatic Agreement, and SHPO encourages INCOG's staff to attend at least one of SHPO's regularly scheduled workshops on the review process for 54 U.S.C. 306108 each year. Newly hired staff should participate in training within the first six (6) months of employment, if possible.

VII. PROJECT COORDINATION

Within ninety (90) days following execution of this Programmatic Agreement, the City and INCOG shall revise as necessary the internal review procedures developed pursuant to this Agreement to ensure that the Program activities carried out by other departments, authorities, and agencies are implemented in accordance with the terms of the Programmatic Agreement. The procedures shall outline how historic preservation reviews are to be coordinated and the documentation the departments are to retain in individual project files. A copy of the revised procedures will be submitted to SHPO within ninety (90) days following execution of this Programmatic Agreement.

VIII. MONITORING

A. INCOG shall prepare annual reports summarizing Program activities carried out pursuant to the terms of the Agreement. INCOG shall forward copies of this report to SHPO, ACHP, and other parties who may so request, via the Postal Service. The first report pursuant to the original 2009 agreement was submitted by October 31, 2010, and subsequent reports shall be submitted by October 31 of each year.

B. City shall retain individual project files containing determinations of eligibility, the comments of SHPO, specifications and work write-ups, before-and-after photographs and other pertinent documentation, for at least three (3) years following the completion of the Program activity.

IX. DISPUTE RESOLUTION

A. Should SHPO, OAS, or any consulting party object within the thirty-day period of review to any plans for action proposed pursuant to this Agreement, INCOG shall consult with the objecting party to resolve the objection. If INCOG determines that the objection cannot be resolved pursuant to 36 CFR §800.7(b), INCOG shall request ACHP to join the consultation (if it is not already participating) and provide to ACHP the documentation specified in 36 CFR §800.11(g). Within forty-five (45) days following receipt of adequate documentation, ACHP will either:

1. Join the consultation and proceed to consult further with INCOG, SHPO, and any consulting party pursuant to 36 CFR §800.7(c), ACHP's comments being taken into account in reaching a final decision on the undertaking, or
2. Provide advisory comments upon an undertaking for which a memorandum of agreement will be executed pursuant to 36 CFR §800.7(b), which INCOG will take into account in reaching a final decision on the undertaking.

- B. If ACHP elects not to join the consultation, it shall notify INCOG and proceed to comment in accordance with 36 CFR §800.7(c).
- C. ACHP's responses to such requests will be taken into account by INCOG in accordance with 36 CFR §800.7(c) with reference only to the subject of the dispute; INCOG's responsibility to carry out all actions under this Agreement that are not the subject of the dispute will remain unchanged.

X. TERM OF AGREEMENT

This Agreement shall take effect on the date it is signed by all parties and filed with ACHP and shall continue in full force and effect until ten (10) years after the effective date, unless otherwise terminated or extended. At any time in the six-month period prior to the expiration date, INCOG may request SHPO in writing to review the City's Program and consider an extension or modification to this Agreement. No extension or modification shall be effective unless all parties to the Agreement have agreed to it in writing.

XI. AMENDMENT

Any party to this Agreement may request that it be amended, whereupon the parties will consult to consider such an amendment. The amendment shall be effective on the date a copy signed by all of the signatories is filed with ACHP.

XII. TERMINATION

Any party to this Agreement may terminate it by providing thirty (30) days' notice to the other parties, provided that the parties will consult during the period prior to termination to seek agreement on amendments or other actions that would avoid termination. In the event of termination, City will comply with 36 CFR §800.3 through 800.6 with regard to individual undertakings covered by this Agreement.

EXECUTION AND IMPLEMENTATION of this Agreement evidences that the City has satisfied its responsibilities under 54 U.S.C. 306108 of the National Historic Preservation Act, as amended through December 19, 2014 and Codified in Title 54 of the United States Code for undertakings as described in this Agreement and funded by the HUD Programs.

SIGNATORIES:

The City of Tulsa


G. T. Bynum, Mayor

Date JUL 29 2019


Attest:

Deputy 
City Clerk



Date JUL 29 2019

Approved:

Asst. 
City Attorney


Date 7-24-19

INCOG


Rich Brierre, Executive Director

Date 8/1/2019

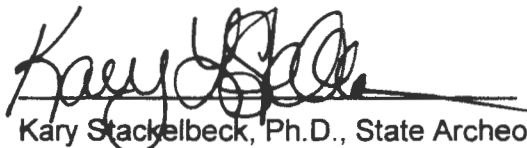
State Historic Preservation Officer


Bob L. Blackburn, Ph.D.

