

DAX 2009-48

AN INTERLOCAL AGREEMENT BETWEEN KING COUNTY AND THE CITY OF SEATTLE RELATING TO HISTORIC AND ARCHAEOLOGICAL RESOURCE REVIEW SERVICES

THIS IS AN AGREEMENT between King County, a home rule charter county and a political subdivision of the State of Washington, hereinafter referred to as the "COUNTY," and the City of Seattle, a municipal corporation of the State of Washington, hereinafter referred to as the "CITY."

WHEREAS, the CITY desires to take into consideration and comply with rules and regulations addressing historic and archaeological resources (historic properties) affected by its actions for the benefit of present and future generations; and

WHEREAS, it is in the public interest that these jurisdictions cooperate to provide efficient and cost-effective review for historic properties and their protection; and

WHEREAS, pursuant to RCW 39.34, the Interlocal Cooperation Act, the parties are each authorized to enter into an agreement for cooperative action;

NOW THEREFORE, the COUNTY and the CITY hereby agree:

1. Services. The COUNTY shall provide historic property review services to the CITY using its comprehensive database and geographic information system data for such known and suspected properties. At the request of the CITY, the COUNTY may also provide other related services, including but not limited to assisting with the CITY's RFP selection process of historic and archaeological resource consultants; and historic and archaeological resource consultation and mitigation discussions. Services provided by the COUNTY pursuant to this Agreement do not include legal services. The CITY and the COUNTY shall meet annually to discuss a work plan for the following year.
2. The CITY's Responsibilities. The CITY shall:
 - A. Submit Historic Property Review Requests to the COUNTY. The COUNTY shall have a minimum of three weeks to provide its review and comment. Except for CITY actions affecting COUNTY-owned properties, the COUNTY shall not review effects on above-ground properties within the cities of Seattle and Bothell.
 - B. Provide all information necessary for review, including but not limited to:

- 1) a comprehensive description of the proposed action, including the geographic area that will be affected directly and indirectly by the action, staging and access areas, expected depth and horizontal extent of excavation or other ground disturbance;
- 2) a vicinity map showing the location of the project and any ancillary areas that will be affected;
- 3) plans detailing proposed construction, including areas that will be excavated;
- 4) current digital photographs of existing buildings, structures, and landscape features within the areas affected by a proposed action; and
- 5) readily available information on site conditions and the history of the vicinity, including geotechnical reports and other data pertaining to subsurface conditions (particularly previous cut and fill in areas to be excavated), and historic and current land use in the vicinity.
- 6) identification of state and federal funding sources and/or federal permits associated with the project

C. At the CITY's discretion and within its ability to do so, the CITY shall provide additional information if requested by the COUNTY; and

D. Consider the review comments from the COUNTY regarding mitigation of any adverse effects affecting historic properties.

3. The COUNTY's Responsibilities. The COUNTY shall:

- A. Review and comment on projects submitted by the CITY, using personnel meeting the professional qualifications standards established for such review by the Secretary of the Interior (36 CFR Part 61) whenever possible; or, if not, clearly noting this in its comments;
- B. Provide a screening form identifying historic properties and conditions suggesting the presence of such properties; and
- C. Recommend measures for further information gathering, protection of historic properties, or other resource-related measures.

The COUNTY may request additional information as necessary to complete its review and comment of Review Requests from the CITY; and

If requested by the CITY, the COUNTY shall provide information and other assistance regarding compliance, mitigation, and other matters involving historic properties per Section 1 above.

4. Compensation.

- A. **Costs and Rates.** The CITY shall reimburse the COUNTY fully for all labor costs incurred in providing services under this Agreement, including overhead and indirect administrative costs, travel, miscellaneous materials, and equipment costs, if any. Costs charged to the CITY may be reduced by special appropriations, grants, or other supplemental funds, upon mutual written agreement of both parties. Reimbursement rates for labor costs may be revised annually by letter and shall not require an amendment of this Agreement. Annually, the COUNTY shall provide in writing the current reimbursement rates for overhead and indirect administrative costs and the formulae for calculating those rates. Annually, the CITY shall provide in writing, an annual maximum total cost. The City shall set an annual maximum budget.
- B. **Billing.** The cost of COUNTY services shall be billed quarterly. The quarterly bill shall reflect actual costs plus the annual administrative overhead rate. Payments are due within 30 days of invoicing by the COUNTY. With each bill the COUNTY shall provide detailed documentation of costs, including labor charges identified by person, project, task, dates and hours, for the period of billing.
- C. **Prepayment.** The CITY, at its discretion, may establish an annual payment fund with the COUNTY to pay COUNTY invoices. The COUNTY shall bill directly from the payment fund and provide quarterly billing statements. Upon request COUNTY shall provide the CITY with the current balance of the payment fund including individual project costs to date. At the end of each year or upon termination of this Agreement, any balance in the payment fund will be refunded to the CITY within 30 days after written notice from the CITY.

