

Appendix H  
Draft Memorandum of Agreement

S. Holgate Street to S. King Street  
Viaduct Replacement Project  
Environmental Assessment



**MEMORANDUM OF AGREEMENT**  
**Among**  
**The Federal Highway Administration, and**  
**The Washington State Historic Preservation Officer**

**Implementing Section 106 of the National Historic Preservation Act for**  
**the S. Holgate Street to S. King Street Viaduct Replacement Project,**  
**City of Seattle, King County, Washington**

WHEREAS, The U.S. Department of Transportation, Federal Highway Administration (FHWA) is the federal agency responsible for the administration of the Federal-Aid for Highways Program as described in 23 C.F.R. § 101 et seq.; and

WHEREAS, FHWA has determined that the S. Holgate Street to S. King Street Viaduct Replacement Project is an undertaking, as defined in 36 C.F.R. § 800.16(y), that may have an effect on historic properties, as defined in 36 C.F.R. § 800.16(l)(1); and

WHEREAS, pursuant to 36 C.F.R. § 800.13, FHWA has authorized the Washington State Department of Transportation (WSDOT) to initiate consultation with the State Historic Preservation Officer (SHPO) and Indian tribes, but FHWA retains legal responsibility for compliance with Section 106 including all findings and determinations; and

WHEREAS, Indian tribes have a special interest in the preservation and protection of their cultural heritage within the their traditional lands; and

WHEREAS, pursuant to 36 C.F.R. § 800.14(b)(3), federally-recognized Indian tribes that may attach religious and cultural significance to historic properties potentially affected by the S. Holgate Street to S. King Street Viaduct Replacement Project, the Muckleshoot Indian Tribe, the Snoqualmie Indian Tribe, the Suquamish Tribe, the Tulalip Tribes, and the Confederated Bands and Tribes of the Yakama Nation, have been consulted regarding this Agreement and invited to sign the Agreement as concurring parties; and

WHEREAS, the Duwamish Tribe (a non-federally recognized tribe) has been consulted regarding this Agreement and invited to sign the Agreement as a concurring party; and

WHEREAS, the City of Seattle Historic Preservation Officer (HPO) has been consulted regarding this Agreement and invited to sign the Agreement as a concurring party; and

WHEREAS, [INSERT PARTICIPATING PARTIES HERE], have agreed to consider being concurring parties to this Agreement; and

WHEREAS, the Confederated Bands and Tribes of the Yakama Nation and [INSERT OTHER NON-PARTICIPATING PARTIES HERE] have not agreed to be concurring parties to this Agreement; and

WHEREAS, FHWA and WSDOT, in consultation with the Washington SHPO, the Indian tribes, and other interested parties has conducted a cultural resource study as required by 36 C.F.R. part 800, to identify and evaluate the effects upon historic properties located within the Area of Potential Effects (APE) to the extent possible prior to issuance of final NEPA documentation; and

WHEREAS, FHWA has determined that the Alaskan Way Viaduct and Battery Street Tunnel (AWV) and Bemis Building are eligible for listing in the National Register of Historic Places, and the SHPO concurred on January 29, 2003 and

WHEREAS, FHWA has determined that both properties will be adversely affected by the project, and DAHP concurred on February 3, 2003; and

WHEREAS, archaeological investigations have been limited because: (1) the AWV structure itself is an obstacle to large excavations; (2) the lack of access to future right-of-way in a densely developed corridor restricts WSDOT's ability to conduct subsurface testing; (3) the high water table precludes adequate depth of excavation prior to installation of shoring and pumping devices; and (4) deep ground disturbance in the vicinity could compromise the structural stability of the AWV structure and the seawall; and

WHEREAS, some types of ground disturbance, including deep, narrow foundations for elevated structures, have the potential to affect deeply buried archaeological materials, but cannot be archaeologically investigated; and