Date Aug 12, 2019

INVITED SIGNATORIES:

Oklahoma Archeological Survey


Kary Stackelbeck, Ph.D., State Archeologist

Date 9/13/2019

APPENDIX A - DEFINITIONS AND ABBREVIATIONS

ACHP means the Advisory Council on Historic Preservation, an independent Federal agency that advises the President and Congress on historic preservation matters.

Acquisition and Acquisition/Rehabilitation means single-family and multi-family property acquisitions and single-family and multi-family property acquisitions for the purpose of rehabilitation.

Owner-Occupied Rehabilitation means single-family homes occupied by owner to be rehabilitated which may include minor emergency repairs.

CDBG means Community Development Block Grant.

Demolition means demolition of single-family and multi-family homes which have become uninhabitable.

Historic property means any property that is included in or eligible for inclusion in the National Register of Historic Places as set forth in 36 CFR §800.

HOME means Home Investment Partnerships Program.

HUD means the United States Department of Housing and Urban Development.

INCOG's QSP means INCOG's Tulsa Planning Office staff member who meets the professional qualifications as specified in the Secretary of the Interior's *Historic Preservation Professional Qualification Standards* (48 FR 44738-39, September 29, 1983).

National Register refers to the basic inventory of historic resources in the United States maintained by the Secretary of the Interior.

OAS means the Oklahoma Archeological Survey, the agency responsible for identification of Oklahoma's archeological resources, maintenance of inventory files of such sites, and provision of advice to other agencies and organizations about the significance of these resources and how to protect them.

Program refers to all activities funded by HUD specifically covered by this Programmatic Agreement and administered by the City of Tulsa Division of Grants Administration.

54 U.S.C. 306108, formerly Section 106, refers to the section of the National Historic Preservation Act of 1966, as amended through December 19, 2014 and Codified in Title 54 of the United States Code and its resulting review process designed to ensure that impacts on historic properties are taken into account during Federal project planning and execution.

SHPO means the Oklahoma State Historic Preservation Officer.

Standards means the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings published as 36 CFR §67.

TPC Staff means INCOG's Tulsa Planning Office staff assigned to the City of Tulsa's Tulsa Preservation Commission, the entity charged with the designation of local historic preservation overlay districts and review of requests for Historic Preservation Permits under the City's Zoning Code.

Undertaking means a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a federal agency.

APPENDIX B – MEMORANDUM OF UNDERSTANDING

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING ("MOU") is entered into by and between the City of Tulsa, an Oklahoma municipal corporation ("City"), and the Indian Nations Council of Governments ("INCOG"), an entity created under the provisions of the Oklahoma Interlocal Cooperation Act (74 O.S. Sec. 1001 et seq.) and is to become effective on January 1, 2019.

WHEREAS, INCOG is an organization created under the Interlocal Cooperation Act to provide a framework for assisting and partnering with local governmental units to meet their needs in an efficient manner, including contracting with such units for specific services; and

WHEREAS, City has determined that efficiencies in the delivery of planning services can be achieved and areas of duplication eliminated if City's planning functions not already supported by INCOG were to be performed by INCOG; and

WHEREAS, the parties have agreed to consolidate planning functions, including implementation of an effective strategy for long-term community building, neighborhood revitalization, and placemaking in the City of Tulsa; and

WHEREAS, the City has determined that INCOG has the unique ability, knowledge and experience necessary to provide such professional services to the City of Tulsa; and

WHEREAS, the City has further determined that the professional services to be provided by INCOG are designed to, and are likely to, enhance the coordination of City planning efforts with the current planning activities of the Tulsa Metropolitan Area Planning Commission and thus supporting the orderly development of the City of Tulsa.

NOW, THEREFORE, the Parties agree as follows:

1. **Term**

- (a) The initial term of this MOU shall commence on January 1, 2019 and shall continue through June 30, 2019, unless terminated earlier as provided herein.
- (b) Unless otherwise terminated according to the applicable provisions herein, this MOU shall automatically renew for subsequent fiscal years, subject to the City's annual appropriation of sufficient funds for the performance of the duties and obligations set forth herein.

2. **Professional Services**

- (a) INCOG shall devote sufficient personnel and resources to develop, plan, carry out and supervise a strategy for short- and long-term planning efforts in the City. The professional services to be provided as part of this program are itemized in the

approved Annual Planning Work Program and Performance Goals attached hereto as Exhibit "A," and shall meet or exceed the performance measures set forth therein, and shall, at a minimum, include the development and implementation of specific programs designed to support the long-term planning, small area planning, plan implementation and tracking, neighborhood strengthening, and district revitalization within the City. An organizational chart for the team to be created to execute this work is attached hereto as Exhibit "B."

