

PROGRAMMATIC AGREEMENT

among the WASHINGTON STATE CONVENTION CENTER PUBLIC FACILITIES DISTRICT, U.S. DEPARTMENT OF TRANSPORTATION FEDERAL HIGHWAY ADMINISTRATION, WASHINGTON STATE HISTORIC PRESERVATION OFFICER, and CITY OF SEATTLE Regarding the Proposed Washington State Convention Center Addition, Seattle, Washington

WHEREAS, U.S. Department of Transportation, Federal Highway Administration (FHWA) plans to “approve” Washington State Convention Center Public Facilities District’s proposed addition to the northeast of the existing Washington State Convention Center (WSCC) in downtown Seattle (the Project) (the undertaking) pursuant to the requirements for FHWA approval of right-of-way use agreement in 23 CFR Section 710.405; and

WHEREAS, FHWA has defined the undertaking’s area of potential effects (APE) as described in Attachment A; and

WHEREAS, this programmatic agreement (Agreement) is made under the authority of Section 106 of the National Historic Preservation Act (NHPA) and its implementing regulations found at 36 CFR 800.14, which provides federal agencies, in this case, FHWA, with the authority to negotiate programmatic agreements to govern the implementation of their NHPA Section 106 responsibilities; and

WHEREAS, the Project requires FHWA and Washington State Department of Transportation (WSDOT) approvals identified in the Final NEPA Environmental Impact Statement, including 1) break-in-access authorization;¹ 2) approval to close the ramp from Interstate 5 (I-5) to the Convention Place Station (CPS); 3) authorization of a right-of-way (ROW) use agreement (airspace lease) within the I-5 ROW limits; 4) approval to remove a segment of the existing King County Metro transit flyover ramp located on WSDOT property; and 5) authorization to build structures on WSDOT property within the area of potential effects (APE); and

WHEREAS, FHWA is the lead federal agency; and

WHEREAS, FHWA has determined that the undertaking will have an adverse effect on 1017 Olive Way building, which is eligible for listing in the National Register of Historic Places, and has consulted with the Washington State Historic Preservation Officer (SHPO) pursuant to

¹ FHWA and WSDOT require a break-in-access authorization for any permanent or temporary modification that crosses over, under, or physically through WSDOT-limited access.

36 CFR Part 800, the regulations implementing Section 106 of the National Historic Preservation Act (54 U.S.C. § 306108);² and

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

WHEREAS, the Washington SHPO has responsibilities under the NHPA, 36 CFR Part 61 and 36 CFR Part 800 to advise and assist FHWA in complying with its NHPA Section 106 duties for proposed undertakings under FHWA purview and is a Signatory to this Agreement; and

WHEREAS, the WSCC is a Signatory to this Agreement; and

WHEREAS as the owner of Freeway Park, which is within the APE, as well as the recipient of WSCC public benefits funding outlined below, the City of Seattle is an Invited Signatory to this Agreement; and

WHEREAS, FHWA notified the following Consulting Parties about the undertaking: Cultural Landscape Foundation (TCLF), Historic Seattle, King County, Muckleshoot Indian Tribe, Seattle Department of Transportation, Seattle Theater Group (STG), Snoqualmie Nation, Stillaguamish Tribe, Suquamish Tribe, Tulalip Indian Tribe, Washington Department of Transportation (WSDOT), Washington Trust for Historic Preservation (WTHP), and 4Culture; and

