

**PROGRAMMATIC AGREEMENT
BETWEEN
U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT,
THE CITY OF SEATTLE,
THE WASHINGTON STATE DEPARTMENT OF ARCHAEOLOGY AND HISTORIC
PRESERVATION,
AND
THE ADVISORY COUNCIL FOR HISTORIC PRESERVATION
FOR
THE ADMINISTRATION OF CERTAIN HUD-FUNDED ACTIVITIES**

WHEREAS, the U.S. Department of Housing and Urban Development (HUD) provides grant funding to the City of Seattle (Seattle), an Entitlement community in Washington; and

WHEREAS, Seattle now administers HUD grant programs listed in Appendix A; and

WHEREAS, HUD regulations at 24 CFR Part 58 implement statutory authorities that permit certain entities to assume HUD's environmental responsibilities for various HUD programs, and included among the statutory authorities under which this responsibility is assumed in compliance with Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470 *et seq*] (Section 106); and

WHEREAS, Seattle has determined that implementation of the listed HUD Programs may include activities, such as rehabilitation, demolition and new construction, that may have an effect on properties included in or eligible for inclusion in the National Register of Historic Places (historic properties); and

WHEREAS, Seattle has determined that certain activities funded by the listed HUD Programs have the potential to affect historic properties and has consulted with the Washington State Historic Preservation Officer (SHPO) pursuant to 36 CFR 800.14 of the regulations implementing Section 106; and

WHEREAS, Seattle operates an historic preservation program that meets the standards of the Washington State Department of Archaeology and Historic Preservation and the National Park Service, is a Certified Local Government pursuant to 36 CFR Part 61.5, and has staff meeting the Secretary of Interior's Professional Qualification Standards for architecture, archaeology, historic architecture, or architectural history (Certified Staff);

NOW, THEREFORE, HUD, Seattle, the SHPO and the Advisory Council on Historic Preservation (ACHP) agree that the HUD Programs shall be administered in accordance with the following stipulations to satisfy the Section 106 responsibilities of Seattle and HUD.

STIPULATIONS

Seattle will ensure that the following measures are carried out:

I. ACTIVITIES SUBJECT TO REVIEW

- A. Undertakings that are not listed in **Appendix B** or will occur on lands under tribal jurisdiction must be reviewed in accordance with 36 CFR Part 800.
- B. Activities listed in **Appendix B** have limited potential to affect historic properties and, when not on lands under tribal jurisdiction, may be approved by Seattle without further consultation with the SHPO, Indian Tribes or the ACHP.
- C. The list of programs enumerated in **Appendix A** and activities described in **Appendix B** will be considered annually and reviewed and revised as needed by Seattle, the SHPO, and the ACHP.

II. REVIEW OF PROJECTS

A. Eligible Properties

Properties considered eligible for National Register listing shall be reviewed by the Washington State Department of Archaeology and Historic Preservation (SHPO) staff for concurrence regarding their eligibility. Requests for concurrence shall include an electronic version of the SHPO's inventory database form with a current photograph, completed to the extent feasible with readily available information. Actions proposed for any property currently or likely to be certified for federal historic preservation income tax credits shall be submitted to the SHPO for review. All work performed on properties listed or eligible for listing in the National Register of Historic Places (National Register) must conform to the Secretary of the Interior's Standards for the Treatment of Historic Properties.

B. Non-Eligible Properties

For properties determined by Seattle staff in its Historic Preservation Office to be not eligible for listing in the National Register, Seattle will be responsible for completing the EZ-Form in the DAHP database. That information shall be transmitted to DAHP on a monthly basis.

C. Archaeological Sites

Properties within or in the immediate vicinity of registered or suspected archaeological sites are not exempt from review if a proposed project involves soil disturbance. Suspected archaeological sites are places for which verified reports of archaeological deposits or evidence of occupation or use in ethnographic accounts exist.

In the event that archaeological or historic materials are discovered during any project activities, including work in previously disturbed native soils, work in the immediate vicinity will be stopped, the area secured, and the SHPO, and the affected tribe's cultural resource and administrative staff notified.

