

Summary of Downtown Seattle Transit Tunnel (DSTT) Transfer Agreement (Proposed Ordinance 2022-0330)

Ordinance

Transfer is negotiated under KCC 4.56.070.C and 4.56.140

Agreement

SECTION	NAME	DESCRIPTION
The agreement is between King County (KC) and Central Puget Sound Regional Transit Authority (Sound Transit, ST) and agreement will be effective when it is executed by both parties		
Recitals		
		<ul style="list-style-type: none"> A. KC provides public transportation within the county B. ST provides high-capacity transit within its boundaries C. DSTT was opened in 1990 by Municipality of Metropolitan Seattle (Ex A) D. Seattle holds the rights-of-way (ROW), granted Metro right to use ROW for DSTT through City Ord 112462 in 1985 (Master Cooperation Agreement) and granted ST right to use ROW for DSTT through City Ord 119975 in 2000 (Transit Way Agreement) E. 2002 joint use agreement (Ord 14396) provided for joint use through March 2019 F. KC owns and manages DSTT and operates Link light rail under Intergovernmental Agreement (IGA) with ST, last updated in 2019 (Ord 18914) G. Voters approved ST expansion in 2008 and 2016 H. KC sold Convention Place Station (CPS) in 2018 (Ord 18546) I. ST has appraised and conducted due diligence on DSTT and its systems and requires ongoing support from KC to transition ownership of DSTT J. KC and ST intend to transfer DSTT to ST to meet goals of providing transit service K. Parties have authority under state law
1	Conveyance and Transfer of the DSTT and Agreements	
1.1	DSTT Assets	KC shall transfer and ST shall accept the DSTT Assets: <ul style="list-style-type: none"> • Ex B-1 DSTT Structure • Ex B-2 Fixed Assets • Ex B-3 DSTT Real Estate Rights • Ex B-4 DSTT Artwork • Ex B-5 DSTT Artist Agreements
1.2	Retained Assets	DSTT Assets exclude Retained Assets (Ex C) that include several traction power substations and a 700MHz repeater
1.3	New Agreements, Leases and Contracts	Between execution of agreement and Closing Date, KC will not enter into any new agreements or leases, and will terminate all agreements or assign them to ST on or before the Closing Date
1.4	Conveyance	On Closing Date, conveyance will happen through: <ul style="list-style-type: none"> • Ex D DSTT Transfer and Conveyance Agreement • Ex E Quitclaim Deed

Summary of Downtown Seattle Transit Tunnel (DSTT) Transfer Agreement (Proposed Ordinance 2022-0330)

SECTION	NAME	DESCRIPTION
1.5	Cooperation Agreements	On Closing Date, parties will also execute two Cooperation Agreements: <ul style="list-style-type: none"> • Ex F-1 Metro Facilities Agreement • Ex F-2 DSTT Advertising Revenue Share Agreement (which aims to evenly split the advertising revenue received by ST from advertising within DSTT stations with KC, net of ST expenses associated with advertising and each party will use its share of the revenue to fund reduced or no-cost fare pricing for low-income customers up to \$25M to KC or 6/30/42, whichever comes first)
2	Consideration	
2.1	DSTT Assets and Cooperation Agreements	Full consideration for the transfer is: <ol style="list-style-type: none"> i. Transfer of KC’s title to DSTT Assets ii. ST’s assumption of responsibility for and ongoing O&M for DSTT Assets iii. Execution of Cooperation Agreements
3	Representations and Warranties of the Parties and Conditions of Property	
3.1	Warranties and Representations of KC	KC represents and warrants: <ol style="list-style-type: none"> 1. KC is a political subdivision of State of WA
3.2	Representations and Warranties of ST	ST represents and warrants: <ol style="list-style-type: none"> 1. ST is a regional transit authority under laws of the State of WA
3.3	Condition of Tunnel Assets	<ol style="list-style-type: none"> 1. KC Disclosure Statement: ST waives its right to receive a seller’s disclosure statement from KC, except for Environmental section, but no warranties or obligations by KC and no duties other than those in this agreement 2. KC’s disclaimer of condition of DSTT Assets: KC has not made any representations, warranties, etc., about the value, nature, quality, or condition of the DSTT Assets, they are transferred “as-is with faults,” including: water, soil, and geology; physical condition; operating history, valuation, or income to be derived; tax consequences of the transaction; suitability for ST’s uses; governmental approvals or franchises; availability of utilities; compliance with zoning or other laws; use for a particular purpose; quality or construction, materials, equipment, and systems; presence of wetlands, contaminants; environmental hazards; or any other matter 3. DSTT Assets conveyed with no warranties of title, including real estate rights to allow DSTT to be used by ST for any particular purpose, ST to perform due diligence 4. ST acceptance of condition of DSTT Assets: ST accepts KC’s disclaimer, will conduct a physical inspection prior to Closing, agrees to “as-is with faults” condition

Summary of Downtown Seattle Transit Tunnel (DSTT) Transfer Agreement (Proposed Ordinance 2022-0330)

