

**AGREEMENT FOR REMOVAL AND REPLACEMENT
OF
COMMUNICATIONS AND LOW-VOLTAGE EQUIPMENT
AND
RELATED WORK IN THE
DOWNTOWN SEATTLE TRANSIT TUNNEL
BETWEEN
CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY
AND
KING COUNTY**

TABLE OF CONTENTS

<u>Section</u>	<u>Page</u>
1. [Reserved]	5
2. Scope of Communication and Low-Voltage Work, PSTT Electrical Room Work and Separation Wall Work	5
3. Design of Communication and Low-Voltage Work, PSST Electrical Room Work and Separation Wall Work	6
4. Permits	10
5. Construction of Separation Wall Work and Communications and Low- Voltage Equipment Work	11
6. Construction of PSST Electrical Room Work.....	11
7. Matters Common to Construction of the Work.....	11
8. Funding Responsibility for Design and Construction; Payment Process	16
9. Insurance Requirements	17
10. Waiver of Subrogation	18
11. Indemnity; Hold Harmless.....	18
12. Operations & Maintenance Protocols and Responsibilities During and After the End of Joint Operations	20
13. Dispute Resolution	20
14. Miscellaneous.....	21
15. Attachment A	24

**AGREEMENT FOR REMOVAL AND REPLACEMENT OF
COMMUNICATIONS
AND LOW-VOLTAGE EQUIPMENT AND RELATED WORK
IN THE DOWNTOWN SEATTLE TRANSIT TUNNEL**

This AGREEMENT FOR REMOVAL AND REPLACEMENT OF COMMUNICATIONS AND LOW-VOLTAGE EQUIPMENT AND RELATED WORK IN THE DOWNTOWN SEATTLE TRANSIT TUNNEL (“Agreement”) is executed by and between CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY, a regional transit authority organized under Chapter 81.112 RCW (“Sound Transit”) and KING COUNTY, a home rule charter county and political subdivision of the State of Washington (“King County” or “the County”), each a “Party” and collectively the “Parties”.

RECITALS

- A. King County owns the Downtown Seattle Transit Tunnel (“DSTT”) located in the city of Seattle under downtown Seattle streets and the Convention Place Station property (the “CPS Property”) located at 906 Pine Street, Seattle, Washington.
- B. Sound Transit and the County are parties to that certain Agreement regarding the Design, Construction, Operation, and Maintenance of the Downtown Seattle Transit Tunnel and Related Facilities dated June 24, 2002 (“Tunnel Agreement”). Pursuant to the Tunnel Agreement and that certain Downtown Seattle Transit Tunnel Closure Period Construction, Operations and Maintenance Agreement dated June 13, 2003, between September 2005 and September 2007 (the “closure period”), Sound Transit retrofitted the DSTT for joint operations of light rail and buses. Both Sound Transit and the County currently run transit service through the DSTT.
- C. During the closure period, Sound Transit and King County Metro (“Metro”) design engineers concluded that effective joint operations would be served by co-locating and, in some instances, integrating communications equipment and fiber optic lines, and Supervisory Control and Data Acquisition (“SCADA”), fire/life safety, and CCTV equipment for bus and rail. As a result, the parties agreed that Sound Transit would install or upgrade equipment on the CPS Property in the same location as existing County equipment (collectively “Communications and Low-Voltage Equipment”), to support joint bus and rail operations within the DSTT.

- D. King County, as seller, has entered into that certain Purchase and Sale Agreement (“PSA”) with the Washington State Convention Center Public Facilities District (“WSCC”), as buyer, dated July 25, 2017, for the sale of the CPS Property. Under the PSA, the County plans to cease bus operations in the DSTT in March 2019 or September 2019. For the cessation of bus operations, Sound Transit’s Communications and Low-Voltage Equipment for rail operations will need to be removed or revised and relocated to support continued rail operations in the DSTT. The County’s Communications and Low-Voltage Equipment will also need to be removed or revised and relocated to support Metro operations, including a County-owned traction power facility (the “Traction Power Substation,” or “TPSS”), following the end of joint use. The County has committed in the PSA to complete these activities as they are necessary to allow for demolition of Convention Place Station and construction by WSCC of a planned expansion of WSCC facilities on the CPS Property.
- E. Sound Transit and the County have identified an area within the DSTT (the “Cut and Cover”) to be an appropriate new site for most of their Communications and Low-Voltage Equipment (“Communications and Low-Voltage Work”). The Parties have also identified an area near the Cut and Cover, the Pine Street Stub Tunnel (PSST) Electrical Room, in which the remaining portion of the Communications and Low-Voltage Equipment, including electrical infrastructure, will be installed (“PSST Electrical Room Work”). Finally, additional related construction work, consisting of installation of a separation wall between the Cut and Cover and Sound Transit’s active rail line in the DSTT (the “DSTT Merge Point”) and related work will be needed (the “Separation Wall Work”). The Cut and Cover, PSST Electrical Room, and DSTT Merge Point are depicted in Attachment A. The Communication and Low Voltage Work, PSST Electrical Room Work and the Separation Wall Work are referred to herein collectively as the “Work”. With exception of costs expressly allocated to Sound Transit, it is the Parties’ intention that the County pay for the costs of the Work.
- F. The Parties have existing standard operating procedures (“SOPs”) and Standard Maintenance Procedures (SMP’s) for joint operations and maintenance in the DSTT and agree that they shall continue to apply during and after the implementation of this Agreement, unless modified by written agreement of the Parties. With the exception of costs expressly allocated to Sound Transit, it is the parties’ intention that County pay for the costs of the Work.
- G. The Parties intend by this Agreement to establish their respective rights, roles and responsibility related to the Work.

