

**Interlocal Cooperation Agreement for
the Public Art Element for the
Smokey Point Transit Center**

between

COMMUNITY TRANSIT

and

THE CITY OF ARLINGTON

This Agreement (hereinafter, the “Agreement”) is entered into by Snohomish County Public Transportation Benefit Area d/b/a Community Transit (hereinafter “COMMUNITY TRANSIT”), a special purpose municipal corporation and the City of Arlington (hereinafter “ARLINGTON”), a municipal corporation organized under the laws of the State of Washington, who are collectively referred to as “PARTIES”.

RECITALS

WHEREAS, the Interlocal Cooperation Act, as amended, and codified in Chapter 39.34 of Revised Code of Washington provides for interlocal cooperation between governmental agencies; and

WHEREAS, COMMUNITY TRANSIT owns and is constructing the Smokey Point Transit Center; and

WHEREAS, ARLINGTON has an active and vibrant art program and is interested in placing art in the Smokey Point community; and

WHEREAS, COMMUNITY TRANSIT has placed community art work at recent major public transit projects, including the Lake Stevens Transit Center and the Mountlake Terrace Transit Center, and invites community involvement in transit projects to enhance the transit riders’ experience, and

WHEREAS, the PARTIES desire to enter into this Agreement for the purpose of locating a sculpture at the Smokey Point Transit Center, and further to define the PARTIES’ respective rights, obligations, costs and liabilities regarding this project;

WHEREAS, each PARTY has represented it has the full right, power and authority to execute this Agreement and have been duly authorized to enter into this Agreement; and

NOW, THEREFORE, in consideration of the terms, conditions and covenants contained herein, the PARTIES agree as follows:

TERMS

Section 1. Purpose. The purpose of this Agreement is to establish a formal arrangement under which COMMUNITY TRANSIT and ARLINGTON determine the rights, obligations, costs, and liabilities related to locating a sculpture at the Smokey Point Transit Center. The Agreement defines the selection of the artist(s) and sculpture; engineering, fabrication, and permitting for the sculpture and foundation; transportation of the sculpture and installation of the sculpture at the site; maintenance responsibilities; ownership; and future removal of the proposed sculpture, if required.

Section 2. Definitions. For the purpose of this Agreement, the following word(s) shall have the following meaning(s):

“ARTIST” means the artist or artists selected by the SELECTION COMMITTEE.

“PROJECT” means the ARTIST’s design and fabrication of the sculpture; design, permitting, and construction of the foundation; installation of the sculpture; and first year of maintenance and repair warranty of the sculpture by the ARTIST.

“SELECTION COMMITTEE” means the formal committee formed by ARLINGTON to select the ARTIST. The SELECTION COMMITTEE will be made up representatives from of City of Arlington, Community Transit, the Arlington Arts Council, and other qualified individuals as mutually approved by the PARTIES.

Section 3. Term. This Agreement shall be effective upon execution of the PARTIES hereto and remain in effect through September 30, 2015 unless terminated earlier pursuant to the provisions herein. The PARTIES agree that ninety (90) days prior to the expiration of the Agreement, COMMUNITY TRANSIT and ARLINGTON may meet to discuss the extension of this agreement upon mutually agreeable terms

Section 4. Termination. In the event the Agreement is terminated as provided in this Section, each Party shall bear their own costs, fees and charges incurred as of the date of termination. The Agreement may be terminated immediately upon any of the following grounds:

- A. The SELECTION COMMITTEE does not award the PROJECT, for any reason whatsoever, by December 31, 2014; or
- B. The ARTIST does not complete the installation of the PROJECT at the Smokey Point Transit Center, for any reason whatsoever, by September 30, 2015; or
- C. The PROJECT becomes a safety or maintenance concern after its installation which cannot be adequately resolved, than Community Transit will be responsible for the removal or modification of the installed PROJECT.

Section 5. Obligations of COMMUNITY TRANSIT. COMMUNITY TRANSIT agrees as follows:

- A. As a member of the SELECTION COMMITTEE, COMMUNITY TRANSIT will help to complete and to make public the “Call for Proposals for the Smokey Point Transit Center Art Project”. Please see Attachment 1, the preliminary draft of the Call for Proposals.