WHEREAS, FHWA has determined that the project has the potential to adversely affect archaeological historic properties but further investigation must be coordinated with construction;

**NOW, THEREFORE,** FHWA, WSDOT, and the SHPO agree that the undertakings shall be implemented with the following stipulations in order to take into account the effects of the undertaking on historic properties:

## **STIPULATIONS**

### **I. GENERAL REQUIREMENTS**

- A. This Agreement shall apply only to the S. Holgate Street to S. King Street Viaduct Replacement Project.
- B. As a condition of its award of any assistance under the Federal-Aid Highway Program to WSDOT, FHWA shall require that WSDOT carry out the requirements of this Agreement, and all applicable laws.
- C. Where required by regulation or permit, WSDOT shall employ professional staff in the fields of Archaeology, History, and Architectural History who meet the requirements of the Secretary of Interior's Professional Qualifications Standards (36 C.F.R. § 61).

- D. FHWA and WSDOT affirm that avoidance of adverse effects to historic properties is the preferred course of action and will be pursued where possible.
- E. FHWA and WSDOT acknowledge the sensitivity of cultural resources and commit to keeping sensitive information confidential to the extent allowed by law.

## **II. MITIGATION OF ADVERSE EFFECTS TO HISTORIC BUILT ENVIRONMENT RESOURCES**

### **A. Mitigation of Adverse Effects to the Alaskan Way Viaduct and Battery Street Tunnel**

#### 1. Historic American Engineering Record (HAER) Documentation

- (i) Under Section 110(b) of the National Historic Preservation Act, WSDOT will produce a Level II HAER documentation of the AWV and BST, which will be in accordance with the *Secretary of Interior's Standards and Guidelines for Architectural and Engineering Documentation*.
  - (ii) The Level II HAER documentation will consist of large format photographs, and include aerial perspective, photographs of construction and measured drawings, and documentation of distinctive attributes of the AWV.
  - (iii) The documentation will include digital copies of historic photographs, building plans, and as-built construction plan sheets.
  - (iv) WSDOT has contracted with the National Park Service (NPS) to produce the photographic HAER documentation. This work was conducted by Jet Lowe, NPS photographer, on March 20 through 25, 2008, and will be completed October 2008. The scope of work for this project, presented in a Memorandum of Agreement (MOA) between the NPS, WSDOT, and FHWA, is included as Appendix A.
  - (v) WSDOT has contracted with AWV Historian Mimi Sheridan to provide the historic context and physical description for the HAER written documentation.
  - (vi) The Level II HAER documentation will consist of a minimum of 50 large format photographs, and includes aerial perspective and documentation of distinctive attributes of the AWV.
  - (vii) The HAER written documentation will include digital copies of historic photographs, building plans, and as-built construction plan sheets.
2. WSDOT will work with local repositories and museums to provide the public an opportunity to view the photographs and better understand the history and engineering significance of the AWV. WSDOT will feature the HAER documentation on the AWV program website, and offer opportunities for the public

to view the HAER photographs and narrative on display at public forums associated with the AWW program.

3. WSDOT will offer the large-format HAER photographs and narrative for display and interpretation at one or more of the following local museums, repositories, and public venues:

- Seattle Public Library
- Museum of History and Industry (MOHAI)
- The Seattle Aquarium
- Grand Central Arcade in Pioneer Square
- Olympic Sculpture Park/Seattle Art Museum
- University of Washington display cases
- Local kiosks on the Seattle Waterfront and in the Pioneer Square neighborhood
- Seattle City Hall display gallery
- Local newspaper article or photography feature
- Historic Seattle newsletter/website
- Interpretive displays for waterfront bicycle trails
- Seattle-Tacoma Airport
- Other web sites (including any/all of the above, or on HistoryLink.org)