- (b) City anticipates abolishing its Planning Department, and that City employees affected by such abolishment may be interested in applying for similar positions with INCOG. While INCOG anticipates adding staff to address the additional workload contemplated by this Agreement, it is under no obligation to hire displaced City staff. For the affected employees that INCOG does choose to hire, the INCOG hire date shall be such that no gap exists between termination from City employment and beginning of INCOG employment. INCOG participates in the City's Municipal Employees Retirement Plan, and in the City's medical insurance plan. On January 1, 2019, City employees hired by INCOG will remain covered by these plans but will be covered as INCOG employees. INCOG shall not be obligated to carry over or pick up any other City employment benefit, including leave. City will terminate affected City employees under the conditions set forth in its Personnel Policies and Procedures Manual.

3. Annual Planning Work Program and Performance Goals

- (a) INCOG's Annual Planning Work Program and Performance Goals for the initial term of the MOU has been approved by the City and is attached hereto as Exhibit "A."
- (b) On or before ninety (90) days prior to the beginning of subsequent fiscal years, INCOG shall submit to City for approval a proposed Annual Planning Work Program and Performance Goals. City shall notify INCOG of its approval or its suggested revisions to the Annual Planning Work Program and Performance Goals within thirty days of receipt of the proposed documents. Upon agreement and approval of the Annual Planning Work Program and Performance Goals by both parties, the approved Annual Planning Work Program and Performance Goals shall replace Exhibit "A" to this MOU for the applicable fiscal year.
- (c) The Annual Planning Work Program and Performance Goals shall specify the benchmarks, goals and objectives for the upcoming fiscal year, as well as the specific professional services that will be provided by INCOG to achieve those benchmarks, goals and objectives.

4. Budget

- (a) INCOG's Annual Budget for the initial term of this MOU has been approved by the City and is attached hereto as Exhibit "C" and made a part hereof.

- (b) On or before ninety (90) days prior to the beginning of each subsequent fiscal year, INCOG shall submit to City for approval a proposed Annual Budget. City staff shall notify INCOG of its administrative approval or its suggested revisions to the Annual Budget within thirty days of receipt of the proposed documents. Final City approval of this Annual Budget will not be determined until the Council approves the overall City budget for the applicable fiscal year. Upon agreement and approval of the Annual Budget, the approved Annual Budget shall replace Exhibit "C" to this MOU for the applicable fiscal year. If City does not appropriate sufficient funds in a subsequent fiscal year, this MOU shall automatically terminate on July 1st of the applicable fiscal year.
- (c) The Annual Budget shall include expenses for professional services necessary to carry out the approved Annual Planning Work Program and Performance Goals for the applicable term of the MOU.

5. Payment for Professional Services

- (a) As consideration for the services described herein, City shall pay INCOG the sum of \$732,563.00, in addition to the transfer of the equipment as described in paragraph 11 below, for the performance of the professional services set forth on Exhibit "A," including the necessary expenses related thereto as set forth on Exhibit "C" in the Annual Budget for the initial term of the MOU. Payment for subsequent terms (i.e., renewals) will be determined in conjunction with the City's annual process for determining its Annual Budget.
- (b) Subject to the appropriation of sufficient funds for such purpose, for subsequent fiscal years, City shall pay INCOG quarterly for the professional services necessary to carry out the approved Annual Planning Work Program and Performance Goals and the expenses necessary to provide such services in accordance with the amounts set forth on the approved Annual Budget in the same manner that City pays INCOG for other services provided.

6. Reports

- (a) INCOG shall produce and provide to the City quarterly reports of performance and activity achieved, compared to past periods including a review of ongoing plans, progress and problems related to its Annual Planning Work Program and Performance Goals.
- (b) INCOG shall produce an annual report describing the services and programs offered by INCOG during the preceding fiscal year and an evaluation of the extent to which these services and programs have achieved the goals and objectives of the Annual Planning Work Program and Performance Goals.

7. Additional Requirements

In addition to developing an Annual Budget to achieve the Annual Planning Work Program and Performance Goals listed in Exhibit "A," and producing the required reports as outlined in Section 6, INCOG shall:

- (a) Attend all weekly Senior Leadership Team meetings for the City, to report on planning activities and critical projects; and
- (b) Meet bi-weekly with the City's Chief of Community Development and Policy on key planning programs, projects, and initiatives, as well as progress on the Annual Planning Work Program and Performance Goals; and
- (c) Participate as directed in the development and implementation of the City's capital improvements program, including:
 - (i) The submission of capital improvements requests needed to advance the City's planning goals and objectives, and the Annual Planning Work Program and Performance Goals; and
 - (ii) Project prioritization, planning, development, and design approval for key City capital improvement projects, including but not limited to certain street rehabilitation, pedestrian and bicyclist infrastructure, Improve Our Tulsa, and Vision Tulsa projects; and others as directed; and
- (d) Develop and implement a Destination Districts program, focused upon a disciplined system and framework for sustainably improving and revitalizing established, emerging, and catalytic commercial districts within the City (through small area planning, commercial and neighborhood assessments, placemaking initiatives and projects, prioritization in City capital improvements programs, and additional tools for public-private collaboration and partnership); and
- (e) Provide staff support to the City's Preservation Commission, and planning services to the Route 66 and Arts commissions.
- (f) Support the professional development of City staff to ensure that the City is informed of best professional planning practices in planning from an investment and policy perspective. At a minimum, this professional development support shall be included in the Annual Budget and provide such funds as may be necessary to be used for travel, training, professional fees and other necessary legal expenses of two attendees to be designated by the Community Development and Policy Chief of the City of Tulsa to the American Planning Association (APA) national planning conference or comparable planning conference.

8. Expenditure of Funds

- (a) INCOG shall expend funds provided by City during the initial term in accordance with the Annual Budget attached hereto. INCOG shall expend funds provided by City for each subsequent fiscal year of the MOU in accordance with the approved Annual Budget for such subsequent fiscal year of the MOU. INCOG may transfer funds, or make expenditures, allocated for one element of the budget to another element, so long as the basic objectives of the Annual Planning Work Program and Performance Goals are not impaired. The objectives may be revised by written MOU of the parties hereto throughout the term of the MOU, either increased or decreased, based on changing economic conditions.
- (b) Upon reasonable request from City's Community Development and Policy staff, INCOG shall provide City access to, or provide reports to City based upon information contained in, any research or reference materials that INCOG purchases with City funds.

9. Recordkeeping and Audit

INCOG shall prepare and maintain complete and accurate books, records and accounts showing the expenditures of all funds disbursed to it in accordance with generally accepted accounting principles. In accordance with Government Auditing Standards INCOG will secure an annual Independent Audit Report. The Independent Auditors' Report shall be made available to the City and the City shall have the right, subject to reasonable written notice, to review the accounts, books and records of the INCOG related to services provided by INCOG under this agreement for the City.

10. Compliance with Laws and Ordinances

INCOG shall comply with all applicable State, federal, and local laws, ordinances, and regulations.

11. Equipment

As partial consideration for INCOG's services during the initial term of this MOU, City shall transfer such computer and peripheral equipment, as agreed upon and inventoried, to INCOG that has been previously utilized by City employees to develop, plan, carry out and supervise the short- and long-term planning efforts in the City, as that work is described herein. In the event that this MOU does not renew through December 31, 2021, or is otherwise terminated before December 31, 2021, such equipment shall be returned to City within thirty (30) days of the effective date of such termination or non-renewal. This transfer of equipment is approved by the Mayor per Title 6, Section 411.B.2, Tulsa Revised Ordinances, regarding exchange of personal property for services of equal or greater value, as such approval is included with his approval of this MOU. Following this initial transfer of equipment, any additional or replacement expense for

any equipment required for INCOG to perform its obligations as set forth herein shall be the sole responsibility of INCOG.

12. Indemnification

To the extent permitted by law, INCOG shall defend, indemnify, and hold harmless City, and its officers, employees, agents and representatives from and against any and all claims, losses, damages, liability, lawsuits, judgments, costs, fees, and expenses that may be claimed by any person or entity, or incurred by the City, and which arise out of, or are in any way related to, the activities of INCOG, its officers, employees, agents, sub-contractors, volunteers, or representatives, pursuant to this MOU, whether or not there is any negligence on the part of the City or its officers, agents, or employees. However, INCOG's duties under this section shall be limited to any claims, losses, damages, liability, lawsuits, judgments, costs, fees, and expenses to the extent that they arise from the negligence, fraud or willful misconduct of INCOG, its employees, officers, agents or representatives.

13. Default

(a) City shall have the right to terminate this Memorandum of Understanding upon thirty days (30) written notice to INCOG in the event the City determines, based upon substantial evidence that INCOG has:

- (i) Improperly expended funds provided by the City pursuant to this MOU; or
- (ii) Failed to perform the services required of it pursuant to this MOU; or
- (iii) Consistently failed to meet the performance measures set forth on the annual approved Annual Planning Work Program and Performance Goals; or
- (iv) Filed, or has taken or committed any act preparatory to filing, a petition in bankruptcy or for receivership or reorganization under federal bankruptcy laws; or
- (v) Become insolvent or committed any act of insolvency.

(b) INCOG shall have the right to terminate this MOU upon thirty (30) days written notice to City and City's failure to cure within such thirty (30) day period, in the event that INCOG determines, based upon substantial evidence, that City has:

- (i) Failed to pay when due an invoice properly submitted in accordance with the terms of this MOU; or
- (ii) Filed, or has taken or committed any act preparatory to filing, a petition in bankruptcy or for receivership or reorganization under federal bankruptcy laws; or

(iii) Become insolvent or committed any act of insolvency.