WHEREAS information regarding about the undertaking has been presented in numerous public forums. The project has both a dedicated website (<http://www.wsc addition.com/>) that provides information and opportunities to provide comments and ask questions and Addition-specific information posted on the existing convention center website (<http://www.wsc c.com/>). Key opportunities for community involvement have occurred through the SEPA EIS process (scoping meeting and DEIS public meeting), the NEPA EIS process (scoping meeting and DEIS public hearing), City of Seattle Design Review Board and Seattle Design Commission meetings, a WSCC Addition Public Benefit Open House, Planned Community Development Public Meeting, and numerous community/neighborhood meetings. The project has also received coverage in the following media (among others): *Seattle Times*, *Daily Journal of Commerce*, *Puget Sound Business Journal*, *Yakima Herald*, *Capitol Hill Times*, *Curbed Seattle*, *Successful Meetings*, *Capitol Hill Blog*, *Seattle P-I*, *Conferences & Trade Shows Today*, *Eugene Register-Guard*, *Portland Journal of Commerce*, *Engineering News Record*, *City Inspired*, *The Urbanist*, *Geekwire*, *Bellingham Herald*, *Daily Olympian*, *Seattle Transit Blog*, *Meetings and Conventions*, and local television and radio stations and their websites; and

² Matthew Sterner, Washington State Department of Archaeology and Historic Preservation, to Sharon Love, Federal Highway Administration, Re: Adverse Effect, 2016-03-01368, September 14, 2017.

WHEREAS the Stillaguamish Tribe elected to be a Concurring Party to the Agreement;
and

WHEREAS, WSCC proposes to contribute funding to the City's Affordable Housing Fund (Fund), which the Seattle Office of Housing administers. Once deposited into the Fund, the funds are comingled with those received from many sources, including payments received by the City under the City's Incentive Zoning (IZ) rules and the Mandatory Housing Affordability (MHA) program. FHWA has determined that this contribution of nonfederal funds does not constitute an undertaking because FHWA has no approval authority over how the funds are allocated to future affordable housing projects; and

WHEREAS, WSCC proposes to fund lighting improvements of the Paramount Theatre (911 Pine St.) and NRHP-eligible Camlin Hotel (1619 Ninth Ave.) as part of its public benefits package and Sarah Sodt (City of Seattle Historic Preservation Officer and SLB Coordinator) approved Certificates of Approval for each building, confirming that the lighting will be installed following the Secretary of the Interior's *Standards for the Treatment of Historic Properties*³ and thus have no adverse effect on a historic property (Attachment B);⁴ and

WHEREAS, the Project proposes to contribute funding to the City for use by the Office of Planning and Community Development to study the potential lidding of portions of I-5. As funding will support studies only and is not tied to a specific project, FHWA has determined and the SHPO has concurred that payment of funds toward the lidding study does not have the potential to adversely affect a historic property; and

WHEREAS, FHWA has determined that ground disturbance associated with the proposed Project has the potential to impact sediment that may contain archaeological deposits and that therefore archaeological monitoring will be undertaken in order to identify these deposits, and has consulted with the Washington SHPO pursuant to 36 CFR Part 800, the regulations implementing Section 106 of the National Historic Preservation Act (54 U.S.C. § 306108);⁵ and

WHEREAS, FHWA has determined that construction of the proposed WSCC Addition has the potential to adversely affect, in keeping with 36 CFR Part 800.5, the adjacent Paramount

³ U.S. Department of the Interior, National Park Service, Technical Preservation Services, *Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings*, rev. ed., Anne E. Grimmer, 2017, <https://www.nps.gov/tps/standards/treatment-guidelines-2017.pdf>.

⁴ Jordan Kiel, City of Seattle Landmarks Preservation Board Chair, and Sarah Sodt, City of Seattle Landmarks Preservation Board Coordinator, Certificate of Approval, Paramount Theatre and Building, LPB 539/17, issued August 15, 2017; and Jordan Kiel, City of Seattle Landmarks Preservation Board Chair, and Sarah Sodt, City of Seattle Landmarks Preservation Board Coordinator, Certificate of Approval, Camlin Hotel, LPB 540/17, issued August 15, 2017; and Matthew Sterner to Sharon Love, January 25, 2018, indicating SHPO's implied concurrence with the Section 106 Addendum (referred to by Sterner unofficially as the "lighting proposal").