#### **B. Mitigation of Adverse Construction Effects to the Bemis Building**

Construction effects are focused in the area of the Bemis Building, whose tenants will potentially experience noise and dust during construction. They may have limited building access at times during the construction period. These access limitations may have short-term economic effects. However, construction effects are not anticipated to be severe enough or of long enough duration to have an effect on the building's economic viability or historic integrity. WSDOT will ensure that construction-related adverse effects to the Bemis Building will be mitigated through the following measures:

1. Maintaining regular communication with affected residents and businesses in the Bemis Building (through building management) about construction issues
2. Maintaining adequate access to the property, including loading dock access, so that businesses can continue to operate.
3. Developing a noise management and monitoring plan with measures such as maximum noise limits; certain hours for noisier construction activities; and use of Best Management Practices (BMPs), including using quieter equipment and techniques (see the Noise and Vibration Technical Memorandum for further information).
4. Developing a vibration and settlement management and monitoring plan to determine if historic buildings are at risk, and protecting them from damage due to vibration or subsidence.

5. Providing suggestions to minimize impacts from increased traffic.
6. Using BMPs to control air pollution and mud.
7. Ensuring continued utility service as much as practicable, with adequate notice when service is disrupted for construction.

### **III. ARCHAEOLOGICAL RESOURCES**

#### **A. Archaeological Treatment Plan**

1. WSDOT has developed a detailed Archaeological Treatment Plan (Appendix B). The plan, which will guide all future archaeological work on the project, describes:
  - (i) Horizontal and vertical locations with moderate to high probability for archaeological historic properties; and
  - (ii) Archaeological materials that will be considered part of a National Register-eligible site.

#### **B. Archaeological Investigations and Monitoring Plan**

1. WSDOT, in consultation with interested and affected tribes and SHPO, will develop an Archaeological Investigations and Monitoring Plan based on the Archaeological Treatment Plan. The written monitoring plan will:
  - (i) Describe what archaeological activities (investigation or monitoring), if any, will take place at locations of ground disturbance; and
  - (ii) Be completed at least 30 days before the project is advertised for bid.

#### **C. Mitigation Measures for Adverse Effects to Archaeological Historic Properties**

1. Where construction has a high probability of encountering archaeological deposits, as described in the Archaeological Treatment Plan, WSDOT will make every effort to integrate archaeological investigation into construction. These investigations will constitute data recovery and will mitigate adverse effects to any National Register-eligible archaeological site discovered during the investigation.
2. Due to construction techniques and the depth of some deposits, ground disturbance may be planned at locations that have a high probability for archaeological resources, but that are not accessible for archaeological investigations, monitoring during construction, or data recovery if they were determined National Register-eligible. In these locations, FHWA and WSDOT presume that there is an adverse effect on archaeological historic properties, even where no such properties have been previously identified.

- (i) These presumed adverse effects will be described in the Archaeological Investigations and Monitoring Plan (developed in consultation with SHPO and interested and affected tribes), and mitigated through alternative mitigation measures as described in Section III(C)(3)(iv).
- (ii) Alternative mitigation measures will be based on the total number of one cubic meter “units” of soil in high potential deposits that would be impacted as part of this undertaking. The greater number of impacted units, the greater the level of alternative mitigation.
- (iii) The total units of impact will be assessed by a WSDOT Cultural Resources Specialist based on the stratigraphy and historical information, and will be described in the Archaeological Investigations and Monitoring Plan
- (iv) Alternative mitigation will be implemented as follows:
  - (a) If the project has less than 100 units of impact, alternative mitigation will be the creation of additional displays on archaeology, history, and stratigraphy to match those already in Pioneer Square in Occidental Park and elsewhere; the development of an audio walking tour of locations of historical significance to be offered as a podcast on the WSDOT website; and the development of guidelines for identifying archaeological high probability areas in the Duwamish tidelands area for use in guiding future development;
  - (b) If the project has between 100 and 1000 units of impact, alternative mitigation will be the displays, podcast, and guidelines described above, with the addition of sponsoring a series of 5 lectures in Seattle on topics such as Native American Perspectives on Historic Seattle, The History of Transportation in Seattle, The Environmental History of Seattle, and other relevant topics. These lectures will be given in a public location, and recorded for posting on the WSDOT website in podcast form.
  - (c) If the project has more than 1000 units of impact, alternative mitigation will be the displays, guidelines, and lecture series described above, with the addition of developing a traveling exhibit on early Seattle history based on findings of the series of AWVSRP archaeological investigations to be offered to museums locally and statewide.