AGREEMENT

1. [Reserved]

2. **SCOPE OF COMMUNICATION AND LOW-VOLTAGE WORK, PSST ELECTRICAL ROOM WORK AND SEPARATION WALL WORK**

2.1. General. The Parties shall undertake design and construction of the Work in accordance with the respective responsibilities and cost-sharing obligations set forth in this Agreement. As further developed during the design process, the “Scope of Work” shall consist of the following:

2.1.1. Communication and Low-Voltage Work. Consists of: (a) removal and decommissioning of existing tunnel communication infrastructure, including Public Address/Variable Message Signs (PA/VMS), Building Management System (BMS) interfaces, Emergency Ventilation System (EVS), and telephones at CPS; (b) removal of existing radio systems at CPS and installation a new 700/800 MHz Radio Bidirectional Amplifier (BDA) at the DSST Westlake Station, and revision of the radio coverage in the CPS area; (c) re-routing and splicing of communications fiber within the tunnel to bypass CPS (144F and 24F); and (d) installation of a new Metro-only Fire Alarm Control Panel (FACP) to serve the CPS area and Metro I-Net within CPS for Metro use at CPS.

2.1.2. PSST Electrical Room Work Consists of: (a) modifications to an existing Distribution Control Automation Monitoring (DCAM) system and power configuration as back-up power, including connection and activation of DCAM system in existing 26kV switchgear; (b) required 480V electrical power improvements (as an emergency power source) by late 2017; (c) installation of a new 26kV circuit breaker in existing Pine Street 26kV switchgear, including connections from termination block points to circuit breakers; (d) two 26 kV feeders between the County’s replacement TPSS and the PSST Electrical Room, terminating at the new 26kV circuit breakers and termination block in the PSST Electrical Room. This work shall be completed in accordance with a schedule agreeable to the parties.

2.1.3. Separation Wall Work. Consists of: (a) erection of separation wall at the DSST Merge Point; (b) installation of operable door/gate providing access between the DSTT and the Cut and Cover structures for the County performing maintenance on the Traction Power Substation; and (c) provision of SCADA to both Parties, reconfiguration of the fire standpipe/deluge system in affected fire zones, CCTV coverage, fire alarm, access control, signage and associated agreements. The separation wall shall be completed by a date to be agreed upon by the Parties after joint use of the DSTT ends, and before WSCC commences any construction work that would block access to the border between the PSA

Property and the Cut and Cover or that would create an unsafe condition in the DSTT.

2.2. Mutual Cooperation; Diligent Efforts. The Parties shall fully and in good faith cooperate with each other to accomplish each of the activities provided in this Agreement. The Parties shall use diligent efforts and shall furnish their best skill and judgment consistent with industry standards and shall coordinate, manage, direct and oversee their respective design consultants, contractors, employees and other persons retained or assigned in connection with the design and construction of the activities described in this Agreement so as to cause substantial completion of each activity in an expeditious and economical manner.

2.3. Access to DSTT Facilities and Equipment. Each Party will provide the other Party necessary permission to enter into areas controlled by the other to carry out the Work. To the extent a Party requires access to property controlled by a third party, Sound Transit will obtain such access as needed to perform Communication and Low-Voltage Work and PSST Electrical Room Work. The County shall obtain such third party access as needed to perform the Separation Wall Work and coordinate with Sound Transit so that the Separation Wall Work does not interfere with either Party's transit operations.

3. DESIGN OF COMMUNICATION AND LOW-VOLTAGE WORK, PSST ELECTRICAL ROOM WORK AND SEPARATION WALL WORK

3.1. Design. The Parties shall cause design services for the Work to be performed as described below. The design process shall result in delivery of completed construction drawings and detailed specifications for each project separately or in combination with another project.