⁵ Matthew Sterner, Washington State Department of Archaeology and Historic Preservation, to Sharon Love, Federal Highway Administration, Re: Receipt of Cultural Resources Report, Review Comments, 2016-03-01368, March 23, 2017.

Theatre (901 Pine St.), an NRHP-listed property, and has consulted with the Washington SHPO pursuant to 36 CFR Part 800, the regulations implementing Section 106 of the National Historic Preservation Act (54 U.S.C. § 306108);⁶ and

WHEREAS, the project proposes to contribute funds toward future restoration, repair, and enhancements of Freeway Park (owned by the City of Seattle). The specifics of these improvements are yet unknown, and as such, these improvements may yet have an adverse effect on a historic property; and

WHEREAS, the Project proposes to contribute funding to support future Terry Ave. improvements on First Hill to create a woonerf⁷ and/or festival street experience to enhance the pedestrian realm. The specifics of these improvements are as yet unknown, and as such, these improvements may have an adverse effect on a historic property; and

WHEREAS, the Project proposes to contribute funding to the City to improve the pedestrian experience on Olive Way, crossing from downtown to Capitol Hill. The specifics of these improvements are as yet unknown, and as such, these improvements may have an adverse effect on a historic property; and

WHEREAS, the Project proposes to contribute funding to the City of Seattle for use by the Seattle Office of the Waterfront in carrying out its Pike Pine Renaissance: Act One project.⁸ The Pike Pine Renaissance: Act One is a multiyear effort to improve the pedestrian experience and connect Capitol Hill to the waterfront via Pike and Pine Streets and Pike Place Market. The specifics of these improvements are as yet unknown, and as such, these improvements may have an adverse effect on a historic property; and

WHEREAS, the Project proposes to contribute funding to the City for use by the Seattle Department of Transportation to aid implementation of bicycle improvements in the Pike Pine corridor from Ninth Ave. to Capitol Hill and on Eighth Ave. as identified in the adopted Bicycle Master Plan. The specifics of these improvements are yet unknown, and as such, these improvements may have an adverse effect on a historic property; and

WHEREAS in addition to Section 106, proposed Project activities are also subject to review under the following federal, state, and local laws, as applicable: Archaeological Resource Protection Act of 1979; Native American Graves Protection and Repatriation Act, RCW 27.44 (Indian Graves and Records); RCW 27.53 (Archaeological Sites and Resources); RCW 68.60 (Abandoned and Historic Cemeteries and Historic Graves); WAC 25-48 (Archaeological Excavation and Removal Permit); State Environmental Policy Act (SEPA); and relevant City of

⁶ Sterner to Love, March 23, 2017.

⁷ According to *Seattle Times* journalist Daniel Beekman, a *woonerf* is “a parklike street where pedestrians and bicyclists are given priority over motorists” (“Woonerf? It Means Pedestrians, Bikers, and SLU Developer Win,” *Seattle Times*, February 23, 2015, <https://www.seattletimes.com/seattle-news/politics/woonerf-it-means-pedestrians-bikers-and-slu-developer-win/>).

⁸ Seattle Office of the Waterfront, Pike Pine Renaissance: Act One, “About the Project,” accessed January 5, 2018, <https://waterfrontseattle.org/pike-pine>.

Seattle directives regarding archaeology and historic preservation, including Seattle Director's Rule 2-98 and Department of Neighborhoods, Historic Preservation (DON), Seattle Landmarks Board (SLB) review procedures; and

NOW, THEREFORE, FHWA, SHPO, WSCC, and City of Seattle agree to the following stipulations in order to mitigate the Project's known and potential adverse effects on historic properties, and that these stipulations will govern the undertaking and all of its parts until this Agreement expires or is terminated.

