

**CITY OF SEATAC
DISTRIBUTION SCHEDULE**

Agreement #: 09-A105	Interlocal Operating Agreement with Sound Transit regarding Funding Contributions for D'Agostino Artwork
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Term: 08/03/09 thru Ongoing

Reference to: Mot. 3110 **Approved:** 07/28/09

Department/Contact: City Manager's Office

Amendments:	No.	Reference to:	Date approved:	Changes to Agreement per amendment:

Comments: _____

Bid List for Destruction: N/A

Retain this record until after: 10 years after termination

Date Reviewed by Deputy City Clerk: *Marcia Pugg*

INTERLOCAL OPERATING AGREEMENT
Between
SOUND TRANSIT and THE CITY OF SEATAC
REGARDING
FUNDING CONTRIBUTIONS FOR D'AGOSTINO ARTWORK

THIS INTERLOCAL OPERATING AGREEMENT ("Agreement") is made by and between the Central Puget Sound Regional Transit Authority ("Sound Transit") and the City of SeaTac ("the City") (collectively, "the Parties") to provide for joint terrazzo and cast bronze inlay component of the SeaTac/Airport Station plaza for Link light rail, and to define the Parties' respective rights, obligations, costs and liabilities regarding this undertaking.

RECITALS

WHEREAS, the City is a municipal corporation organized under Title 35A RCW, and enjoys all powers necessary to supply municipal services commonly or conveniently rendered by cities and towns; and

WHEREAS, Sound Transit is a duly organized regional transit authority existing under RCW Chapters 81.104 and 81.112, and enjoys all powers necessary to implement a high capacity transportation system; and

WHEREAS, Sound Transit has secured funding to design and install "Celestial Navigations," consisting of a sculpture with an original video inspired by the history and culture of the City of SeaTac projected on its surface ("the Art Project") for placement on the plaza of the Link light rail Airport Station in SeaTac, and has contracted with Fernanda D'Agostino ("the Artist") to create and install the Art Project; and

WHEREAS, in recognition of the importance of the Project as an enhancement of the Link light rail station area and the City's access to the station as well as adjacency to planned new development, the City of SeaTac has authorized additional funding for the Art Project which will provide for five four-feet in diameter and two 10-feet in diameter circular terrazzo can cast bronze inlays("the Terrazzo Work"), generally as shown in Exhibit 1 (SeaTac-Airport Station Plaza: Fernanda D'Agostino, "Celestial Navigation"); and

WHEREAS, the Parties desire by this Agreement to define their respective rights, obligations, costs and liabilities regarding the funding, placement and maintenance of the Art Project; and

WHEREAS, the Parties entered into a Development and Transit Way Agreement for Sound Transit Central Link Light Rail Airport Link Project dated February 16, 2006, which this Agreement does not in any way amend or modify.

NOW THEREFORE, in consideration of the assurances and covenants herein, the Parties hereby mutually agree as follows:

TERMS

Section 1. Purpose. The purpose of this Agreement is to establish the Parties' respective rights, obligations, costs and liabilities for funding, installation, maintenance and disposition of the Art Project. The Agreement shall be interpreted consistent with this purpose.

Section 2. Ownership, Installation, Maintenance and Disposition of the Project.

- a. Sound Transit's contract with the Artist defines the Artist's existing scope of work. Within 10 days of execution of this Agreement, Sound Transit will execute a change order with the Artist adding a maximum of \$73,000 of additional work to the Artist's scope of work, with such additional work being the terrazzo work requested by the City.
- b. In the event the Artist becomes entitled to additional compensation directly related to the Terrazzo Work, the Parties will meet and in good faith assign additional costs based on responsibility.
- c. Nothing in this Agreement is intended to make the City responsible in any way for any design or installation costs associated with the remainder of the Art Project. The City is only responsible for costs associated with the Terrazzo Work.
- d. Sound Transit will be the owner of the Art Project and will maintain and repair the Art Project as it deems appropriate.
- e. Sound Transit will not relocate the Art Project without express written approval from the City, which will not be unreasonably withheld.
- f. If Sound Transit deaccessions the Art Project, the City shall have the right of first refusal to purchase the Art Project from Sound Transit at the price which is the higher of (1) the sum paid to the Artist from Sound Transit Art Budget funds (\$172,500) under Sound Transit's contract therewith together with interest in the amount of 7 percent per annum, and (2) if Sound Transit or the City elects to have an appraisal performed, the then-current appraised value of the Art Project, less the City's contribution defined herein (\$73,000) together with interest in the amount of 7 percent per annum on that contribution. If an appraisal is performed, the appraisal will be at the requester's expense.