3.1.1. Separation Wall Work. The County shall cause design services for the Separation Wall Work to be performed by a design consultant ("County's Design Consultant") retained by the County in accordance with state law. The County shall be responsible for the cost of design services, except for: (a) costs attributable to design work requested by Sound Transit that exceeds the basis for design criteria in Section 3.1.1.2

3.1.1.1. Design Process. In consultation with the County's Design Consultant, the County and Sound Transit will develop a schedule for preparation, submittal and review of the preliminary reports, plans and outline specification and the completed construction drawings and detailed specifications. Sound Transit may participate in all Separation Wall Work design meetings with the County, the County's Design Consultant, and other design professionals, as appropriate, in the course of the development and approval of all plans and specifications.

3.1.1.2. Project Requirements. The Parties shall develop an agreed project budget and project design requirements for the separation wall, the operable door/gate and all systems to support its operation and monitoring to provide access between the DSTT and the Cut and Cover structures, and other elements of the Separation Wall Work, as applicable (“Separation Wall Work Project Requirements”). The basis for the separation wall design criteria shall be in accordance with: (1) the Requirements of any Authority Having Jurisdiction (AHJ), and (2) with those parts of Sound Transit’s Design Criteria Manual (DCM) and Sound Transit’s Standard Operating Procedures (SOP) that pertain to an operable door/gate in the separation wall and systems to support its operation and monitoring and require the separation wall to be fully grouted with rebar and dowled into the existing tunnel structure. The Parties also anticipate the design to include reuse of an existing roll-up door provided by Sound Transit. Costs for any portions of the Separation Wall Work resulting from a Party’s design requirements above and beyond those required by AHJ shall be the cost responsibility of that Party. For purposes of this Agreement:

a. “Requirements” means any authorizations, consents, approvals, licenses, rulings, judgments, orders, decrees, directives, guidance documents or requirements, or any interpretation or administration of any of the foregoing by, any Authority Having Jurisdiction.

b. “Authority Having Jurisdiction” means any federal, state or local government, or any governmental, quasi-governmental, judicial, public or statutory instrumentality, administrative regulatory agency, authority, body or other entity having jurisdiction over the Parties, or performance of the Work, or any of the Separation Wall Work, Low-Voltage and Communications Work and the PSSST Electrical Room Work.

3.1.1.3. Construction Drawings and Detailed Specifications. The County shall provide Sound Transit a copy of all submittals requiring the County’s review and approval, as and when such submittals are provided to the County. Sound Transit shall give the County written notice within fifteen (15) business days following its receipt of a proposed Separation Wall Work project budget or construction drawings and detailed specifications of its approval or disapproval thereof, specifying in the case of its disapproval, its reason therefor. Sound Transit shall have the right to disapprove such project budget, project schedule and construction drawings and detailed specifications which (i) do not meet the Separation Wall Work Project Requirements, (ii) do not comply with requirements of any applicable federal, state or local law, rule or regulation, and (iii) do not comply with previous construction drawings and detailed specifications in all material respects. If no objections or comments are received within such fifteen (15) business day period, then the submittals shall be deemed approved.

3.1.1.4. Resubmittals. If objections or comments are submitted in writing within the time frame and in accordance with the requirements set forth in Section 3.1.1.3, the County shall cause the County's Design Consultant to make changes in the project budget, project schedule and construction drawings and detailed specifications consistent with reasonable objections or comments made by the Sound Transit and shall resubmit the same to Sound Transit for further review and response under the process described in Section 3.1.1.3. The process of resubmittal and review shall continue until the submittals have been approved by all the parties. The final Construction Drawings and Detailed Specifications setting forth in detail the requirements for the construction of the project which have been approved by the County and Sound Transit shall be the Separation Wall Work Construction Documents.

3.1.2. Communications and Low-Voltage Equipment Work. The County shall cause design services for the Communications and Low-Voltage Equipment Work to be performed by WSCC's design consultant, LMN Architects, ("WSCC's Design Consultant"). The County shall be responsible for the cost of design services, except for Sound Transit's reimbursement obligations under Section 8.

3.1.2.1. Design Process. In consultation with WSCC's Design Consultant, the County and Sound Transit will develop a schedule for preparation, submittal and review of the preliminary plans and outline specification and the completed construction drawings and detailed specifications. Sound Transit and the County may participate in all Communications and Low-Voltage Equipment Work design meetings with WSCC's Design Consultant and other design professionals, as appropriate, in the course of the development and approval of all plans and specifications.