III. DISCOVERIES, UNFORESEEN EFFECTS AND EMERGENCIES

Should Seattle, in the process of carrying out any action listed in **Appendix B**, find that the action has the potential to affect a previously unknown property that may be eligible for the National Register of Historic Places (National Register) or that the action will affect a known historic property in an unanticipated manner, Seattle will cease work on only the portions of the action that have the potential to affect the property and proceed in accordance with 36 CFR 800.13(b). Any actions taken in an emergency shall be reviewed in a manner consistent with 36 CFR 800.12. For the purposes of this Agreement, such actions are essential immediate responses to declared natural disasters, emergencies or other immediate threats to life or property, as defined in 36 CFR 800.12. For clarification, the expedited review period during an emergency will begin from the time of discovery of an emergency and will remain in effect for the time necessary to implement the expedited review, but not more than 30 days after the time of the discovery of the emergency.

IV. PUBLIC PARTICIPATION AND CONSULTATION

- A. The City of Seattle shall include, at a minimum, a summary of the Section 106 process and a description of this Agreement and its requirements on the City of Seattle's Department of Neighborhoods website (<http://www.seattle.gov/neighborhoods/preservation>) or other suitable public forum.
- B. City of Seattle staff and Certified Staff shall ensure that information regarding this Agreement and the Section 106 process is included in periodic newsletters and other notices for public distribution.

V. PUBLIC OBJECTIONS

- A. In those cases where Seattle receives a public objection, Certified Staff will review the objection to determine the basis of the objection and consult with the objecting party, as appropriate, in order to resolve the issue.
- B. Where the Certified Staff is unable to resolve the objection to the satisfaction of the objecting party and Seattle, Seattle will consult with the SHPO, and as appropriate, the ACHP.

VI. MONITORING AND REPORTING

- A. The ACHP and the SHPO may monitor activities carried out pursuant to this Agreement, and the ACHP may formally review such activities if so requested. If requested, Seattle will coordinate access for the ACHP and the SHPO to carry out such monitoring and review.
- B. Seattle shall provide an annual report to the signatories and consulting parties on the programs and undertakings covered by this agreement summarizing all activities, any public objections, any disputes and provide recommendations for the annual review and changes to the Appendices. Seattle shall provide an annual report to the signatories and consulting parties on the programs and undertakings covered by this agreement. The report shall

include but not be limited to: a summary of all activities; any public objections; any disputes; identification of staff training needs; and any recommended changes to the Appendices.

C. Seattle and DAHP shall meet annually at a mutually agreeable time to review this PA.

VII. AMENDMENT

If any party to this Agreement determines that its terms cannot be met or believes an amendment is necessary, that party will immediately request the consulting parties to consider an amendment to the Agreement pursuant to 36 CFR 800.14. Such amendment will be executed in the same manner as the original documents.

VIII. TERMINATION

Any consulting party to this Agreement may terminate the Agreement by providing thirty (30) days notice in writing to all other parties. In the event that the Agreement is terminated, Seattle will comply with 36 CFR Parts 800.3 through 800.7. Loss of qualified staff to conduct Section 106 reviews will automatically terminate King County's participation in this Agreement.

IX. DISPUTE RESOLUTION

Should the SHPO, the ACHP, or concerned tribes object within thirty (30) days to any actions pursuant to this Agreement, Seattle will consult with the objecting party to resolve the objection. Seattle will notify the other parties of the nature of the objection, and a schedule for addressing the objection. If Seattle determines that the objection cannot be resolved, Seattle will forward all documentation relevant to the dispute to HUD, and the ACHP, and the ACHP will either:

- A. Provide HUD with recommendations which Seattle will take into account in reaching its final decision regarding the dispute: or
- B. Notify HUD that it will comment pursuant to 36 CFR 800.7(c), and proceed to comment. Any ACHP comments provided in response to such a request will be taken into account by HUD and Seattle in accordance with 36 CFR 800.7 (c)(4) with reference to the subject of the dispute.
- C. Any recommendations or comments provided by the ACHP will be understood to pertain only to the subject of the dispute. Seattle's responsibility to carry out all actions under this Agreement that are not subject to dispute will remain unchanged.

X. FAILURE TO CARRY OUT AGREEMENT

In the event Seattle does not carry out the terms of this Agreement, Seattle will comply with 36 CFR Part 800.4 through 800.6 with regard to individual undertakings covered by this Agreement.