#### D. Discoveries During Construction

1. If National Register-eligible deposits as described in the archaeological assessment guidelines are encountered during construction, the process described in the Archaeological Investigations and Monitoring Plan and Unanticipated Discovery Plan (Appendix C) will be followed.
2. If human remains are encountered during construction, the process described in the Unanticipated Discovery Plan (Appendix C) will be followed.



#### E. Reporting

Within 120 days of concluding fieldwork, a technical report describing any and all monitoring and resultant archaeological excavations will be provided to the Project Manager, who will forward the report to the WSDOT Cultural Resources Program for review and delivery to FHWA, DAHP, and the interested and affected tribe(s).

### **IV. DISPUTE RESOLUTION**

A. All parties will strive to address and resolve disagreements informally.

1. In the event that agreement cannot be reached, any signatory to this Agreement may object in writing to FHWA regarding any plans, specifications, actions, or findings within 15 calendar days following the receipt of such documents (including documents received by email). FHWA will notify WSDOT and SHPO, and will attempt to assist in the informal resolution of the objection.
2. If FHWA determines that the objection cannot be resolved, FHWA shall forward all documentation relevant to the dispute to the ACHP for its recommendation, including FHWA's proposed response to the objection.
3. Within 15 calendar days of the receipt of such documentation, the ACHP will either advise FHWA that it concurs with FHWA's proposed response, whereupon FHWA will respond to the objection accordingly, or provide FHWA with recommendations pursuant to 36 CFR § 800.2(b)(2) which FHWA shall take into account in reaching its final response to the objection. If the ACHP does not respond within 30 calendar days, FHWA may assume that ACHP concurs in the proposed response to the objection.

B. Should a member of the public raise an objection, FHWA shall take the objection into account and consult as needed with the objecting party to resolve the objection. Each party reserves any and all rights it may otherwise have to enforce its rights or seek resolution of the dispute under applicable law.

### **V. AMENDMENT AND TERMINATION**

- A. Any signatory may propose to FHWA that this Agreement be amended, whereupon FHWA shall call a meeting of all signatories to consider such amendment. All modifications must be mutually agreeable, in writing, and signed by the signatories.
- B. Any signatory to this agreement may terminate it by providing 30 calendar days written notice to the other parties, provided that the signatories will meet during the period prior to termination to seek agreement on amendments or other actions that would avoid termination. This agreement cannot be terminated without such a meeting.
- C. In the event of termination, FHWA shall comply with 36 CFR § 800 with regard to all remaining actions under this Agreement.

**SIGNATORIES**

Federal Highway Administration  
By: \_\_\_\_\_ Date: \_\_\_\_\_  
Daniel M. Mathis, Division Administrator

Washington State Historic Preservation Officer  
By: \_\_\_\_\_ Date: \_\_\_\_\_  
Allyson Brooks, Ph.D.

**INVITED SIGNATORIES**

Washington State Department of Transportation  
By: \_\_\_\_\_ Date: \_\_\_\_\_  
Craig Stone, Administrator, Urban Corridors Office

**CONCURRING PARTIES**

[Tribe]  
By: \_\_\_\_\_ Date: \_\_\_\_\_  
[name, title]

[Tribe]  
By: \_\_\_\_\_ Date: \_\_\_\_\_  
[name, title]

City of Seattle  
By: \_\_\_\_\_ Date: \_\_\_\_\_  
Karen Gordon, Historic Preservation Officer