3.1.2.2. Project Requirements. The Parties shall develop an agreed project budget, project schedule and design requirements for the Communications and Low-Voltage Equipment Work ("Communications, Low-Voltage Equipment").

3.1.2.3. Construction Drawings and Detailed Specifications. The County shall provide Sound Transit a copy of all submittals requiring the County's review and approval on the Communications and Low-Voltage Equipment, as and when such submittals are provided to the County. Sound Transit shall give written notice within fifteen (15) business days following its receipt of a proposed Communications and Low-Voltage Equipment Work project budget, and construction drawings and detailed specifications of its approval or disapproval thereof, specifying in the case of its disapproval, its reason therefor. Sound Transit shall have the right to disapprove such budgets and construction drawings and detailed specifications which (i) do not meet the Communications

and Low-Voltage Equipment Project Requirements, (ii) do not comply with requirements of any applicable federal, state or local law, rule or regulation, and (iii) do not comply with previous construction drawings and detailed specifications in all material respects. If no objections or comments are received within such fifteen (15) business day period, then the submittals shall be deemed approved.

3.1.2.4. Resubmittals. If objections or comments are submitted in writing within the time frame and in accordance with the requirements set forth in Section 3.1.2.3, the County shall cause the WSCC's Design Consultant to make changes in the project budget, project schedule and construction drawings and detailed specifications consistent with reasonable objections or comments made by Sound Transit and shall resubmit the same to Sound Transit for further review and response under the process described in Section 3.1.2.3. The process of resubmittal and review shall continue until the submittals have been approved by all the parties. The final construction drawings and detailed specifications setting forth in detail the requirements for the construction of the project which have been approved by the County and Sound Transit shall be the Communications and Low-Voltage Equipment Work Construction Documents.

3.1.3. PSST Electrical Room Work. Sound Transit shall cause design services for the PSST Electrical Room Work to be performed by Sound Transit's design consultant ("Sound Transit's Design Consultant"). Sound Transit shall be responsible for the cost of design services, except for the County's payment obligations under Section 8.

3.1.3.1. Design Process. In consultation with Sound Transit's Design Consultant, the County and Sound Transit will develop a schedule for preparation, submittal and review of the preliminary plans and outline specification and the completed construction drawings and detailed specifications. The County may participate in all PSST Electrical Room Work design meetings with Sound Transit's Design Consultant and other design professionals, as appropriate, in the course of the development and approval of all plans and specifications.

3.1.3.2. Project Requirements. The Parties shall develop an agreed project budget, project schedule and design requirements for the PSST Electrical Room Work (the PSST Electrical Room Work Project Requirements").

3.1.3.3. Construction Drawings and Detailed Specifications. Sound Transit shall provide the County with a copy of all submittals requiring the Sound Transit's review and approval on the PSST Electrical Room Work, as and when such submittals are provided to Sound Transit. The County shall give written notice within fifteen (15) business days following its receipt of a proposed

Communications and Low-Voltage Equipment Work project budget, project schedule, and construction drawings and detailed specifications of its approval or disapproval thereof, specifying in the case of its disapproval, its reason therefor. The County shall have the right to disapprove such budgets, schedules and construction drawings and detailed specifications which (i) do not meet the PSST Electrical Room Work Project Requirements, (ii) do not comply with requirements of any applicable federal, state or local law, rule or regulation, and (iii) do not comply with previous construction drawings and detailed specifications in all material respects. If no objections or comments are received within such fifteen (15) business day period, then the submittals shall be deemed approved.

3.1.3.4. Resubmittals. If objections or comments are submitted in writing within the time frame and in accordance with the requirements set forth in Section 3.1.3.3, Sound Transit shall cause Sound Transit's Design Consultant to make changes in the project budget, project schedule and construction drawings and detailed specifications consistent with reasonable objections or comments made by the County and shall resubmit the same to Sound Transit for further review and response under the process described in Section 3.1.3.3. The process of resubmittal and review shall continue until the submittals have been approved by all the parties. The final construction drawings and detailed specifications setting forth in detail the requirements for the construction of the project which have been approved by the County and Sound Transit shall be the PSST Electrical Room Work Construction Documents.

3.1.3.4. Design Completion. The Parties acknowledge that the PSST Electrical Room Work Construction Documents have been completed.

4. PERMITS

4.1. Permits. The County shall secure or cause its general contractor ("County Contractor") for the Separation Wall Work and WSCC's general contractor/construction manager for the Communications and Low-Voltage Work to secure all permits required to be obtained from governmental agencies or third parties in connection with the Separation Wall Work and the Communications and Low-Voltage Work. Sound Transit shall secure, or cause its general contractor ("Contractor") to secure all permits required to be obtained from governmental agencies or third parties in connection with the PSST Electrical Room Work. King County shall be responsible for costs associated with issuance of permits for the Separation Wall Work and the Communications and Low-Voltage Work. Sound Transit shall be responsible for costs associated with issuance of permits for the PSST Electrical Room Work.