XI. ANTI-DEFICIENCY ACT

All commitments made under this Agreement are subject to the availability of funds. Nothing in this Agreement will be construed as limiting or affecting the legal authorities of Seattle, the SHPO, or the ACHP, or as binding upon the parties to perform beyond their respective authorities or to require any of the parties to assume or expend funds in excess of available appropriations. If funds are not available or are insufficient to meet the commitments of this Agreement, Seattle will consult to amend or terminate this Agreement.

XII. DURATION


This Agreement will be in force for a ten-year period beginning the date of the signature of SHPO. At any time in the sixth-month period prior to such date, Seattle may request the SHPO and the ACHP to consider an extension or modification of this Agreement. No extension or modification will be effective unless all parties to the Agreement have agreed with it in writing.

Execution of this Programmatic Agreement by Seattle, the SHPO, the ACHP, and concurring Tribes, and implementation of its terms evidence that Seattle has taken into account the effects of this undertaking on historic properties and afforded the ACHP an opportunity to comment. This Agreement may be executed in counterpart.

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Consulting Parties

WASHINGTON STATE HISTORIC PRESERVATION OFFICER

By  Date 8/11/09
State Historic Preservation Officer

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By _____ Date _____
ACHP Executive Director

CITY OF SEATTLE DEPARTMENT OF NEIGHBORHOODS,
HISTORIC PRESERVATION PROGRAM

By  Date 4 August 2009
City of Seattle Historic Preservation Officer

CITY OF SEATTLE DEPARTMENT OF NEIGHBORHOODS

By  Date 8.4.09
Department Director

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Concurring Parties

MUCKLESHOOT INDIAN TRIBE

By _____ Date _____
Tribal Chair

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Concurring Parties

PUYALLUP TRIBE OF INDIANS

By _____ Date _____
Tribal Chair

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Concurring Parties

SNOQUALMIE TRIBE

By _____ Date _____
Tribal Chair

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Concurring Parties

SUQUAMISH TRIBE

By _____ Date _____
Tribal Chair

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Concurring Parties

TULALIP TRIBES

By _____ Date _____
Tribal Chair

APPENDIX A

The following HUD Grant Programs (HUD Programs) or successor programs are administered by the City of Seattle:

- American Dream Downpayment Initiative Program
- Community Development Block Grant Program
- Emergency Shelter Grant Program
- FHA Multifamily Housing Finance Agency Risk Sharing Pilot Program
- HOME Investment Partnerships Program
- Housing Opportunities for People with AIDS Program
- Lead-Based Paint Hazard Control Grant Program
- Lead Hazard Reduction Demonstration Grant Program
- Neighborhood Initiative Program
- Section 8 Project Based Assistance Program including Single Room Occupancy
- Shelter Plus Care Program
- Special Projects Appropriated Under an Appropriations Act for HUD
- Supportive Housing Program

APPENDIX B

The following proposed undertakings, which have limited potential to affect historic properties, do not require review by the Advisory Council on Historic Preservation (ACHP), the SHPO or Certified Department of Housing and Urban Development (HUD) staff, unless they occur on lands under tribal jurisdiction. When referenced in the following list of proposed undertakings, the term “in-kind” shall mean that the result will match all physical and visual aspects of existing historic materials, including form, color and workmanship. “In-kind” mortar will also match the strength and joint tooling of existing historic mortar.

- A. Rehabilitation of buildings and structures less than 45 years old, unless they were designed by a notable architect, constructed by a notable builder, or associated with events or persons significant in recent history.
- B. Rehabilitation of properties listed on or eligible for the National Register, (except for properties currently or likely to be certified for federal historic preservation income tax credits), to include:
 - 1. Repair, maintenance, removal, replacement or installation of the following systems provided that the proposed work does not affect historically significant exterior or interior features of the property:
 - a. electrical wiring,
 - b. water and plumbing systems (when historic features such as hand pumps or plumbing fixtures are retained),
 - c. heating and cooling systems and duct work.
 - 2. Energy conservation measures (provided that such measures are not visible and do not alter or detract from those qualities that make the resource eligible for the National Register) to include:
 - a. insulation of roofs, crawl spaces, ceilings, attics, floors and around pipes/ducts as long as these measures do not induce, retain, or introduce moisture into a building; and insulation of exterior walls that does not damage or alter the exterior appearance of the building (note that installation that requires the drilling of holes in exterior features of the building and introduction of vents and/or ventilation systems is not exempt from SHPO review);
 - b. interior modifications that do not alter significant features or finishes;
 - c. caulking and weather stripping consistent with the appearance of the building; and
 - d. replacement or modification of the lighting systems, when existing systems or fixtures have no historic significance.
 - 3. Repair of existing doors and/or replacement in kind when they are beyond repair and replacements match the existing doors in design and materials.
 - 4. Repair of existing window frames and sashes by patching, splicing, consolidating, or otherwise reinforcing or replacing only these parts that are extensively deteriorated or