Section 3. Funding Commitment. The City shall contribute seventy-three thousand dollars (\$73,000) to Sound Transit for purposes of funding the Terrazzo Work.

Section 4. Payment Procedures. The funding outlined in Section 3 shall be provided in either one (1) payment or (2) equal payments. Payment by the City shall be made upon the later of (1) execution of this Agreement, and (2) receipt of an invoice from Sound Transit containing confirmation by Sound Transit that the relevant terrazzo work is substantially complete or alternately the first payment by the City shall be made upon the initiation of the terrazzo site work and the second payment by the City shall be made upon the substantial completion of the terrazzo work. The City shall provide payment within 30 days of receiving the invoice from Sound Transit.

Section 5. Designated Representatives. Each Party shall, within 10 days of the execution of this Agreement, designate a representative ("Designated Representative") responsible for communications between the Parties and as a central point of contact for each Party, and notify the other Party of the Designated Representative's identity and contact information. The Designated Representatives shall serve as a joint board for the purposes of this Agreement, shall ensure that the terms of this Agreement are satisfied, and shall coordinate the input and work of other staff members within their respective agencies as it relates to the scope of this Agreement. The Parties reserve the right to change their respective Designated Representatives upon written notice provided to the other Party.

Section 6. Insurance. Sound Transit will secure and maintain sufficient insurance to cover the replacement cost of the Art Project, and will provide proof of said insurance to the City within 30 days of the completion of the Art Project. Sound Transit's agreement with the Artist describes the insurance requirements already in place between Sound Transit and the Artist during design, fabrication, and installation of the Art Project. Sound Transit will require additional coverages from the Artist as required or requested by the City, but the City shall bear the full additional cost of any such coverages, and such amounts are not included in the \$73,000 amount identified in Section 3 above.

Section 7. Inspection of Work. Sound Transit shall administer final inspection and acceptance of the installation process and of the final Art Project in accordance with the provisions of its contract with the Artist. The City shall be invited to participate in the final inspection. Nothing in the City's exercise of the right of inspection shall reduce Sound Transit's responsibility for the proper execution of the Artist's work or relieve Sound Transit's responsibility for direct supervision of the same. The City in exercising its right to inspect the work performed by the Artist shall not be deemed or construed to be in control of the Artist's work.

Section 8. Dispute Resolution. The Parties shall work collaboratively to resolve disagreements arising from activities performed under this Agreement. Disagreements shall be resolved promptly and at the lowest level of hierarchy. To this end, the following guidelines shall apply to any dispute between the Parties:

A. The Designated Representatives shall use their best efforts to resolve disputes and issues arising out of, or related to this Agreement. The Designated Representatives shall communicate regularly to discuss the status of the tasks to be performed hereunder and to resolve any issues or disputes related to the successful performance of this Agreement. The Designated Representatives shall cooperate in providing staff support to facilitate the performance of this Agreement and the resolution of any issues or disputes arising during the term of this Agreement.

B. One Party's Designated Representative shall notify the other in writing of any problem or dispute that the Designated Representative believes requires formal resolution according to the dispute resolution provisions of this Agreement. The Designated Representatives shall meet within five (5) business days of receiving the written notice and attempt to resolve the dispute.

C. In the event the Designated Representatives cannot resolve the dispute, the Sound Transit Deputy Executive Director of Link and the Mayor of the City of SeaTac or their respective designees shall meet and engage in good faith negotiations to resolve the dispute. The Parties agree that they shall have no right to seek relief under this Agreement in a court of law until and unless each of these procedural steps is exhausted.

Section 9. Term. This Agreement shall become effective as of the date of execution by each Party's respective governing body, and shall remain in effect so long as the Art Project remains on the premises of the SeaTac/Airport Plaza and Sound Transit owns the Art Project. The Parties may at their discretion amend this Agreement or enter into subsequent agreements, as desired, upon the appropriate written authorization of each Party's respective governing body or authorized representative as may be required.

Section 10. Termination. Each Party may terminate this Agreement upon at least thirty (30) days advance written notice to the other Party. PROVIDED, that termination or expiration of this Agreement shall not alter the Parties' respective obligations under Section 4 for work substantially completed at the time of the termination. Sound Transit shall reimburse the City for any Terrazzo Work that is not completed.