SECTION	NAME	DESCRIPTION
4	Title and Survey Matters	
4.1	Title Commitments	ST has obtained commitments for title insurance describing the Real Estate Rights
4.2	Survey	ST has obtained a LIDAR survey of the DSTT
4.3	Title Policy	ST may elect to purchase a title insurance policy
5	KC Responsibilities Prior to and After Closing	
5.1	Pre-Closing Responsibility	After Effective Date and prior to Closing Date, KC will: <ol style="list-style-type: none"> a. Maintain all business records pertaining to DSTT b. Except for International District Station (IDS) Easement (§7.1.8), not create, amend, modify any easement, license, or right of entry without ST’s written consent c. Obtain ST’s approval prior to making any substantial improvements to DSTT Assets d. Maintain DSTT in its current condition and state of repair If KC learns of anything that could materially affect DSTT or the conveyance, it will notify ST
6	DSTT Operations; Termination of Existing Agreements	
6.1	Amendment to Link O&M Agreement	Parties will enter into an amendment to the Link O&M Agreement (aka IGA) to include the operation of the DSTT (see Proposed Ordinance 2022-0329)
6.2	Termination of Master Cooperation Agreement and 2002 Joint Operating Agreement	KC, ST, and Seattle will execute DSTT Transfer and Conveyance Agreement (Ex D), which will terminate: <ul style="list-style-type: none"> • 2002 joint use agreement (Ord 14396) • 1985 Master Cooperation Agreement (City Ord 112462)
7	Conditions to Closing	
7.1	Conditions to Closing	Parties agree to the following conditions:
7.1.1	Legislative Approval	<ol style="list-style-type: none"> 1. KC’s performance subject to approval by KC Council 2. ST’s performance subject to approval by ST Board
7.1.2	Federal Transit Administration (FTA) Requirements and Approval	<ul style="list-style-type: none"> • ST and KC shall jointly ID FTA grant restrictions and requirements and obtain written FTA consent for the transfer • From Closing Date, ST shall assume all obligations pertaining to DSTT Assets that arise from the use of FTA or Urban Mass Transit Administration financial assistance
7.1.3	City Concurrence	Parties shall obtain Seattle’s approval and executive of the Conveyance Agreement (Ex D)
7.1.4	SEPA Compliance	Parties shall complete any needed SEPA compliance
7.1.5	Delivery of Documents by KC	KC will deliver to ST all documents required of KC for Closing (§8.3)
7.1.6	Delivery of Documents by ST	ST will deliver to KC all documents required by KC for Closing (§8.4)
7.1.7	Legal Description	Parties have agreed on legal description, to be attached to the Quitclaim Deed (Ex E)

Summary of Downtown Seattle Transit Tunnel (DSTT) Transfer Agreement (Proposed Ordinance 2022-0330)

SECTION	NAME	DESCRIPTION
7.1.8	IDS Easement	KC will provide documentation regarding IDS easement
7.1.9	KC Responsibilities	KC will meet each obligation in §5.1
7.1.10	Link O&M Agreement Amendment	Parties to have executed amendment to the IGA (PO 2022-0329) on or before Closing
8	Closing	
8.1	Closing/Closing Date	<ul style="list-style-type: none"> • Closing shall be the date on which KC transfers the DSTT Assets to ST • Closing shall occur within 90 days of receipt of materials in §7.1.1, 7.1.2, 7.1.3 • If Closing has not occurred by June 30, 2023, Transfer Agreement shall be extended in writing to a negotiated later date, or will terminate • Parties shall provide prior notice of any change in Closing deadline to FTA and Seattle
8.2	Proration	<ul style="list-style-type: none"> • Parties agree that transaction is exempt from real estate excise tax (REET) • Parties shall file a REET affidavit • All other taxes and assessments to be prorated as of Closing Date • KC shall pay any other transfer tax, as well as its own attorneys' fees • ST shall pay all escrow fees, recording fees, and its own attorneys' fees • All other expenses to be paid by party incurring the expense
8.3	KC's Delivery at Closing	<p>At or before Closing, KC will deliver to ST the following executed documents:</p> <ol style="list-style-type: none"> 1. Quitclaim Deed (Ex E) 2. REET affidavit (§8.2) 3. Facilities Agreement (Ex F-1) 4. Advertising Agreement (Ex F-2) 5. DSTT Transfer and Conveyance Agreement (Ex D) 6. Other documents needed to complete Closing <p>**Note, there is no 8.3.6; #6 above is 8.3.7 in the document**</p>
8.4	ST's Delivery at Closing	<p>At or before Closing, ST will deliver to KC the following executed documents:</p> <ol style="list-style-type: none"> 1. Quitclaim Deed (Ex E) 2. Facilities Agreement (Ex F-1) 3. Advertising Agreement (Ex F-2) 4. DSTT Transfer and Conveyance Agreement (Ex D) 5. Counterpart of REET affidavit 6. Other documents needed to complete Closing <p>**Note, there is no 8.4.6 or 8.4.7; #6 above is 8.4.8 in the document**</p>