STIPULATIONS

FHWA, with the assistance of WSCC, will ensure that the following measures are carried out:

I. ARCHAEOLOGY DURING WSCC CONSTRUCTION

- a. WSCC will develop an archaeological investigation plan and conduct subsurface investigation in coordination with the Washington State Department of Archaeology and Historic Preservation (DAHP) to address concerns regarding subsurface archaeological deposits. Results of the subsurface investigation will be used to develop an archaeological monitoring and inadvertent discovery plan (MIDP) in coordination with DAHP and affected Tribes prior to commencement of ground-disturbing activities. The MIDP will include procedures for monitoring and addressing inadvertent discoveries, as appropriate. Signatories and concurring signatory will be given thirty (30) days to review and comment on the draft MIDP.
- i. The above activities will be undertaken by a qualified cultural resource professional(s) with appropriate expertise and meeting the Secretary of the Interior's Professional Qualifications for archaeology as found in 36 CFR Part 61.

II. RIACH BUILDING

- a. WSCC will provide research and fund the creation of a HistoryLink entry on the Riach family and business.
- b. WSCC will complete a thematic historic context of Seattle's Auto Dealerships following the best-practices for such documents as outlined by the National Park Service (NPS; e.g., https://www.nps.gov/nr/publications/guidance/NR_workshop_3-11-09/White_paper_on_historic_context_4-09.doc). The context will inventory, evaluate, and make recommendations regarding automobile dealerships within the City of Seattle city limits, and will also create a master list and map of extant buildings associated with the themes/brands, times, and styles of dealerships. Although the context and survey will have a geographic

scope of city of Seattle’s current geographic boundaries, it will cover automobile dealerships constructed from 1903 (the date of the first dealership) to 1967 (the date of the opening of I-5). The study is limited to “automobile dealers” only (as listed in Polk Directories)—in other words, not used cars dealerships, repairs shops, accessories and parts retail facilities, gas stations, and so on. Inventory efforts are not to exceed more than 150 buildings or structures. All resources will be documented on historic property inventory (HPI) forms in WISAARD and be recorded at the reconnaissance level. If HPIs already exist for resources within the study time and theme, the consultant will update the forms with new/additional information and photographs (as appropriate). DAHP and the City of Seattle Historic Preservation Program will review at least one draft of the context statement and inventory forms before the final documentation is completed. WSCC will make a PDF of the final document available to DAHP and the City of Seattle Historic Preservation Program for public posting on the City of Seattle’s website. All work will be conducted by professionals meeting the Secretary of Interior’s Professional Qualifications for architectural history.

- c. WSCC will commission artwork that incorporates/interprets the historical significance of the 1017 Olive Way building and install it in a public location within the new convention center. WSCC and the commissioned artist (and other professionals, as appropriate) will work with a qualified historian who meets the Secretary of the Interior’s Professional Qualifications as found in 36 CFR Part 61 and who has done previous interpretive history work. The historian will ensure that interpretation of the artwork/installation includes meaningful historic content that serves to convey to the public (in clear, concise, and readable narrative that includes images, as appropriate) how the site has changed over time and to situate those changes within relevant historic context and contemporary development trends. Prior to permanent installation of the artwork (preferably, at no more than 65% design), WSCC will submit designs to DAHP for review and comment.

III. PARAMOUNT THEATRE

Although the Section 106 process has identified no Project-related adverse effects to the Paramount Theatre (an NRHP-listed property and designated Seattle Landmark), WSCC has reached agreement with the Seattle Theatre Group (STG; the owners of the Paramount Theatre) to closely monitor the building for significant construction-related effects and to ensure as little disruption to theater operations and/or attendance as possible. As follows, WSCC will:

- a. Conduct a preconstruction survey of the building including inspection of the building foundation, exterior walls, and some interior finishes in order to

document preexisting defects such as cracks and settlement. DAHP and Seattle HPO will review and approve the inventory methodology before the inventory begins. Defects will be noted and all information will be supplied to DAHP and Seattle HPO. All repairs will be reviewed by DAHP and Seattle HPO to ensure all proposed work meets the *Secretary of Interior's Standards for the Treatment of Historic Properties* and the requirements of the Paramount Theatre's Controls and Incentives Plan. WSCC will pay for monitoring and pay for any repairs caused by the construction.