5. CONSTRUCTION OF SEPARATION WALL WORK AND COMMUNICATIONS AND LOW-VOLTAGE EQUIPMENT WORK

5.1. The County will contract with WSCC to have its general contractor construction manager perform the Communications and Low-Voltage Equipment Work per that certain TPSS MOU Amendment dated _____, 2018, a copy of which has been provided to Sound Transit. The County shall be responsible for construction of the Separation Wall Work, including procurement of the general contractor for the Separation Wall Work, and shall provide the necessary administrative, inspection, clerical and other services.

5.2. The County shall advertise the contract for the Separation Wall Work in the official legal publication for the County and if necessary other publications, consistent with applicable laws and regulations.

5.3. The County shall open the bids and shall notify Sound Transit of the time and date of the bid opening. Sound Transit may attend the opening of bids.

5.4. The County shall award the contract(s) to the lowest responsive responsible bidder, subject to applicable laws and regulations.

5.5. The County shall require that Sound Transit be included as an additional insured on all of the general contractor's insurance policies or Owner Controlled Insurance Program, if one is established by WSCC, and that Sound Transit is included as a party indemnified by the general contractor in the contract's indemnification provisions and receives the same indemnification protection as the County.

5.6. The County will provide to Sound Transit regular construction schedule updates for review and comment in order to assure that Sound Transit can support the construction schedules and the schedules are consistent with Sound Transit safety and operations requirements.

6. CONSTRUCTION OF PSST ELECTRICAL ROOM WORK

6.1. Sound Transit has by change order, added the PSST Electrical Room Work to the scope of work of its contract with Mass Electric, Contract E750.

7. MATTERS COMMON TO CONSTRUCTION OF THE WORK

7.1. General. The County, as the Party contracting for the Separation Wall Work and the Communications and Low-Voltage Equipment Work, and Sound Transit, as the Party contracting for the PSST Electrical Room Work, agree to abide by the provisions in this Section 7 on their respective projects.

7.2. Change Orders. For purposes of this Section 7.2, a change order may consist of a “County-Initiated Change Order”, a “Sound Transit-Initiated Change Order”, a “WSCC-Initiated Change Order” or a “Contractor-Initiated Change Order”. A Change Order may increase or decrease the costs to construct the Separation Wall Work, Communications and Low-Voltage Equipment Work, or the PSST Electrical Room Work, or extend or reduce the time for achieving substantial completion or completion of each. All change orders must be in writing. Except as provided herein, all change orders shall require the mutual approval of Sound Transit and the County.

7.2.1. County-Initiated and Sound Transit-Initiated Change Orders. Sound Transit and King County shall not unreasonably withhold or delay their consent to change orders initiated by the other Party, provided: (i) the consent of the general contractor and WSCC (for the Communications and Low-Voltage Equipment Work), is obtained; (ii) the Parties agree on the increase or decrease in cost, if any, to perform the Work; and (iii) the Parties agree to any additional working days to be added to the construction contract.

7.2.2 WSCC-Initiated or Contractor-Initiated Change Orders. The County and Sound Transit shall unreasonably withhold or delay its consent to a WSCC-Initiated or Contractor-Initiated Change Order, provided that : (i) the Parties agree on the increase or decrease in cost, if any, to construct the Separation Wall Work, the Communications and Low-Voltage Equipment Work or the PSST Electrical Room Work, as applicable; (ii) the proposed change order is minor in nature and does not affect overall performance of fire and life safety, electrical or mechanical systems or the continuity of bus and rail operations in the DSST; and (iii) the County and Sound Transit agree to any working days to be added to or deducted from the construction contract.

7.2.3 Timing and Procedures. For all change orders, Sound Transit shall review and approve or object to a proposed change order within ten (10) business days of receiving the proposed change order for review.

7.2.4 Field Orders. Sound Transit and the County anticipate that there will be field orders that will result in alterations to the Work. Each Party shall use its reasonable efforts to apprise the other Party of such proposed alterations the Work and its recommendations regarding them prior to any action being taken. Sound Transit and the County anticipate that it may not always be possible to receive the other Party’s prior approval of such field orders for alterations in a timely manner. Therefore, such field orders may be approved by the County on the Separation Contract Work and on the Communications and Low-Voltage Equipment Work and by Sound Transit on the PSST Electrical Room Work, without prior approval by the other Party, but only if the alterations authorized by these field orders do not materially increase the cost to construct the Work or result in a material modification of the Work, or reduce the safety or continuity of buses and the light rail system operating in the DSST. As soon as practical, the County and Sound Transit shall provide each other with all field orders approved by them.