Summary of Downtown Seattle Transit Tunnel (DSTT) Transfer Agreement (Proposed Ordinance 2022-0330)

SECTION	NAME	DESCRIPTION
9	Dispute Resolution	
9.1	Cooperation	<ul style="list-style-type: none"> • Parties shall work cooperatively and in good faith to resolve issues associated with this agreement • Parties will use their best efforts to prevent and resolve any sources of conflict • No judicial or administrative challenges except as in §9 and prior to that must use dispute resolution process here
9.2	Negotiated Resolution	<p>If a dispute cannot be resolved staff-to-staff, process is:</p> <ol style="list-style-type: none"> 1. Party desiring to initiate negotiations to provide written notice to other party and shall cooperate 2. Within 5 days of written notice, initiating party shall provide a written, detailed summary of facts of dispute 3. Initiating party shall designate an employee to respond to responding party 4. Within 14 days after notice, responding party shall prepare a written, detailed summary, designate an employee to respond, and set a meeting
9.3	Mediation	<ul style="list-style-type: none"> • Any dispute not yet resolved shall be submitted to mediation under procedures of American Arbitration Assn unless parties agree to other rules • If parties cannot agree on a mediator within 10 days, any party may request the appointment of a mediation • Mediation shall occur at any location in Seattle • Mediation shall include exchange of written claims and responses at least 10 days prior to session • Parties to split mediation costs • Mediation to conclude within 60 days after designation of the mediator • If mediation is unsuccessful, litigation may commence
9.4	No Prejudice	<ul style="list-style-type: none"> • No delay in mediation shall prejudice the rights of either party • At request of either party, can toll the statute of limitations • Dispute resolution process information is not evidence in any subsequent dispute resolution or legal action
9.5	Emergency	<ul style="list-style-type: none"> • If either party determines that circumstances require immediate action, party may pursue any immediate remedy available under the law without following the dispute resolution procedures
9.6	Performance Not Excused	<ul style="list-style-type: none"> • During any dispute resolution process or litigation, parties shall continue to perform their duties under this agreement
10	Intentionally omitted <<No text in this section>>	

Summary of Downtown Seattle Transit Tunnel (DSTT) Transfer Agreement (Proposed Ordinance 2022-0330)

SECTION	NAME	DESCRIPTION
11	Insurance	
11.1	Insurance	Until Closing Date, KC will maintain property insurance on DSTT Assets per IGA (aka Link O&M Agreement)
12	Misc Provisions	
12.1	Merger	<ul style="list-style-type: none"> Anything in this agreement shall not survive the Closing unless it expressly is provided for in Closing
12.2	Default; Limitation on Liability	<ol style="list-style-type: none"> Default by ST: If Closing does not occur due to default by ST, KC's sole remedy is to terminate the agreement Default by KC: If Closing does not occur due to default by KC, ST's sole remedy is to terminate the agreement Limitation on liability: Neither party is liable to the other for damages, lost profits, loss of business or loss of use of property, or cost of capital
12.3	Time	<ol style="list-style-type: none"> Time is of the essence Computation of time: "day" refers to a calendar day, "business day" means not a legal holiday (Sat, Sun, or RCW 1.16.050), day expires at 5PM
12.4	Notices	Contacts for notices for KC and ST
12.5	Entire Agreement and Amendment	This document constitutes the entire agreement and may not be modified or amended except by a written agreement specifically referring to this agreement and signed by all parties
12.6	Severability	Any portion found invalid does not affect rest of agreement
12.7	Waiver	No waiver of any breach or default shall be considered valid unless in writing and signed by the party giving such waiver
12.8	Binding Effect	Agreement shall be binding upon each party
12.9	Legal Relationship	Parties to this agreement implement solely as KC and ST, no partnership or joint undertaking shall be construed
12.10	Captions	Captions are for convenience only
12.11	Governing Law and Venue	Superior Court of King County, WA
12.12	No Third Party Beneficiaries	Agreement only for the benefit of the parties
12.13	Assignment	Parties may not transfer the agreement within written consent of the others
12.14	Negotiation and Construction	All terms to be construed as if both parties have jointly prepared it
12.15	Counterparts	Agreement may be executed by electronic signing
12.16	Further Assurances, Interests and Agreements	KC and ST agree to cooperate on any inadvertent omissions or updates
12.17	Conflicting Provisions	Transfer Agreement controls