(c) Such termination shall be effective the last day of the fiscal year in existence at the end of said thirty days.

14. Termination

Either party may terminate this MOU for any reason by giving one hundred and eighty (180) days' notice to the other party. Such termination will be effective the last day of the fiscal year in existence at the end of said one hundred and eighty days. If sufficient funds are not appropriated as set forth herein, this MOU shall automatically terminate on July 1st of the fiscal year for which sufficient funds are not appropriated.

15. Independent Contractor

The parties agree that INCOG, and its officers, employees, agents, representatives and volunteers, while engaged in performance of duties required by this MOU, are independent contractors, and not employees of the City.

16. Assignment

INCOG shall not assign this MOU, or the right to receive any monies pursuant to this MOU, without the prior written consent of the City. INCOG acknowledges that the unique nature of the services to be provided by INCOG and nature of the funds to be disbursed to INCOG by City provide adequate justification for any City refusal to consent to such an assignment by INCOG.

17. Notices

All notices required to be given by this MOU shall be in writing and personally served, given by U.S. mail, via electronic mail, or via facsimile. Notice by mail shall be deemed to have been given when deposited in the United States mail, postage prepaid, and addressed to the party to be notified as follows. Notice by other methods shall be deemed given when sent:

To City:
City Clerk
City of Tulsa
175 E. 2nd Street
Tulsa, OK 74103
Email: cityclerk@cityoftulsa.org

Copy to:
Nick Doctor
Chief of Community Development & Policy
City of Tulsa
175 E. 2nd Street, Suite 1500
Tulsa, OK 74103
Email: nddoctor@cityoftulsa.org

To INCOG:
Executive Director
INCOG

Copy to:
Susan Miller
Tulsa City County Planning Director

Williams Center Tower II
Two West Second Street, Suite 800
Tulsa, OK 74103

INCOG
Two West Second Street, Suite 800
Tulsa, OK 74103

City and INCOG may, by giving notice as provided herein, designate different addresses to which subsequent notices are to be sent.

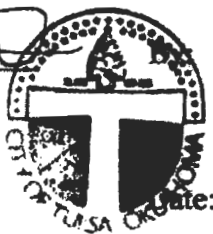
18. Complete Agreement


This document represents the entire agreement between the City and INCOG on the subject of INCOG's assumption of the planning functions currently performed by the City, and supersedes all prior negotiations, representations, either oral or in writing, on this subject. This MOU may be amended only by a written instrument signed by City and INCOG.

ATTEST:

City of Tulsa


Dep City Clerk




Mayor

Date: 12/20/18

APPROVED:


Assistant City Attorney

Indian Nations Council of Governments

By: 
Chair

Date: 12/11/18

ATTEST:


Secretary

EXHIBIT A
Annual Planning Work Program and Performance Goals

January 1 to June 30, 2019 Tulsa Planning Office Work Program

The Tulsa Planning Office will work diligently to further planning initiatives that improve the quality of life for all citizens. Consolidation of planning programs will result in a stronger planning presence, with improved coordination, ability to interact and better respond to all stakeholders in the community - citizens, elected and appointed officials, developers, builders, etc. Consolidation of planning functions will clarify roles, avoid duplication of efforts and result in a more efficient use of staff. The benefits will be evidenced by proactive planning efforts and significantly enhanced planning responses to community issues.

Goal 1

A consolidated planning function will elevate the role of planning in the community through enhanced communication and broader public outreach.

- *Objective 1:* The Tulsa Planning Office will host a new consolidated website and develop strategies for meaningful dialogue with community members to drive change.

Benchmark: The Tulsa Planning Office will work with key stakeholders to develop a communications strategy and a new website. Planning staff will present an initial proposal and seek input from Planning Commission and City Council by March, 2019.

The Tulsa Planning Office is comprised of nine programs: Under Current Planning - **Planning Commission/Zoning, Planning Commission/Subdivision, Board of Adjustment and Preservation Commission/Historic Preservation**; Under Plan Development and Implementation – **PlaniTulsa Update and Enhancements, Small Area Planning and Plan Implementation and Tracking**; and the **Destination District Program**.

I. Current Planning programs

Planning Commission/Zoning – Implementing Zoning Code, includes working with applicants on rezoning requests; analyzing zoning requests and preparing staff recommendations; meeting all legal requirements for Planning Commission public hearing process through adoption by City Council; also includes development plan/site plan review (administrative) for Optional Development Plans, Planned Unit Developments, Corridor Plans and Master Planned Developments (MPD) and River Design Overlay.