- B. As a member of the SELECTION COMMITTEE, COMMUNITY TRANSIT will provide timely review and approval/denial of PROJECT applications in order to select the preferred ARTIST and PROJECT. Community Transit reserves the right to reject any and all proposals.
- C. During the selection process, the SELECTION COMMITTEE will define required operation and maintenance of the PROJECT. If the required operation and maintenance activities are within COMMUNITY TRANSIT's normal maintenance practices, COMMUNITY TRANSIT will accept maintenance responsibilities for the PROJECT. If the selected PROJECT requires operation and maintenance which are not typical for COMMUNITY TRANSIT, the SELECTION COMMITTEE may (1) work with the ARTIST to modify the PROJECT so it can be maintained by typical COMMUNITY TRANSIT maintenance practices or (2) the PROJECT will not be selected.
- D. COMMUNITY TRANSIT will reimburse ARLINGTON for payments towards the PROJECT including design, purchase of materials, 50% completion, and upon installation of the completed PROJECT, up to a total contribution of \$15,000 for the PROJECT.
- E. COMMUNITY TRANSIT will provide timely constructability review and approval of the ARTIST's preliminary PROJECT foundation plans, at its own expense in addition to other COMMUNITY TRANSIT PROJECT contributions, if the preliminary foundation plans are provided to COMMUNITY TRANSIT by August 1, 2014, and the total cost for the proposed foundation and lighting is not more than \$5,000.
- F. COMMUNITY TRANSIT will provide the PROJECT foundation as per the ARTIST's City approved engineered plans, at its own expense in addition to other COMMUNITY TRANSIT PROJECT contributions, if city approved engineered foundation plans are provided by August 8, 2014 and as approved in Section 5.E.
- G. Community Transit will install the finished sculpture, if the ARTIST schedules the delivery with COMMUNITY TRANSIT and has the completed sculpture on-site, ready to be installed prior to substantial completion of the Smokey Point Transit Center, at its own expense in addition to other COMMUNITY TRANSIT PROJECT contributions.
- H. Upon completion of the ARTISTS one year maintenance period, COMMUNITY TRANSIT will become responsible for the maintenance of the PROJECT.

Section 6. Obligations of ARLINGTON. ARLINGTON agrees as follows:

- A. As a member of the SELECTION COMMITTEE, ARLINGTON will work to complete and to make public the "Call for Proposals for the Smokey Point Transit Center Art Project" at its own expense. Please see Attachment 1, the preliminary draft of the Call for Proposals.
- B. As a member of the SELECTION COMMITTEE, ARLINGTON will provide timely review and approval/denial of the PROJECT.

- C. ARLINGTON will pay of any and all PROJECT costs above \$15,000 unless specifically defined in Section 5.
- D. ARLINGTON will submit city approved PROJECT invoices to COMMUNITY TRANSIT for reimbursement for goods and/or services received by ARLINGTON up to \$15,000.
- E. ARLINGTON will provide for all permit reviews and approvals of the PROJECT and its foundation design at its own expense.
- F. ARLINGTON will provide for all building and electrical inspections and approvals of the constructed PROJECT and its foundation at the Smokey Point Transit Center at its own expense.

Section 7. Administration. No new or separate legal or administrative entity is created to administer the provisions of this Agreement.

Section 8. Project Managers. The PARTIES shall authorize designated staff to review and approve the design. For this process, COMMUNITY TRANSIT's project manager is Todd Jacobs or his designee and ARLINGTON's project manager is Sarah Lopez or her designee.

Section 9. Construction Project Acceptance. Upon satisfactory completion of the PROJECT, as agreed upon between ARLINGTON and COMMUNITY TRANSIT, the ARTIST's one year maintenance period starts.

Section 10. Ownership and Disposition of Property. The PROJECT installed pursuant to this Agreement shall become and remain the exclusive property of COMMUNITY TRANSIT upon completion.

Section 11. Release, Indemnification and Hold Harmless Agreement. Each Party to this Agreement shall be responsible for its own negligent and/or wrongful acts or omissions, and those of its own agents, employees, representatives or subcontractors, to the fullest extent required by laws of the State of Washington. Each Party agrees to protect, indemnify and hold the other Party harmless from and against any and all such liability for injury or damage to the other party or the other Party's property, and also from and against all claims, demands, and causes of action of every kind and character arising directly or indirectly, or in any way incident to, in connection with, or arising out of work performed under the terms hereof, caused by its own fault or that of its agents, employees, representatives or subcontractors.