- b. The WSCC construction team will meet monthly with STG to review construction schedules.
- c. WSCC will provide parking in its existing garages at a discount for Paramount Theatre patrons during construction.
- d. WSCC, STG, King County Metro, and the Seattle Department of Transportation reached agreement on bus traffic on Ninth Ave., which borders the west side of the theatre, during the period of construction when buses are still using the tunnel. This agreement facilitates continued unimpeded access to the Paramount Theatre loading dock.

IV. FREEWAY PARK

- a. WSCC will complete an NRHP nomination for Freeway Park according to NPS Bulletin 16a, How to Complete the National Register Registration Form. WSCC will submit at least one draft of the nomination to DAHP for review and comment. WSCC will make revisions, as necessary until accepted by DAHP. Following acceptance by DAHP, the nomination will be prepared for submittal to WA-ACHP, SHPO, and then the Keeper of the National Register for listing in the NRHP.
- b. The City of Seattle will follow the processes outlined in 36 CFR 800 in consultation with FHWA and SHPO, and with solicited advisory input from TCLF and other consulting parties, for any proposed project that has potential to affect Freeway Park's character-defining features as defined in the NRHP nomination of the park as identified in IV(a) and receiving WSCC funding, Washington State Capital Budget funding, and/or federal government assistance (defined as federal funding, permit, or license). All future Freeway Park improvement projects will be completed following the Secretary of Interior's *Standards and Guidelines for the Treatment of Historic Properties*, as well as specific guidance for parks found in the

Secretary of Interior's *Guidelines for the Treatment of Cultural Landscapes*.⁹

V. TERRY AVE. FESTIVAL STREET/WOONERF

- a. Once the final details have been worked out for the public benefit work to be conducted in association with improvements to Terry Ave. to create a festival street or woonerf and funded by WSCC, the City of Seattle will follow the processes outlined in 36 CFR 800 in consultation with FHWA and SHPO for any improvements completed with WSCC funding.

VI. OLIVE WAY IMPROVEMENTS

- a. Once the final details have been worked out for the public benefit work to be conducted in association with pedestrian improvements to Olive Way crossing from downtown to Capitol Hill and funded by WSCC, the City of Seattle will follow the processes outlined in 36 CFR 800 in consultation with FHWA and SHPO for any improvements completed with WSCC funding.

VII. PIKE PINE RENAISSANCE: ACT ONE FUNDING

- a. Once the final details have been worked out for the public benefit work to be conducted in association with the Pike Pine Renaissance: Act I and funded by WSCC, the City of Seattle will follow the processes outlined in 36 CFR 800 in consultation with FHWA and SHPO for any improvements completed with WSCC funding associated with the Pike Pine Renaissance: Act One plan.

VIII. BICYCLE MASTER PLAN IMPROVEMENTS FUNDING

- a. Once the final details have been worked out for the public benefit work to be conducted in association with the Bicycle Master Plan and funded by WSCC, the City of Seattle will follow the processes outlined in 36 CFR 800 in consultation with FHWA and SHPO for any improvements associated with this plan completed with WSCC funding.

⁹ National Park Service (NPS), *The Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings*, rev. Anne Grimmer, 2017, <https://www.nps.gov/tps/standards/treatment-guidelines-2017.pdf>; and National Park Service, Secretary of the Interior, *Guidelines for the Treatment of Cultural Landscapes*, accessed January 15, 2018, <https://www.nps.gov/tps/standards/four-treatments/landscape-guidelines/index.htm>.