7.2.4.1. A “material modification” means an alteration that (a) materially alters the design of the Separation Contract Work, the Communications and Low-Voltage Equipment Work or the PSST Electrical Room Work; (b) a reasonable person would know at the time the alteration decision was made would certainly result in an increase of the County or Sound Transit’s operational costs over time; or (c) reduces of safety or continuity of buses and the light rail system operating in the DSTT.

7.2.5 Costs and Expenses. All costs and expenses of County-Initiated Change Orders and Sound Transit-Initiated Changes shall initially be paid by the initiating Party. The costs are to be shared per the funding responsibility per section 8. Accordingly, the financially responsible party will reimburse the other Party for the agreed upon change order amount in accordance with section 8. Costs and expenses of County-Initiated and Sound Transit-Initiated Change Orders shall include, but are not limited to: (i) any costs and expenses of that Party’s Design Consultant and other consultants to prepare and review the change order; (ii) the costs and expenses incurred by the other Party to obtain, revise or amend permits for the change order; (iii) the costs and expenses to construct the change order work; (iv) any other costs or expenses chargeable by the contractor under the contract with the initiating Party in connection with the change order; and (v) if the change order results in an extension of the time period for construction, any additional resulting costs incurred by the other Party.

7.3. Progress Reports; Record Documents. If not otherwise included in the contractor’s monthly request for payment, Sound Transit or the County, as applicable, shall cause its contractor to submit, with a copy delivered to the other Party, written monthly progress reports on the contractor’s work showing percentages of completion and any actual or potential changes to the construction schedule. Each Party shall also require the contractor to maintain at the project site one record copy of all construction documents, all drawings, specifications, addenda, change orders and other modifications, in good order and marked currently to record changes and selections made during construction together with approved shop drawings, product data, samples and similar required submittals. All such records shall be made available to Sound Transit and the County, and any consultant(s) retained by them, upon request.

7.4. Inspections. The County shall have the right to inspect the on-going construction of the PSST Electrical Room Work upon reasonable prior notice to Sound Transit. Sound Transit shall have the right to observe and inspect the on-going construction of the Communications and Low Voltage Equipment Work and Separation Wall Work upon reasonable prior notice to King County. In addition, each Party shall have the right to have an independent consulting architect, engineer or other appropriate consultant to observe and inspect the construction work. Each Party’s agents and employees shall comply with the contractor’s work site safety requirements when present on the site.

7.5. Required Construction Contract Provisions. The Parties shall ensure that the construction contracts with the County's contractor's performing the Communications and Low-Voltage Equipment work and Separation Wall Work and Sound Transit's Contractor on the PSST Electrical Room Work and all other construction contracts, including subcontracts, include provisions requiring the following:

7.5.1. The Contractor shall comply with all prevailing wages laws as set forth in Chapter 39.12 RCW.

7.5.2. The Contractor shall promptly pay its subcontractors perform work in accordance with all requirements of law.

7.5.3. The Contractor shall provide a performance and payment bond for the full contracted value of the work, in accordance with chapter 39.08 RCW.

7.5.4. The Contractor shall initiate, maintain and provide supervision of safety precautions and programs in accordance with all applicable requirements of law.

7.5.5. The Contractor shall take all action necessary to ensure the continuity of bus and rail operations in the DSST.

7.5.6. The Contractor shall immediately remedy, remove, replace, or dispose of unauthorized or defective work or materials.

7.5.7. The Contractors shall secure for the benefit of the County and Sound Transit all warranties of the work provided by subcontractors, suppliers and manufacturers of products materials, systems and components of the Separation Wall, Communications and Low-Voltage, and PSST Electrical Room Work. Each Party shall provide the other with copies of all warranties.

7.6. Completion of Work.

7.6.1. Substantial Completion. Each Party will give notice in writing to the other when the contractor performing Work for that Party anticipates that the Low-Voltage and Communications Work, Separation Wall Work, PSST Electrical Room Work, as applicable, shall have achieved substantially complete. Within 15 days of the notice, the other Party may inspect and review that part of the Work, as applicable, to determine whether it is substantially complete. The inspecting Party will prepare a punch list to be completed prior to acceptance of the Low-Voltage and Communications Work, Separation Wall Work, and PSST Electrical Room Work. King County or Sound Transit may recommend reasonable punch list items to, subject to approval by the other Party, such approval not to be unreasonably withheld. The completion of the punch list shall not be required in

order for the Low-Voltage and Communications Work, Separation Wall Work, PSST Electrical Room Work, as applicable to be substantially complete.