Exhibits to the Agreement

EXHIBIT	NAME	DESCRIPTION
A	DSTT Description	
		<ul style="list-style-type: none"> The exhibit shows a map of the DSTT pathway superimposed on the Downtown Seattle street grid
B-1	DSTT Structure	
		<ul style="list-style-type: none"> Description of the DSTT alignment List and locations of DSTT stations: International District, Pioneer Square, University Street, and Westlake
B-2	DSTT Fixed Assets	
		<p>Describes the DSTT Fixed Assets:</p> <ul style="list-style-type: none"> Does NOT include the Retained Assets, which KC will continue to own Does include all KC-owned improvements, structures, systems, signage, components, artwork, and fixtures, specifically: <ul style="list-style-type: none"> Anything part of or enclosed in the DSTT Assets Any part of the DSTT Stations Anything existing on or in the areas described in the DSTT Real Estate Rights (including KC-owned ventilation ducts, street grates, emergency hatches, tunnels, elevators, escalators, and all artwork and signage on an inlayed in sidewalks near DSTT Stations) Awnings at several locations outside the DSTT
B-3	DSTT Real Estate Rights and Agreements	
		<ul style="list-style-type: none"> Lists the Recording Number, date, document, and Tax ID number of each real estate transaction that comprises the DSTT The list is organized by DSTT Station, showing the properties and transactions in and between each DSTT Station
B-4	DSTT Artwork	
		<ul style="list-style-type: none"> List of artwork at each DSTT Station and tunnel-wide
B-5	DSTT Artist Agreements	
18.0		<ul style="list-style-type: none"> List of contracts for each artist and artwork
C	Metro Retained Assets	
		<p>This exhibit lists all assets in the DSTT for which KC will retain ownership, focusing on:</p> <ul style="list-style-type: none"> Several traction power substations that are used for Metro’s trolleybus system A 700 MHz repeater that Pioneer Square Station and its path to the KC Radio Core

Summary of Downtown Seattle Transit Tunnel (DSTT) Transfer Agreement (Proposed Ordinance 2022-0330)

EXHIBIT	NAME	DESCRIPTION
		The exhibit also lists ST’s responsibility to provide power, phone, and fire detection service within the DSTT. Retained assets are listed as:
1	South Jackson Traction Power Substation (TPSS) No. 35	<ul style="list-style-type: none"> • KC to retain South Jackson TPSS No. 35 at International District Station and all equipment required for operation of the facility, including DC feeder conduits and circuit breakers • International District TPSS No. 40 will remain in KC ownership but will be removed at ST’s expense to make space for one ST TPSS • ST will supply power • KC will retain use of existing phones • KC will be able to make attachments to a named room at the station • ST will provide no-cost access to the TPSS to KC, including temporary parking for 1 vehicle at International District Station plaza
2	University Street TPSS No. 41	<ul style="list-style-type: none"> • KC to retain University Street TPSS No. 41 at University Street Station, including all equipment, switching vault, and DC feeder conduits to supply power to trolleybus system • KC to retain the communications duct bank • ST will supply power • KC will retain use of existing phones • KC will be able to make attachments to several named rooms at the station • ST will provide no-cost access to the TPSS to KC
3	Olive TPSS No. 36	<ul style="list-style-type: none"> • KC to retain Olive TPSS No. 36, located in the cut and cover tunnel under Ninth Ave, including all equipment, ducts, and feeder cables • ST will supply power • KC will retain use of existing phones in the cut and cover tunnel • KC will retain modular TPSS inside the cut and cover tunnel • ST will provide no-cost access to the cut and cover tunnel to KC
4	Pioneer Square Station 700 MHz Repeater	<ul style="list-style-type: none"> • KC to retain 700 MHz Repeater Site at the Pioneer Square Station and its path to the KC Radio Core • ST to provide no-cost access to the repeater site
D	DSTT Transfer and Conveyance Agreement	
		<ul style="list-style-type: none"> • The Transfer and Conveyance Agreement is one of the two main effectuating documents called for in the Agreement (§1.4) • It is to be executed by KC, ST, and Seattle

Summary of Downtown Seattle Transit Tunnel (DSTT) Transfer Agreement (Proposed Ordinance 2022-0330)