Each Party specifically promises to indemnify the other Party against claims or suits brought under Title 51 RCW by its own employees, contractors, or subcontractors, and waives any immunity that each Party may have under that title with respect to, but only to, the limited extent necessary to indemnify the other Party. This waiver has been mutually negotiated by the PARTIES. Each Party shall also indemnify and hold the other Party harmless from any wage, overtime or benefit claim of any of the first Party's employees, agents, representatives, contractors or subcontractors performing services under this Agreement. Each Party further agrees to fully indemnify the other Party from and against any and all costs of defending any such claim or demand to the end that the other Party is held harmless therefrom.

Section 12. Minor Revisions. The PARTIES shall authorize designated staff to approve minor revisions to the Agreement that are necessary and generally consistent with the intention of this Agreement. For this process, COMMUNITY TRANSIT's project manager David True or his designee, and ARLINGTON's project manager Sarah Lopez or her designee. Such minor revisions shall include: (a) any revisions within the scope of the original PROJECT design caused by unanticipated existing conditions or budget constraints, and/or (b) any revisions within the operations and maintenance of the PROJECT to improved functionality or clarify responsibilities. Changes to the Agreement must be mutually acceptable, clearly documented and authorized in writing by the project managers. If potential revisions are deemed to be beyond the authority of this section, project managers shall bring the potential revision back to the signatures of this Agreement for further consideration.

Section 13. Compliance with Legal Requirement. Each Party shall comply with all applicable federal, state and local laws, rules and regulations in performing this Agreement.

Section 14. Governing Law and Venue. Disputes shall be resolved as follows: COMMUNITY TRANSIT's Chief Executive Officer or designee and ARLINGTON's City Manager or designee shall review the applicable facts, contract terms, statutes and rules affecting the dispute to resolve the matter. If the PARTIES cannot reach a resolution, the PARTIES agree that any legal action to enforce any right or obligation under this Agreement may only be brought in Snohomish County Superior Court. The venue specified in this section shall not apply to any federal agency that is a party to this Agreement.

Section 15. Notices. Notices to Arlington shall be sent to the following address:

City of Arlington
Sarah Lopez, Recreation Manager/Executive Assistant
238 North Olympic
Arlington, WA 98223-1337

Notices to COMMUNITY TRANSIT shall be sent to the following address:

Community Transit
Todd Jacobs, Capital Development Project Manager
7100 Hardeson Road
Everett, WA 98203-5834

Section 16. Method and Duty to File Agreement. ARLINGTON shall, upon execution of this Agreement by both PARTIES, post the Agreement on the ARLINGTON official website in accordance with RCW 39.34.040.

Section 17. Integration. This document constitutes the entire embodiment of the Agreement between the PARTIES, and, unless modified in writing by an amendment to this Interlocal Agreement signed by the PARTIES hereto, or signed by the project managers in the case of a minor revision in accordance with Section 13, shall be implemented as described above.

Section 18. No Third Party Beneficiary. It is understood and agreed that this Agreement is solely for the benefit of the PARTIES hereto and gives no right to any other party. No joint venture or partnership is formed as a result of this Agreement.

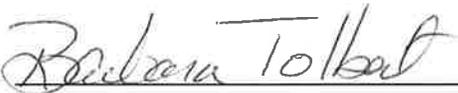
Section 19. Non-Waiver. Waiver by any Party of any of the provisions contained within this Agreement, including but not limited to any performance deadline, shall not be construed as a waiver of any other provisions.

Section 20. Survivability. The obligations of the PARTIES under all provisions of this Agreement which may reasonably be interpreted or construed as surviving the suspension, completion, termination or expiration of this Agreement shall survive the suspension, completion, termination or expiration of this Agreement.

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CITY OF ARLINGTON

COMMUNITY TRANSIT

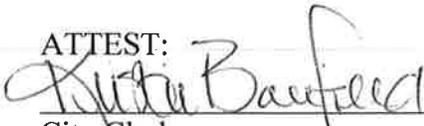
By: 

By: _____
Joyce Eleanor, Chief Executive Officer

Date: 5/20/14

Date: _____

ATTEST:


City Clerk

ATTEST:

Gail McNutt, Executive Secretary

APPROVED AS TO FORM:


City Attorney

APPROVED AS TO FORM:

Community Transit Attorney