7.6.2. Completion of Punch List Items. Following substantial completion, Sound Transit or King County, as applicable, shall cause the contractor to complete all punch list items in accordance with the contract documents for the Low-Voltage and Communications Work, Separation Wall Work, and PSST Electrical Room Work.

7.6.3. Acceptance and Final Completion. Sound Transit or King County, as applicable, shall give notice in writing when it receives notice from the contractor that the Low-Voltage and Communications Work, Separation Wall Work, and PSST Electrical Room Work has achieved acceptance. To the extent reasonably practical, the responsible Party shall give notice in writing at least thirty (30) days prior to the date upon which the Low-Voltage and Communications Work, Separation Wall Work, and PSST Electrical Room Work shall have achieved Final Completion. Final Completion of the Work or either of the Low-Voltage and Communications Work, Separation Wall Work, and PSST Electrical Room Work shall have occurred when all of the events set forth in this Section 7.6 have occurred and Sound Transit or the County, as applicable, has delivered the items described in Sections 7.7 and 7.7.1 through 7.7.5 of this Agreement.

7.6.4 Turnover of the Project. Upon acceptance of the Low-Voltage and Communications Work and Separation Wall Work by the County, and acceptance of the PSST Electrical Room Work by Sound Transit: 1) King County shall own and control each element of the Work used for Metro bus operations, including those elements located on Sound Transit-owned property, and shall be responsible, without limitation, for all operations, maintenance, security, and all in accordance with Section 12; 2) Sound Transit shall own and control each element of the Work used for Sound Transit rail operations, including those elements located on King County-owned property, and shall be responsible, without limitation , for all operations, maintenance, security, and all in accordance with Section 12; and 3) Items shared by King County and Sound Transit shall be accessible to either party, subject to specific maintenance and access procedures in accordance with section 12. Examples of items in 7.6.4-3) above include but are not limited to , fiber backbone communication systems, certain security systems, fire alarm systems, and CCTV systems necessary at the boundaries between the properties and required for safe operation of the tunnel, rail, and bus operations..

7.7 Close-Out Obligations. Within 30 days of acceptance of the Low-Voltage and Communications Work, Separation Wall Work and PSST Electrical Room Work, Sound Transit for the PSST Electrical Room Work and King County for

the Low-Voltage and Communications Work and Separation Wall Work, for shall obtain and submit to the other Party, the following:

7.7.1 As-built Plans. PDFs of contractor markups to the as-built plans. Thereafter, final as-built plans will be provided in electronic form in CAD format to the other Party within 12 months of acceptance.

7.7.2 Manuals. All technical and service, instruction, procedure, or other manuals relating to the operation and maintenance of a systems and other mechanical devices and equipment installed, except insofar as relating to the responsible Party's own personal property or fixtures.

7.7.3 Warranties. The responsible Party shall cause the general contractor to secure for the benefit of the other Party all warranties, guarantees, maintenance contracts, and machinery and equipment warranties of the work provided by contractors, suppliers, materialmen, and manufacturers of components of the Low-Voltage and Communications Work, Separation Wall Work and PSST Electrical Room Work. Upon acceptance of the Low-Voltage and Communications Work, Separation Wall Work and PSST Electrical Room Work, Sound Transit or King County, as applicable, shall cause the general contractor to assign such warranties for each element of the Work owned by the other Party to that Party. After acceptance of the Low-Voltage and Communications Work, Separation Wall Work and PSST Electrical Room Work and during the warranty period, each Party shall assist the other to enforce any warranties or guarantees with respect to the Low-Voltage and Communications Work, Separation Wall Work and PSST Electrical Room Work upon request. **Sound Transit and King County make no other warranties, express or implied, with respect to the Work. The only warranties available to each Party are those provided by consultants, contractors and the WSCC in their respective contracts with the Parties.**

7.7.4 Permits and Licenses. The originals (if not posted at the Work site) of all Permits, licenses, and other approvals necessary for the occupation, use, and operation of the Low-Voltage and Communications Work, Separation Wall Work and PSST Electrical Room Work.

7.7.5 As-Built Survey. Each Party shall cause the contractor to provide the other Party with any land engineering work it performs or as-built plans prepared under the contract documents for the Low-Voltage and Communications Work, Separation Wall Work and PSST Electrical Room Work.

8. FUNDING RESPONSIBILITY FOR DESIGN AND CONSTRUCTION; PAYMENT PROCESS

8.1. Funding Obligations. At the date of signing of this agreement for all work going forward, the County and Sound Transit shall provide funding for design and construction and ongoing operations and maintenance of the Work as follows:

8.1.1. PSST Electrical Room Work. Sound Transit shall pay all costs at its expense for the PSST Electrical Room Work, including but not limited to design, construction, testing and commissioning in accordance with agreed Sound Transit and King County design and performance requirements.