EXHIBIT	NAME	DESCRIPTION
	Recitals	<ol style="list-style-type: none"> 1. Transfer Agreement sets forth the terms and conditions 2. Conveyance Agreement implements the assignments, transfers, and conveyances set forth in the Transfer Agreement 3. Conveyance Agreement terminates 2 previous agreements as of the Closing Date: <ol style="list-style-type: none"> a. 1985 Master Cooperation Agreement between Seattle and Metro (now KC) (City Ord 112462), which granted Metro right to use Seattle ROW for DSTT for public transportation b. 2002 joint use (aka joint operating) agreement between KC, ST, and Seattle (Ord 14396) 4. KC and ST represent and warrant that Conditions to Closing in Transfer Agreement have been met or waived 5. Closing Date is set as _____ (tbd)
1.0	Transfer and Conveyance of DSTT	<ol style="list-style-type: none"> 1. DSTT is hereby transferred and conveyed to ST by KC through delivery of fully executed Conveyance Agreement and Quitclaim Deed (Ex E) and recorded 2. KC to retain all rights to Retained Assets per Metro Facilities Agreement (Ex D-1)
2.0	Termination of Master Cooperation Agreement	<ol style="list-style-type: none"> 1. As of Closing Date, the 1985 Master Cooperation Agreement between Seattle and Metro (now KC) (City Ord 112462), which granted Metro right to use Seattle ROW for DSTT for public transportation is terminated
3.0	Termination of Joint Operating Agreement	<ol style="list-style-type: none"> 1. As of Closing Date, the 2002 joint use (aka joint operating) agreement between KC, ST, and Seattle (Ord 14396), is terminated
4.0	Implementation of the Transitway Agreement	<ol style="list-style-type: none"> 1. Prior to Closing Date, ST and Seattle shall implement provisions of the Transitway Agreement (City Ords 119975, 120788) to reflect the DSTT transfer 2. As of the Closing Date, ST and Seattle intend for DSTT to be a part of the light rail transit system under the Transitway Agreement 3. Parties shall incorporate DSTT into the definition of Light Rail Transit System in the Transitway Agreement by filing this agreement with the City Clerk
5.0	City Acknowledgement of Transfer	<ol style="list-style-type: none"> 1. As of Closing Date, Seattle acknowledges that ST owns and possesses the DSTT, including that w/in Seattle ROW and that all rights in Master Cooperation Agreement have been transferred to ST 2. As of Closing Date, Seattle acknowledges that KC owns and possesses the Retained Assets, including that w/in Seattle ROW, and will use these for public transportation purposes

Summary of Downtown Seattle Transit Tunnel (DSTT) Transfer Agreement (Proposed Ordinance 2022-0330)

EXHIBIT	NAME	DESCRIPTION
D-1	Metro Facilities Agreement	
		This is blank in document, will be the fully executed Ex F-1
E	Quit Claim Deed	
1		<ul style="list-style-type: none"> • KC and ST are parties to DSTT Transfer Agreement and Conveyance Agreement and transfer the DSTT (as shown in Ex A) • Quit Claim Deed is subject to the Conveyance Agreement (Ex D)
2		<ul style="list-style-type: none"> • For and in consideration of supporting public transportation, KC conveys to ST all of KC’s rights to the DSTT Assets: <ul style="list-style-type: none"> ○ Tunnel structure itself (Ex B-1) ○ Improvements comprising stations and other fixed assets (Ex B-2) ○ Easements and agreements (Ex B-3) ○ KC-owned public artwork and supporting agreements (Ex B-4 and B-5) ○ Real property on which portions of the tunnel structure are located (B-6) • ST accepts the rights and obligations under the leases, contracts, and agreements (in Ex B-3 and B-5) and shall be solely responsible for complying with the obligations
3		<ul style="list-style-type: none"> • ST acknowledges, accepts, and acquires the DSTT Assets on an “as-is with all faults” basis • ST has no recourse against KC for any and all past, present, or future claims or demands related to DSTT condition, including environmental issues
4		<ul style="list-style-type: none"> • Environmental laws defined
5		<ul style="list-style-type: none"> • Quit Claim deed incorporates §3.3.2, 3.3.3 and Ex C
6		<ul style="list-style-type: none"> • KC and ST agree to cooperate on any necessary corrections to the legal description or assignment of any real property interest inadvertently omitted from Ex B-3
7		<ul style="list-style-type: none"> • Each counterpart will be deemed to be an original
Exhibits to Ex E are:		<ul style="list-style-type: none"> • Ex A: DSTT Depiction • Ex B-1 DSTT Structure • Ex B-2 DSTT Fixed Assets • Ex B-3 DSTT Real Estate Rights and Agreements • Ex B-4 DSTT Artwork • Ex B-5 DSTT Artist Agreements • Ex B-6 Legal Description (legal description for each parcel) • Ex B-7 Tax Parcel Numbers (list of parcel numbers) • Ex C Covenants • Ex D DSTT Transfer and Conveyance Agreement • Ex D-1 Metro Facilities Agreement

Summary of Downtown Seattle Transit Tunnel (DSTT) Transfer Agreement (Proposed Ordinance 2022-0330)