missing provided no changes result to the interior or exterior appearance of the window. Adjusting of counterweights is acceptable.

5. Replacement of broken clear glass with clear glass of similar thickness when no modification or damage to adjacent surfaces results.
6. Repair of existing materials and small-scale in kind replacement of wood siding, trim, porch decking, porch rails, joists, columns, and stairs (including framing).
7. Repair of footings, foundations, and retaining walls or in kind replacement of those portions done to match existing material and design. Any associated mortar replacement, if visible, shall be with a mortar mix that matches existing mortar mixes in color, texture, finishing, and appropriate formulation.
8. Repair of existing historically significant cabinetwork and cabinet hardware. Replacement in kind of only those elements that have deteriorated beyond repair when replacements match the existing design and materials
9. Repair and/or replacement of non-historic kitchen and bathroom appliances, fixtures, fittings, accessories, and cabinets with items that are compatible with the character of the historic property.
10. Installation of hardware to include: dead bolts, door hinges, latches and locks, window latches, locks and hinges and door peep holes provided existing hardware is not removed. New hardware shall be of contemporary design and made of the same material as existing hardware, if available.
11. Installation of fire, smoke, and security detectors provided any potential harmful physical effects are easily reversible.
12. Repair, refinishing and replacement in kind of only those portions of historic flooring that are extensively deteriorated.
13. Repair, refinishing and/or replacement of non-historic flooring and floor coverings, including vinyl tile and/or carpet, with similar materials compatible with the historic character of the building, when it is not feasible to reuse underlying historic materials.
14. Repair of existing window, door, and porch screens and storm windows or doors, or replacement in kind if repair is not feasible.
15. Removing deteriorated or damaged paint or coatings down to the next sound layer by hand scraping or sanding. Abrasive methods, sandblasting and waterblasting are specifically prohibited. Encapsulation of lead-based paint is acceptable.
16. Repair and/or replacement in kind of existing roofing material provided the color meets the standards of the (Tribe/City/County or State) or the existing color. Adequate

anchorage of the roofing material to guard against wind damage and moisture penetration shall be provided.

17. Installation of wheelchair ramps meeting code as long as ramps can be easily removed and are not permanently affixed to the structure.

C. Infrastructure

Upgrading, replacement and repair of existing utility service lines, sewer systems and septic lines and systems, only if prior ground disturbance is demonstrated and new disturbance is entirely within previously disturbed areas. Note that disturbed native soils may contain disturbed but significant archaeological deposits.

D. Site and Public Improvements

1. Paving, re-surfacing, and repair of streets, driveways, parking lots, and gutters within the dimensions that they now occupy. Replacement or installation of curbs and/or sidewalks, except in historic districts or on properties where such landscape features contribute to making the resource eligible for National Register listing.
2. In kind repair or replacement of site improvements in the same location and scale, including, but not limited to fences, retaining walls, and landscaping.
3. Removal of pest animals, birds, insects and their associated debris when no loss of historic materials will result.
4. Replacement and/or installation of traffic signals, street name and regulatory signage, or temporary fences except in historic districts or on properties where significant characteristics of the resource would be adversely affected by such installations.
5. Replacement and installation of park and playground equipment, landscaping, and facilities (excluding buildings) except in historic districts or on properties where significant historic characteristics of the property would be impacted by such replacement and installation.

E. Other

1. work involves excavation less than 8 inches in depth over an area of less than 10 square feet will not require archaeological assessments and/or surveys.