Planning Commission/Subdivision- Implementing Subdivision and Development Regulations, includes working with applicants on subdivision requests (platting, lot splits and lot line

adjustments); coordinating agency review comments and ensuring all conditions are met; preparing staff recommendations; and meeting all legal requirements.

Board of Adjustment- Responsible for working with applicants on BOA requests (variances, special exceptions, spacing requirements); Coordinating with the City permitting offices; preparing case reports; and meeting all legal requirements.

Preservation Commission/Historic Preservation- Responsible for administering Historic Preservation Zoning; identifying and nominating properties to the National Register of Historic Places; and producing educational material describing Tulsa historic resources.

Goals, Objectives and Benchmarks

Planning Commission/Zoning

Goal 1

The City of Tulsa Zoning Code will be updated periodically to reflect best planning practices, respond to new development trends in the community and implement the comprehensive plan.

- **Objective 1:** Zoning code implementation team meets regularly to review and discuss implementation issues and new trends that will result in amendments to the zoning code.

Benchmark: Amendments to the zoning code will be processed on an annual or semi-annual basis, as necessary.

- **Objective 2:** Propose and implement City-initiated rezoning programs consistent with the comprehensive plan and to promote other City initiatives.

Benchmark: Evaluate the need for initiating rezoning programs that may be outlined in PlanTulsa, small area plans or other special studies. Any such program will be brought forward as part of the Plan Development and Implementation Program work by June 30, 2019.

Benchmark: Work with neighborhoods surrounding the Lewis Avenue Corridor between E. 15th Street South and E. 21st Street South to draft a zoning overlay to implement their recommendations contained in the Lewis Study. A Lewis Avenue Overlay will be presented to Planning Commission and City Council by April 30, 2019.

Goal 2

The City of Tulsa Comprehensive Plan land use map will be updated periodically to reflect best planning practices, respond to new development trends in the community and implement the comprehensive plan.

- *Objective 1:* Requests for rezoning are reviewed for consistency with the comprehensive plan. During this process, necessary comprehensive plan housekeeping amendments are identified.

Benchmark: Comprehensive plan housekeeping amendments will be processed on an annual basis or in conjunction with other comprehensive plan updates.

Planning Commission/Subdivision

Goal 1

The Technical Advisory Committee (TAC) process for subdivision review will provide a stronger presence from City staff and offer more efficient services to the applicant and Planning Commission.

- *Objective 1:* The TAC process for subdivision review will be enhanced through expanded input from City departments, such as Engineering Services and Streets and Stormwater.

Benchmark: An enhanced TAC meeting process will be implemented as meetings begin in 2019.

Board of Adjustment

Goal 1

The Zoning Code will provide clear criteria and instruction for the Board of Adjustment to aid in their consideration of various applications, including new development trends.

- *Objective 1:* A clear solution is identified and adopted for short term rentals to alleviate the Board of Adjustment's review of cases without clear or applicable standards.

Benchmark: Zoning Code amendments and other necessary processes for short term rentals will be in place by April 30, 2019.

Preservation Commission/Historic Preservation

Goal 1

The Historic Preservation program for the City of Tulsa will strive to retain the distinctive character of its many historic neighborhoods and commercial centers and will share the history of Tulsa through these resources. The Preservation Commission process will be transparent and predictable for applicants.

- *Objective 1:* The Preservation Commission will evaluate their processes and prioritize a work program to address outstanding issues, such as the demolition permit review process.

Benchmark: Staff and the Preservation Commission develop a work plan, identify priorities and begin implementing these items by June 30, 2019.

II. Plan Development and Implementation programs

Small Area Planning – Oversee and manage all aspects of small area planning processes, including maintaining website (both historic & current information); public engagement; plan writing/development; public hearing process through adoption; and maintain documents over time as amended.

PlaniTulsa Update and Enhancements – Responsible for 10 year update of PlaniTulsa; assess changed conditions, shortcomings and needs in the update; public engagement; plan writing/development, public hearing process through adoption; oversee all text amendments; maintain document over time as amended.

Plan Implementation and Tracking – Responsible for leading and coordinating implementation efforts of adopted plans (PlaniTulsa, Small Area Plans & others); monitor, coordinate and communicate with relevant entities to implement plan recommendations.

Community Planning (County & Regional only) – Responsible for assisting in long range and current planning functions for unincorporated Tulsa County and smaller communities throughout the Tulsa Metropolitan Area.

Goals, Objectives and Benchmarks

Small Area Planning

Goal 1

Citizens within the city of Tulsa that participate in the small area planning process will work with professional planners to address community concerns and see implementation of their plans.

- ***Objective 1:*** Review and develop a timeline for completion of previous small area plans to reflect the “adopted plan review” resolution adopted by the Planning Commission.