EXHIBIT	NAME	DESCRIPTION
F-1	Metro Facilities Agreement	
	Between KC and ST	
	Background	<p>A. KC and ST have entered into DSTT Transfer Agreement, which calls for the parties to enter into this Facilities Agreement as a condition of the transfer</p> <p>B. By entry into this Facilities Agreement, parties intend to facilitate KC’s continuous use of its Retained Assets, as well as the placement of potential additional transportation-related facilities (Future Assets)</p> <p>C. Facilities Agreement provides the terms and conditions for KC’s use of the Retained Assets and the process for KC’s potential placement of Future Assets</p>
1	Definitions	<p>1. Retained Assets are owned by KC and identified in Ex C (and Ex 1 to Facilities Agreement)</p> <p>2. Future Assets are fixed assets, equipment, and facilities approved to be placed within DSTT per Article IV</p>
2	Retained Assets	<p>1. KC shall retain all right, title, and ownership to the Retained Assets</p> <p>2. Right to leave Retained Assets in place:</p> <ol style="list-style-type: none"> 1. Some Retained Assets are located in or connected to DSTT Assets, and KC has right to use, maintain, replace, or repair Retained Assets within current locations in a manner that does not interfere with ST’s HCT operations 2. KC shall remove some Retained Assets within IDS at ST’s expense (Ex 1 §1.C) 3. KC shall notify ST in writing if it intends to remove any Retained Assets from service to develop a plan <p>3. Right of entry:</p> <ol style="list-style-type: none"> 1. ST shall allow KC right of entry and access to and through the DSTT Assets (Ex 1) but KC not to disrupt ST HCT operations 2. ST shall provide KC with all keys, security codes, ID, etc. for access, and KC is liable for any damages caused <p>4. Indemnification and Insurance:</p> <ol style="list-style-type: none"> 1. KC shall defend and indemnify ST from and against damage to DSTT Assets caused by Retained Assets 2. These provisions constitute a waiver for each party under industrial insurance 3. KC will maintain a fully funded self-insurance program, plus property insurance for Retain Assets 4. KC responsible for any requirements pertaining to Retained Assets that arise as a result of a federal grant or loan <p>5. Fees, Costs, Payments</p>

Summary of Downtown Seattle Transit Tunnel (DSTT) Transfer Agreement (Proposed Ordinance 2022-0330)

EXHIBIT	NAME	DESCRIPTION
		<ol style="list-style-type: none"> 1. Except as per this Facilities Agreement, ST shall impose no fee, rental payment, or other charge for the Retained Assets or KC's right of entry, though ST may pass through costs for increased costs caused by a KC modification to a Retained Asset and costs incurred by ST in connection with KC access to Retained Assets using routes other than those in Ex 1, 1.I, 2.I, 3.H) 6. ST's Responsibilities for Retained Assets <ol style="list-style-type: none"> 1. ST shall take reasonable measures to safeguard the Retained Assets, including security, fire detection, and will notify KC of any damage 2. ST shall not damage the Retained Assets, including shall not alter, disconnect, move, or modify 3. ST may access all areas within and around the Retained Assets to carry out its obligations under this Facilities Agreement 4. ST shall have no obligation to maintain, repair, or replace or improvement the Retained Assets 7. Emergency Egress and Utilities <ol style="list-style-type: none"> 1. ST shall supply 26KV power to the Retained Assets (Ex 1) and KC shall pay for metered usages and a proportionate share of O&M of the 26KV system. ST shall maintain and supply ancillary power and emergency egress routes 2. KC shall retain use of existing phones (Ex 1, §1.G, 2.G, 3.F) 3. Parties will confirm the current locations of utility metering and transfer utility meters as necessary to conform with the transfer of DSTT ownership, KC responsible for paying for 26KV power, ancillary electricity, phone service, water, and other utilities used by or for the Retained Assets, shall be separate metering
3	Relocation of Retained Assets	<ol style="list-style-type: none"> 1. Any Retained Asset may be moved to another location within DSTT at the request of ST on terms acceptable to KC, with ST responsible for relocation costs 2. ST and KC may agree to move Retained Assets outside the DSTT (§3.3, 3.5), with ST responsible for all relocation costs 3. ST and KC will establish a contact person and intake process for ST proposals to move Retained Assets outside DSTT 4. Review of Proposal: <ol style="list-style-type: none"> 1. KC will evaluate proposal to determine whether new location will meet needs of Retained Assets 2. KC review may consist of standard technical review or additional factors, including quality of access

Summary of Downtown Seattle Transit Tunnel (DSTT) Transfer Agreement (Proposed Ordinance 2022-0330)

EXHIBIT	NAME	DESCRIPTION
		<ol style="list-style-type: none"> 5. A Retained Asset may only be relocated outside DSTT where new location meets the security, functionality, and maintenance requirements and relocation does not have a negative impact on current and future operations. If KC denies request, KC and ST will engage in iterative process, including planned mitigation 6. If after these steps, KC and ST agree that a Retained Asset may be relocated outside DSTT, parties will negotiate and agree on mitigation, provisions for liability, insurance, and reimbursement to KC
4	Future Assets	<ol style="list-style-type: none"> 1. ST and KC may agree to KC placement of one or more fixed assets, equipment, and facilities within DSTT 2. ST and KC will establish a contact person and intake process for KC proposals to place Future Assets within DSTT 3. Review of proposal: <ol style="list-style-type: none"> 1. ST will evaluate the proposal to determine if it can be implemented without interfering with or having a negative impact on current and future operations of DSTT, including safety and complexity of O&M 2. ST review may consist of technical review process or additional factors, including ST needs for DSTT, customer experience, consistency with ST’s approach, and FTA requirements 4. Future Asset may only be placed in a manner that does not interfere with or have a negative impact on current and future operations of DSTT, if ST has concerns KC and ST will engage in iterative process to resolve 5. If KC and ST agree to place a Future Asset in DSTT, parties will negotiate and execute an agreement, may include mitigation, liability, reimbursement so that ST incurs no costs
5	No Third Party Rights	<ol style="list-style-type: none"> 1. No rights to any party not a signatory to this Facilities Agreement
6	Dispute Resolution	<ol style="list-style-type: none"> 1. ST and KC will establish a process to elevate concerns within their organizations 2. For any dispute involving ST and a proposed Future Asset, this process will review whether the proposed Future Asset may be placed within the DSTT without interference to ST’s current and future needs, plus benefits of KC’s proposal, needs of the public, and intended uses of DSTT 3. For any dispute involving KC and proposed relocation of Retained Asset outside the DSTT, this process will review whether the Retained Asset may be placed outside DSTT without interference to current and future operations of Retained Assets