5. Indemnification.

- A. The COUNTY shall release, indemnify and hold harmless the CITY and its officers, agents, and employees, or any of them, from any and all claims, actions, suits, liability, loss, costs, expenses, and damages of any nature, including claims arising under federal, state, or local environmental laws by reason or arising out of any negligent act or omission of the COUNTY, its officers, agents, and employees, or any of them, in providing services pursuant to this Agreement. In the event that any suit based upon claims, actions, suits, liability, loss, costs, expenses, and damages of any nature is brought against the CITY, the COUNTY shall defend the same at its sole cost and expense; provided, that the CITY retains the right to participate in and

defend against said suit if any principle of governmental or public law is involved; and if final judgment is rendered against the CITY and/or its officers, agents, employees, or any of them, or jointly against the CITY and the COUNTY and their respective officers, agents and employees, or any of them, the COUNTY shall satisfy the same. COUNTY shall reimburse CITY for any costs, fees, or expenses incurred for having to defend against such suit.

- B. In executing this Agreement, the COUNTY does not assume liability or responsibility for or in any way release the CITY from any liability or responsibility that arises in whole or in part from the existence or effect of City of Seattle ordinances, rules, regulations, polices, or procedures, or those of any other jurisdiction within which a project is reviewed. If any cause, claim, suit, actions, or administrative proceeding is commenced in the enforceability and/or validity or any City of Seattle ordinance, rule, regulation, or those of any other jurisdiction within which a project is reviewed is at issue, the CITY shall defend the same at its sole expense and if judgment is entered or damages are awarded against the CITY, the COUNTY, or both, the CITY shall satisfy the same, including all chargeable costs and attorney fees. CITY shall reimburse COUNTY for any costs, fees, or expenses incurred for having to defend against such suit.
- C. The CITY shall release, indemnify and hold harmless the COUNTY and its officers, agents, and employees, or any of them from any and all claims, actions, suits, liability, loss, costs, expenses, and damages of any nature, including claims arising under federal, state or local environmental laws, by reason of or arising out of any negligent act or omission of the CITY, its officers, agents, and employees, or any of them, in submitting requests or providing information pursuant to this Agreement. In the event that any suit based upon such a claim, action, loss, or damage is brought against the COUNTY, the CITY shall defend the same at its sole cost and expense; provided that the COUNTY retains the right to participate in said suit if any principle of governmental or public laws is involved; and if final judgment be rendered against the COUNTY, and its officers, agents, and employees, or any of them, the CITY shall satisfy the same. CITY shall reimburse COUNTY for any costs, fees, or expenses incurred for having to defend against such suit.
- D. The CITY and the COUNTY acknowledge and agree that if such claims, actions, suits, liability, loss, costs, expenses, and damages are caused by or result from the concurrent negligence of the CITY, its agents, employees, and/or officers and the COUNTY, its agents, employees, and/or officers, this

Article shall be valid and enforceable only to the extent of the negligence of each party, its agents, employees, and/or officers.

6. Duration. This Agreement shall become effective upon, and shall continue for two calendar years from, the date of mutual execution, but shall be renewable upon mutual written agreement of the parties. This Agreement may be terminated by forty-five days written notice from either party.
7. Administration. This Agreement shall be administered for the COUNTY by the manager of the Historic Preservation Program, or the manager's designee, and for the CITY by Seattle Public Utilities' SEPA Responsible Official or other as designated by the Director of Seattle Public Utilities.
8. Amendments. This Agreement may be amended at any time by mutual written agreement of the parties.
9. Equal Employment Opportunity and Outreach. Each party shall follow its procedures and regulations to ensure compliance with laws and regulations protecting equal employment opportunity in regard to any employment related to this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement this 12th day of MAY 2009 2010.

CITY OF SEATTLE

By: Ray Hoff

Title: Acting Director

KING COUNTY

By: [Signature]
King County Executive

Approved as to form:

By: [Signature]
King County Prosecutor