Benchmark: All work on previous small area plans will be completed consistent with the “adopted plan review” by February 28, 2019.

- ***Objective 2:*** Work with stakeholder groups in the Crutchfield, Pearl District and Crosbie Heights neighborhoods to update small area plans and adopt sector plans in a meaningful and implementable manner.

Benchmark: Crutchfield Neighborhood, Pearl District and Crosbie Heights small area plans and sector plans will be adopted by the Planning Commission and approved by City Council by June 30, 2019.

- **Objective 3:** Coordinate with Tulsa Development Authority (TDA) to review coverage of adopted sector plans and determine need for future updates.

Benchmark: Review and propose a strategy to present to the Planning Commission and City Council by June 30, 2019.

- **Objective 4:** Finalize discussions with Berryhill Citizen Advisory Team (CAT) members and other community members on the Berryhill land use plan, ensuring that final recommendations will further the desires of the community, result in land uses complementary to the future construction of the Gilcrease Expressway and be implementable.

Benchmark: Berryhill land use plan will be adopted by the Planning Commission and jointly approved by the City Council and County Commission by January 31, 2019.

- **Objective 5:** Establish a process by which to identify and prioritize future areas that would most benefit from small area planning efforts.

Benchmark: Criteria and process for selection of future small area planning efforts will be established and presented to City Council for consideration by March 31, 2019.

PlaniTulsa Update and Enhancements

Goal 1

The City of Tulsa Comprehensive Plan (PlaniTulsa) will be updated to address changed conditions, currently unmet needs to guide best planning practices and respond to new development trends in the community.

- **Objective 1:** Establish a work plan and timeline to evaluate and update the comprehensive plan.

Benchmark: A work plan and timeline will be developed and presented to Planning Commission and City Council by June 30, 2019. The process of updating the comprehensive plan should be complete by its 10 year anniversary, July 2020.

Plan Implementation and Tracking

Goal 1

The City of Tulsa Comprehensive Plan and all other adopted plans will be implemented to meet the expectations of the citizens that participated in those efforts.

- **Objective 1:** Establish a strategy to compile, evaluate and prioritize plan recommendations and develop an ongoing approach to ensure that plans are continuously implemented.

Benchmark: A strategy for plan implementation and tracking will be presented to the Planning Commission and City Council by June 30, 2019.

- **Objective 2:** Ensure implementation of plans by participation in the City's capital improvements process, through project recommendation and prioritization, development, and design approval for key public projects.

Benchmark: Attend Improve our Tulsa Implementation Team meetings and take an active role in City's capital improvements process on an ongoing basis.

- **Objective 3:** Ensure comprehensive plan implementation through conformance reviews for various planning efforts, including capital improvement projects, tax incentive district projects and tax increment financing (TIF) projects.

Benchmark: Conduct comprehensive plan conformance reviews for various planning initiatives on an ongoing basis.

- **Objective 4:** Continue comprehensive plan implementation through completion of the Zoning Code update process.

Benchmark: Finalize discussions with Landscape Ordinance Working Group and other community members, ensuring that final recommendations further the desires of the community. Landscape Ordinance amendments will be presented to Planning Commission and City Council for adoption by June 30, 2019.

- **Objective 5:** Continue implementation of Downtown Area Master Plan, including the recently adopted Arena District Master Plan and Walkability Analysis. (AIM)

Benchmark: Continue discussion with the Downtown Coordination Council (DCC) on implementation of Walkability Study design recommendations, including potential downtown design zoning standards.

III. Destination District Program

The purpose of the Destination District program is to add vibrancy and stability to districts in Tulsa which will provide opportunities for residents and visitors to experience different areas of the city that have yet to achieve their full potential. The program strives to help places grow in the right direction by applying various strategies (organizational fitness, placemaking, city funding to name a few) with the end goal of creating self-sustaining districts that are successful for years to come and result in an improved quality of life.

Goal 1

The Destination District Program will assist in creating unique, vibrant places that attract residents and visitors.

- *Objective 1:* Planning staff will develop a process, criteria, goals and objectives for Destination District Program administration.

Benchmark: Planning staff will present a resolution outlining the process, criteria, goals and objectives of the Destination District Program to City Council and Mayor for consideration to adopt by March, 2019.

- *Objective 2:* Planning staff will create an outreach strategy for the Destination District Program.

Benchmark: Planning staff will begin outreach to potential districts by March, 2019.

- *Objective 3:* Planning staff will continually work to develop and improve the Destination District Program.

Benchmark: The Destination District Program will be fully functioning by June 30, 2019.