Summary of Downtown Seattle Transit Tunnel (DSTT) Transfer Agreement (Proposed Ordinance 2022-0330)

EXHIBIT	NAME	DESCRIPTION
		<p>4. If a dispute not resolved through this process, parties shall seek to settle through mediation or alternative dispute resolution before commencing litigation</p>
7	Transition support	<p>1. For at least 5 years after effective date, KC will provide ST access to key staff and records needed to facilitate ST’s transition into ownership of DSTT – to provide continuity of services and facilitate ST’s completion of its state of good repair workplan</p> <p>2. KC’s transition to ST will include but not be limited to these work groups:</p> <ol style="list-style-type: none"> 1. Metro structural engineering staff 2. Metro Engineering Records staff 3. Metro Power and Facilities staff 4. Metro Transit Facilities 5. Metro utility and accounting staff <p>3. Parties will collaborate through a process to be completed 3 months after Effective Date to:</p> <ol style="list-style-type: none"> 1. List known key staff for each category 2. Establish protocols and timelines for ST to request and receive transition support 3. Negotiate rates and invoicing procedures for ST to compensate KC for cost of transition support <p>4. KC work on Retained Assets and Future Assets will not be considered transition support</p>
8	Terms and Conditions	<ol style="list-style-type: none"> 1. Time <ol style="list-style-type: none"> 1. Time is of the essence 2. Any reference to “day” is a calendar day, business day is a calendar day that is not a legal holiday (Saturday, Sunday or RCW 1.16.050), and day ends at 5PM 2. Contacts for ST and KC 3. Entire Agreement: this is the entire agreement, may be modified or amended only by written agreement signed by all parties 4. Severability 5. No waiver of any breach or default shall be considered valid 6. Binding on each party 7. Parties represent solely ST and KC, with no partnership, joint venture, or joint undertaking 8. Captions for convenience only 9. Venue is King County Superior Court 10. No third party beneficiaries 11. Cannot assign this agreement to others without consent of other party 12. Agreement has been negotiated between the parties and is neutral between them 13. Counterparts, electronic signing may be used

Summary of Downtown Seattle Transit Tunnel (DSTT) Transfer Agreement (Proposed Ordinance 2022-0330)

EXHIBIT	NAME	DESCRIPTION
		14. KC and ST agree to cooperate to update if needed 15. This Facilities Agreement controls if there are conflicts with any other agreement
Exhibits to Ex F are:		<ul style="list-style-type: none"> Ex 1 Metro Retained Assets
F-2	Station Advertising Revenue Share Agreement	
	Between KC and ST	
	Recitals	<ul style="list-style-type: none"> KC is authorized to perform public transportation functions (RCW 36.56, 35.58) ST is authorized to perform regional public transportation functions (RCW 81.112) KC and ST have entered into DSTT Transfer Agreement KC and ST have agreed that as owner of DSTT, ST will maintain control over advertising in the DSTT KC and ST have agreed to share revenue generated by advertising within DSTT for the purpose of funding reduced or no-cost fares for low-income public transit customers
1	General	1. Purpose is to set forth the terms and conditions for ST to evenly share advertising revenue (net of ST expenses associated with advertising) w/in DSTT with KC 2. This agreement pertains to advertising within the DSTT stations, including walls, floors, ceilings, and other surfaces <ol style="list-style-type: none"> Advertising located elsewhere is not subject to this agreement Advertising affixed to vehicles is not subject to this agreement 3. Advertising means hard copy, print advertisement, and other forms of promotion, including digital, mixed media 4. ST will maintain and control all aspects of advertising within the Stations, pursuant to ST Agency Policy 100
2	Advertising Contract Management	1. ST shall pay KC a proportionate share of revenue from advertising w/in the Stations (§4) 2. ST will exercise reasonable efforts to generate advertising revenue, but KC and ST acknowledge that the implementation and size of advertising program is at ST's sole discretion 3. ST is responsible for the management and administration of the advertising contract for Station advertising 4. ST will ensure that its vendor contract provides for a separate calculation of net revenues for the Stations and will pay KC 50% of the vendor-calculated Station Advertising Revenue less separate expenses incurred by ST for advertising in the DSTT (such as staff costs) 5. If KC support or labor of any kind is necessary for ST to conduct advertising work, any costs ST incurs to pay for KC