DURATION AND EXPIRATION

This agreement will be null and void if its terms are not carried out within five (5) years from the date of its execution, provided that the WSCC may seek an extension for a reasonable period of time if completion of the Project is delayed. Prior to such time, WSCC may consult with the other signatories to reconsider the terms of the agreement and amend in accordance with the Amendments section below. Upon completion of the Stipulations set forth above, WSCC will provide a letter (with attached documentation) of completion to FHWA, with a copy to the signatories on this Agreement. If FHWA concurs that the Stipulations are complete, it will notify the WSCC in writing and this Agreement will expire, at which time the parties will have no further obligations hereunder.

MONITORING AND REPORTING

On the anniversary of the final signature date of this agreement, for each year following the execution of this agreement until it expires or is terminated, WSCC will provide all parties to this agreement a summary report detailing work undertaken pursuant to its terms. The report will include any scheduling changes proposed, any problems encountered, and any disputes and objections received in the WSCC's efforts to carry out the terms of this agreement. Failure to provide the annual summary report may be considered noncompliance with the terms of this PA.

DISPUTE RESOLUTION

Should any party to this agreement object at any time to any actions proposed or the manner in which the terms of this PA are implemented, FHWA will consult with the objecting party(ies) to resolve the objection. If FHWA determines, within thirty (30) days, that such objection(s) cannot be resolved, FHWA will:

- I. Forward all documentation relevant to the dispute to ACHP in accordance with 36 CFR Section 800.2(b)(2). Upon receipt of adequate documentation, ACHP will review and advise FHWA on the resolution of the objection within thirty (30) days. FHWA will take into account any comments provided by ACHP and/or the parties to the PA in reaching a final decision regarding the dispute.
- II. If ACHP does not provide comments regarding the dispute within thirty (30) days after receipt of adequate documentation, FHWA may render a decision regarding the dispute.

FHWA's responsibility to carry out all other actions subject to the terms of this PA that are not the subject of the dispute remain unchanged. FHWA will notify all parties of its decision in writing before implementing that portion of the undertaking subject to dispute under this stipulation. FHWA's decision will be final.

AMENDMENTS

This PA may be amended when such an amendment is agreed to in writing by all signatories. The amendment will be effective on the date a copy signed by all signatories is filed with the ACHP.

TERMINATION

If any signatory to this PA determines that its terms will not or cannot be carried out, that party shall immediately consult with the other signatories to attempt to develop an amendment per AMENDMENTS, above. If within thirty (30) days (or another time period agreed to by all signatories) an amendment cannot be reached, any signatory may terminate the PA upon written notification to the other signatories. Once the PA is terminated, and prior to work continuing on the undertaking, FHWA must either (a) execute an agreement pursuant to 36 CFR § 800.6 or (b) request, take into account, and respond to the comments of the ACHP under 36 CFR § 800.7. FHWA shall notify the signatories as to the course of action it will pursue.

Execution of this PA by FHWA, SHPO, City of Seattle, and WSCC, and its submission to ACHP in accordance with 36 CFR 800.6(b)(1)(iv), will evidence, pursuant to 36 CFR 800.6(c), that this PA is considered to be an agreement for the purposes of Section 106 of the National Historic Preservation Act and will govern the undertaking and all its parts. Execution and submission of this PA, and implementation of its terms, will evidence that FHWA has taken into account the effects of this undertaking on historic properties and afforded the ACHP an opportunity to comment.

SIGNATORY

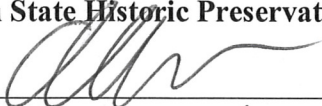
U.S. Department of Transportation Federal Highway Administration

By: Daniel M. Mathis

Date: 03/09/2018

SIGNATORY

Washington State Historic Preservation Officer

By: 

Date: 3/9/18

INVITED SIGNATORY

Washington State Convention Center Public Facilities District

By:  

Date: 2/27/18

INVITED SIGNATORY

City of Seattle

By: *[Handwritten Signature]*

Date: 3.22.18

CONCURRING PARTY

Stillaguamish Tribe

By: 

Date: 3-8-18