

## COOPERATIVE AGREEMENT

### Access to Trim Trees for Radio Services

**THIS COOPERATIVE AGREEMENT** (hereinafter "Agreement") is made and entered into by and between **SNOHOMISH COUNTY FIRE PROTECTION DISTRICT NO. 1** (hereinafter "Fire District") and **SNOHOMISH COUNTY PUBLIC TRANSPORTATION BENEFIT AREA CORPORATION** (hereinafter "Community Transit") and may be referred to individually as "Party" and collectively as "Parties" to permit access on Fire District Property to trim and/or remove trees to facilitate Community Transit radio transmissions.

#### RECITALS

**WHEREAS**, Community Transit has acquired a radio transmission site on property adjacent to property owned by the Fire District, namely Tax Parcel 00492300001802, the parcel located between Fender Drive and Lincoln Way in Lynnwood (hereinafter the "Property"); and

**WHEREAS**, there are certain trees on the Property which are identified on **Exhibit A** hereto (the "Trees") that will interfere with Community Transit's radio system that is an essential element to the safety of Community Transit's system; and

**WHEREAS**, the trimming and removal of the Trees is not an improvement to the Property; and, in the absence of this Agreement, the Fire District would not have an occasion or need to trim the Trees; and

**WHEREAS**, the Fire District and Community Transit desire to enter into an agreement to allow Community Transit to trim and/or remove the Trees to allow the Community Transit radio system to operate.

**NOW, THEREFORE**, in consideration of the terms, conditions, covenants, and performances contained herein, **IT IS MUTUALLY AGREED THAT:**

#### 1.0 PURPOSE AND SCOPE

The purpose of this Agreement is to grant Community Transit a license to enter onto the Property for the limited purpose of trimming and/or removing the Trees as described in Exhibit A. The license granted in this Agreement shall expire on the date this Agreement expires or is terminated.

#### 2.0 SCOPE OF WORK

Community Transit will contract to have the work performed as described in Exhibit A on the Property. Community Transit is solely responsible to comply with all laws, codes regulations, and other legal requirements to perform the work including, but not limited to, competitive procurement and compliance with public works laws. Community Transit will defend and indemnify the Fire District from its failure to comply with this paragraph.

### **3.0 DESIGNATED REPRESENTATIVES**

To ensure effective cooperation, each Party will designate representatives responsible for communications between the Parties.

### **4.0 INDEMNIFICATION**

To the maximum extent permitted by law, Community Transit will defend, indemnify, and hold harmless the Fire District and all of its officials, employees, principals, and agents from all claims, demands, suits, actions, and liability of any kind, including injuries to persons or damages to property, to the extent any such damages and injuries to persons or property are caused by or result from the errors, omissions or negligent acts of Community Transit, its contractor, and/or employees, agents, and representatives in performing its responsibilities under this Agreement. Where such claims, suits, or actions result from concurrent negligence of the Parties, the indemnity provisions provided herein shall be valid and enforceable only to the extent of Community Transit's own negligence. Community Transit agrees that its obligations under this paragraph extend to any claim, demand, and/or cause of action brought by, or on behalf of, any of its employees or agents and for that purpose Community Transit specifically waives, as respects the Fire District only, any immunity under the Worker's Compensation Act, RCW Title 51; and each Party recognizes that this waiver was the subject of mutual negotiation and specifically entered into pursuant to the provision of RCW 4:24.115, if applicable. Each Party to this Agreement will reasonably notify the other of any and all claims, actions, losses or damages that arise or are brought against that Party relating to or pertaining to this Agreement.

In the event a Party fails to perform an obligation under this Agreement, the other Party will have the right to bring an action for specific performance, damages, and any other remedies available to such a Party under this Agreement, at law or in equity.

This Agreement will be interpreted in accordance with the laws of the State of Washington in effect on the date of execution of this Agreement. The Superior Court of Snohomish County, Washington will have exclusive jurisdiction and venue over any legal action arising under this Agreement.

The provisions of this Section 4 will survive any expiration or termination of this Agreement.

### **5.0 INSURANCE**

Each Party agrees and understands that each Party is either self-funded for all of its liability exposures and that its self-funded program is satisfactory for this Agreement or a member of a pooled insurance entity that has a liability program satisfactory for this Agreement. Each Party agrees, at its own expense, to maintain its coverage for its liability exposures for the duration of this Agreement. Each Party agrees to provide the other Party with at least 30 days' prior written notice of any material change in their liability program and will provide the other Party with a certificate of self-insurance as adequate proof of coverage. Each Party has the right to inspect the other Party's liability program at the request of the other Party.

**6.0 TERMINATION OF AGREEMENT**

Either Party may terminate this Agreement, in whole or in part, in writing, for its convenience provided that the terminating Party shall provide the other Party with advance written notice of at least thirty (30) calendar days.

**7.0 EFFECTIVE DATE AND TERM OF AGREEMENT**

The Agreement will commence on the date of execution by the Parties and end on completion of the Scope of Work or December 31, 2012 whichever is sooner.

**8.0 EXECUTION OF AGREEMENT**

This Agreement will be executed in two (2) counterparts, any one of which will be regarded for all purposes as one original.

**IN WITNESS WHEREOF**, each Party has caused this Agreement to be signed by its duly authorized officer or representative as of the date set forth below its signature.

**SNOHOMISH COUNTY FIRE PROTECTION  
DISTRICT NO. 1**

By: Thomas J. Tomberg  
Its: Assistant Chief  
Date: April 12, 2012

**SNOHOMISH COUNTY PUBLIC TRANSPORTATION  
BENEFIT AREA CORPORATION**

By: Emmett Heath, acting CEO  
Joyce Eleanor, CEO  
Emmett Heath, Director of Administration  
Date: 4-16-12

SNO 1\CONTRACT REVIEW\TREE TRIMMING COOPERATIVE AGREEMENT\COOPERATIVE AGREEMENT RE TREE TRIMMING\_04-02-12(R5V)

**COOPERATIVE AGREEMENT  
EXHIBIT A**

**SCOPE OF WORK**

Works consists of all labor and all materials to top six (6) trees and remove selected limbs only from an additional five (5) trees as mapped on **Attachment A**.

Schedule: The contractor has thirty (30) calendar days to complete this project following the issuance of the written Notice to Proceed to the contractor.

**Tree #**  
**Action Needed**

1 Limb West

2 Limb West

3 Top

4 Top

5 n/a

6 Limb East

7 Limb East

8 Top

9 Limb East

10 n/a

11 n/a

12 n/a

13 Top

14 Top

15 Top

Total:

6 Trees Topped

(Tree #15 is already dead, can be felled, if necessary.)

5 Trees limbed

**ATTACHMENT A**

**[MAP OF TREES]**