Summary of Downtown Seattle Transit Tunnel (DSTT) Transfer Agreement (Proposed Ordinance 2022-0330)

EXHIBIT	NAME	DESCRIPTION
		<p>shall be included with ST’s expenses and deducted from the KC share of advertising revenue</p> <p>6. All parties engaged in advertising-related activities in the Stations will follow standard DSTT access procedures</p>
3	Reserved	Blank
4	Compensation, Payment, and Reporting	<ol style="list-style-type: none"> 1. On an annual basis, or other negotiated period, ST will determine and pay KC the proportionate amount of the revenue to be shared (ST will email a report to KC, KC will email an invoice to ST, and ST will electronically transfer payment) 2. There is no minimum guaranteed amount due to KC at any point during this agreement 3. Each party will use its share of the Station Advertising Revenue solely to fund reduced or no-cost fare pricing for low-income public transit customers and will provide each other an accounting of expenditures at least annually
5	Effective Date, Term, and Termination	<ol style="list-style-type: none"> 1. This Advertising Agreement shall become effective on the Closing Date of the DSTT transfer to ST and shall remain in effect until ST has shared with KC a total of \$25M or until June 30, 2042, whichever occurs first 2. Either party may terminate this advertising agreement for cause if the other party fails to fulfill its material obligations under the agreement and the dispute resolution process has failed to reach resolution, if terminating may be done with 90 days’ notice to the other party 3. This advertising agreement will also terminate with the mutual consent of the parties 4. Termination by either party will not release either party from liability for costs or obligations existing as of termination date 5. If ST no longer owns DSTT, Advertising Agreement terminates on the date that ST conveys or transfers title to the DSTT
6	Designated Representatives	<ol style="list-style-type: none"> 1. Names of designated representatives for each party
7	Indemnity: Third party contracts	<ol style="list-style-type: none"> 1. ST agrees to hold harmless, indemnify, and defend KC in any lawsuit challenging the content of advertising or the process or policies used to select or reject advertising 2. If ST enters into or amends a contract with a third party for advertising management, installation, or removal, contract must require: <ol style="list-style-type: none"> 1. That the contractor defend, indemnify and hold harmless ST and KC against contractor’s acts and omissions 2. That the contractor be required to obtain insurance coverage naming ST and KC as add’l insureds

Summary of Downtown Seattle Transit Tunnel (DSTT) Transfer Agreement (Proposed Ordinance 2022-0330)

EXHIBIT	NAME	DESCRIPTION
		<ol style="list-style-type: none"> 3. These provisions are intended to constitute a waiver of each party’s immunity under industrial insurance 4. Each party agrees to bear full responsibility for any and all tax liabilities due to advertising agreement 5. These obligations survive termination or completion of this agreement
8	Audits	<ol style="list-style-type: none"> 1. Each party will maintain accounts and records and will be available for inspection and review by either party upon reasonable notice, records maintained for 6 years
9	Dispute Resolution Process	<ol style="list-style-type: none"> 1. Any disputes or questions that may arise between ST and KC will be governed under this dispute resolution process 2. Parties agree that cooperation and communication are essential and will attempt to resolve at lowest level 3. Either party may refer a dispute to the dispute resolution process by providing written notice <ol style="list-style-type: none"> 1. Level One: ST and KC designated reps meet to discuss and attempt to resolve, if cannot resolve within 14 days then Level Two 2. Level Two: ST Chief Communications Officer and KC’s Dept Lead meet to discuss and attempt to resolve, if cannot resolve within 14 days, then Level Three 3. Level Three: ST Deputy CEO or designee and KC dept director or designee to meet to discuss and attempt to resolve 4. If dispute is not resolved within 14 days of Level Three, parties may file suite or pursue mediation, but parties must continue to perform any undisputed obligations and make any undisputed required payments
10	Assignment and Beneficiaries	<ol style="list-style-type: none"> 1. Neither party may assign all or any portion of this advertising agreement without the written consent of the other party 2. This agreement is made and entered into for the sole protection and benefit of the parties, no rights for any other person
11	General Provisions	<ol style="list-style-type: none"> 1. Parties may not unreasonably withhold requests for information, but understand that some actions may require ST Board or KC Council action 2. Modifications or amendments of this agreement must be made in writing and signed by parties 3. No joint venture or partnership is formed as a result of this agreement 4. Neither party is relieved of its obligations to comply promptly with any provision of this agreement by reason of failure of the other party to enforce prompt compliance 5. Agreement has been reviewed and negotiated by both parties and is neutral

Summary of Downtown Seattle Transit Tunnel (DSTT) Transfer Agreement (Proposed Ordinance 2022-0330)

EXHIBIT	NAME	DESCRIPTION
		6. Each party is responsible for its own costs unless agreed in writing, and if a lawsuit each party must pay its own costs 7. This agreement may be executed in several counterparts
12	Severability	1. Any invalid portion is severable