**EXHIBIT B
TULSA PLANNING OFFICE**

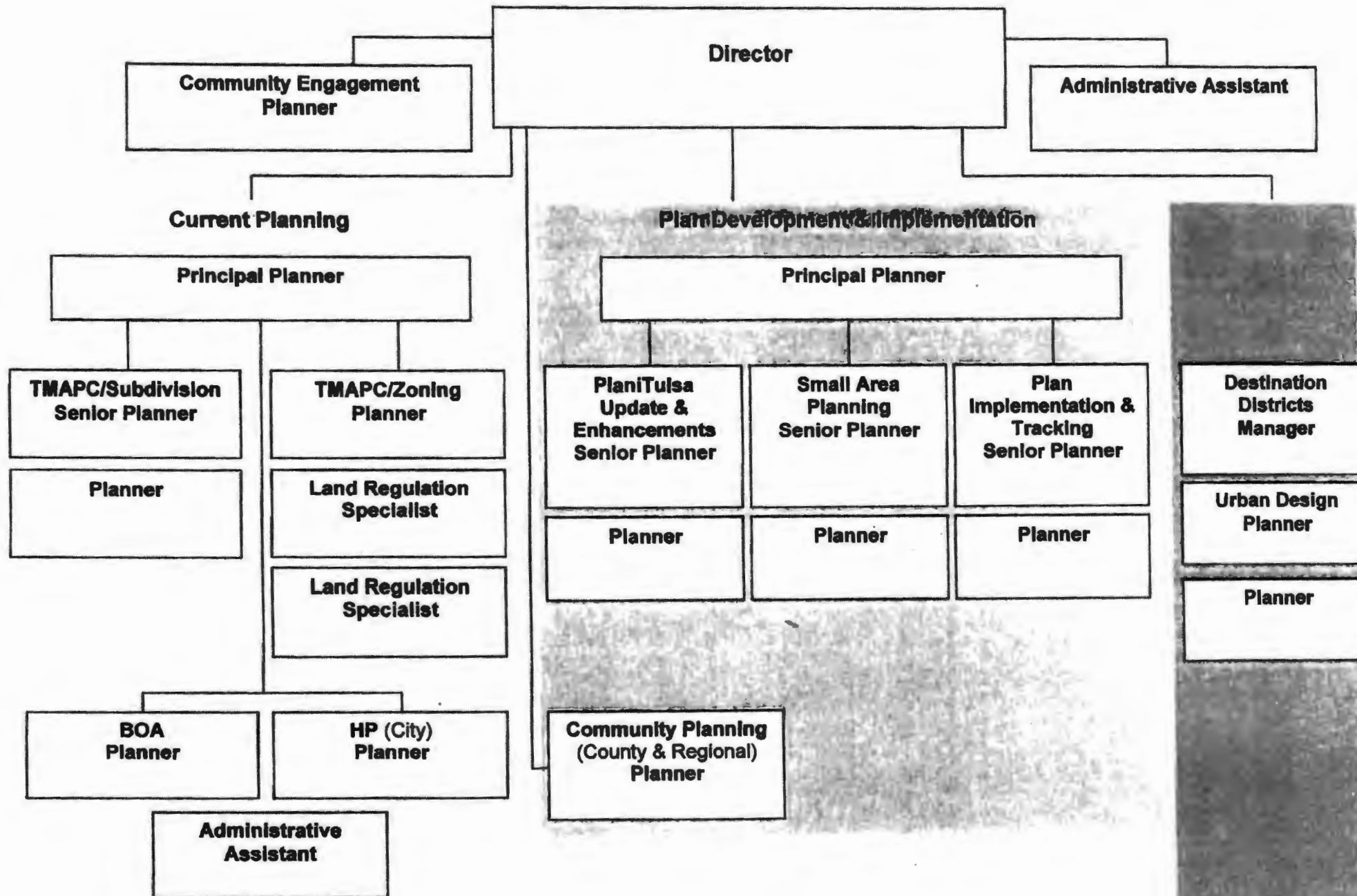


EXHIBIT C

CITY OF TULSA
FY 2019 PLANNING BUDGET
January 1, 2019 - June 30, 2019

INCOG Supplemental Funding

Personnel		
Salaries and Fringe Benefits (12 full time employees)		\$518,094
General Operating Expenses		
Travel and Training		
Planning Staff	\$8,000	
City of Tulsa designees	<u>\$7,000</u>	\$15,000
Software (GIS, InDesign, etc.)		\$33,048
Other (materials & supplies, advertising, printing etc.)		\$14,697
Contracts		
Main Street Programing	\$80,000	
Other	<u>\$10,000</u>	\$90,000
Capital (furniture and equipment)		\$51,724
Moving Expense		<u>\$10,000</u>
Total		\$732,563

City of Tulsa IT Support

Land Development Services Software Integration	\$141,055
Tyler EnerGov Software Acquisition/Customization/Installation	
Total	\$141,055