Section 11. Integration. This document constitutes the entire embodiment of the Agreement between the Parties, and, unless modified in writing by an amendment to this Agreement signed by the Parties hereto, shall be implemented as described herein.

Section 12. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Washington. Any action arising out of this Agreement shall be brought in King County Superior Court.

Section 13. No Employment Relationship Created. The Parties agree that nothing in this Agreement shall be construed to create an employment relationship between the City and any employee, agent, representative or contractor of Sound Transit, including but not limited to the Artist.

Section 14. No Agency. No separate entity is created by this Agreement. No joint venture or partnership is formed as a result of this Agreement. No employees, agents or subcontractors of one party shall be deemed, or represent themselves to be, employees of the other party.

Section 15. No Third Party Rights. This Agreement is solely for the benefit of the Parties hereto and gives no right to any other party. Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any persons other than the Parties.

Section 16. Release, Indemnification and Hold Harmless Agreement.

A. Sound Transit agrees to protect, indemnify and save the City harmless from any and all claims, demands, and causes of action of any kind arising out of the negligence of Sound Transit (including its officers, employees, agents, representatives, contractors, consultants, subcontractors, and subconsultants, each acting in an agency capacity) relating to the work performed under this Agreement. Sound Transit specifically agrees to indemnify the City against claims or suits brought under Title 51 RCW by Sound Transit's employees, representatives, contractors or subcontractors and waives any immunity that Sound Transit may have under that title with respect to, but only to, the limited extent necessary to indemnify the City. Sound Transit further agrees to fully indemnify the City from and against any and all costs of defending any such claim or demand to the end that the City is held harmless therefrom.

B. The City agrees to protect, indemnify and save Sound Transit harmless from any and all claims, demands, and causes of action of any kind arising out of the negligence of the City (including its officers, employees, agents, representatives, contractors, consultants, subcontractors, and subconsultants, each acting in an agency capacity) relating to the work performed under this Agreement. The City specifically agrees to indemnify Sound Transit against claims or suits brought under Title 51 RCW by the City's employees, representatives, contractors or subcontractors and waives any immunity that the City may have under that title with respect to, but only to, the limited extent necessary to indemnify Sound Transit. The City further agrees to fully indemnify Sound Transit from and against any and all costs of defending any such claim or demand to the end that Sound Transit is held harmless therefrom.

C. Tax Indemnity. The \$73,000 amount stated in Section 3, above, includes sales and/or use tax that will be paid by the Artist. The parties are unaware of any other tax that would apply to the City's \$73,000 contribution. Notwithstanding the foregoing, however, the City shall indemnify Sound Transit for any taxes, including business and occupation taxes, sales taxes, utility tax, or a miscellaneous tax, due to a taxing authority by the City or Sound Transit with regard to payments made under this Agreement.

D. The indemnity provisions of this Section shall survive the expiration or termination of this Agreement.

Section 17. Notices. All notices to be provided under this Agreement shall be in writing and shall be hand-delivered or sent by US Mail, and shall be deemed received upon delivery or, in the case of notice sent by mail, three (3) business days after deposit in the US Mail. Notices to the City shall be sent to the following address:

**City of SeaTac
City Manager's Office
4800 S. 188th Street
SeaTac, WA 98188-8605**

Notices to Sound Transit shall be sent to the following address:

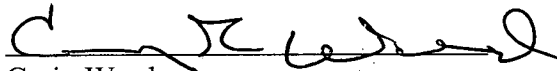
**Sound Transit
Barbara Luecke, Art Program Administrator
Public Art Program
401 S. Jackson Street
Seattle, WA 98104-2826**

Section 18. Duty to File Agreement With County Auditor. The City shall, within 10 days of the execution of this Agreement by both Parties, file this Agreement with the King County Auditor.

IN WITNESS WHEREOF, the Parties hereby agree to the terms and conditions of this Agreement as of the date written below.

CITY OF SEATAC

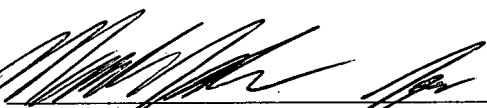
By:


Craig Ward
City Manager

8/3/09

APPROVED AS TO FORM:

By:


Mary Mirante Bartolo
City Attorney

SOUND TRANSIT

By:



Its:

Deputy CEO

APPROVED AS TO FORM:

By:


Sound Transit Legal Counsel

EXHIBIT ONE

SeaTac-Airport Station
"Celestial Navigation" by artist Fernanda D'Agostino
Site Plan of Terrazzo Work