8.1.2. Low-Voltage and Communication Work and Separation Wall Work. King County shall pay all costs for design, construction, testing and commissioning of the Communication and Low-Voltage Equipment Work and Separation Wall Work in accordance with agreed King County and Sound Transit design and performance requirements. However, Sound Transit shall pay all costs for all agreed design, construction, testing and commissioning performed at its request that exceeds the requirements for a safe and operational roll up door in the separation wall per Section 3.1.1.2. Each Party shall be responsible for payment of their own internal staff and project management costs. King County Rail staff shall be considered internal King County staff.

8.2. Payment/Reimbursement Process. The Parties will provide each other with detailed invoices for Work in a mutually acceptable format and manner. Each Party will pay the other party, as applicable, in the full amount of the invoice or provide the other Party with a written request for further information or explaining denial of reimbursement within thirty (30) calendar days after receipt of the invoice. The Parties will meet in person to review and respond to requests for further information or basis for denial of reimbursement within ten (10) business days after the delivery of written notice from one Party to the other Party, with the goal to reach resolution on amounts owing. In the event the Parties are unable to resolve disagreements related to costs and reimbursements, they will use the dispute resolution process in Section 13.

9. INSURANCE REQUIREMENTS

9.1. Sound Transit and King County. Sound Transit and King County each acknowledge, agree, and understand that the other Party is self-funded for all of its liability exposures. Each Party agrees to maintain through its fully funded self-insurance program coverage for all of its liability exposures under this Agreement. Each Party will provide the other Party with at least thirty (30) calendar days prior written notice of any material change in its self-funded insurance program. Upon written request from one Party, the other Party will provide a blanket letter of self-insurance as adequate proof of coverage. Each Party further agrees and understands that the other Party does not purchase Commercial General Liability insurance and is a self-insured governmental entity; therefore, neither Party has the ability to name the other as an additional insured

for such risks. Each Party shall maintain “All Risk” property insurance in an amount equal to the full replacement value of its improvements and personal property located on the premises or shall self-insure improvements and personal property on the premises. Such property insurance shall name the other Party as an additional insured.

9.2. Consultant and Contractor Insurance. Sound Transit and King County shall require their respective Design Consultants, other consultants, if any, and contractors to procure and maintain, at a minimum, insurance against claims for injuries to persons or damages to property which may arise from, or in connection with the performance of work thereunder by the Design Consultant, consultant, contractor, and their agents, representatives, employees and/or subcontractors. The Parties shall separately consult and agree on the scope of coverage and acceptable limits for each project under this Agreement.

10. WAIVER OF SUBROGATION

10.1. Waiver of Subrogation. Sound Transit and the County agree that neither shall make a claim against or seek recovery from the other Party for any loss, injury or damage resulting from risks for which insurance coverage is provided, or required to be provided hereunder (or would have been provided had the County and Sound Transit not elected to self-insure) and each hereby releases the other from any such claim or liability regardless of the cause of such loss or damage. Such waiver is conditioned upon the Parties’ ability to enter into such a waiver and is valid only to the extent subrogation is waived by their respective insurers.

11. INDEMNITY; HOLD HARMLESS

11.1. Sound Transit Indemnity. Sound Transit shall protect, defend, indemnify, and save harmless the County and its officers, officials, employees and agents, from any and all claims, demands, suits, penalties, losses, damages, judgments, or costs of any kind whatsoever (“Claims”), arising out of or in any way resulting from any negligent acts or omissions of Sound Transit’s officers, employees, agents, contractors and/or subcontractors of all tiers in the performance of this Agreement, to the maximum extent permitted by law, including RCW 4.24.115, as now enacted or as hereinafter amended. In the event any such liability arises from the concurrent negligence of the indemnifying Party and the other Party, the indemnity obligation of this Section shall apply only to the extent of the negligence of the indemnifying Party’s officers, employees, agents, contractors and/or subcontractors of all tiers.

11.1.1. Sound Transit’s obligations under this Agreement shall include, but not be limited to:

11.1.1.1. The duty to promptly accept tender of defense and provide defense to the County at Sound Transit’s own expense.

11.1.1.2. The duty to indemnify and defend the County from any such claim, demand, and/or cause of action brought by or on behalf of any of Sound Transit's employees or agents. The foregoing duty is specifically and expressly intended to constitute a waiver of Sound Transit's immunity under the Washington Industrial Insurance Act, RCW Title 51, as respects the County only, with a full and complete indemnity and defense of claims made by Sound Transit's employees. The Parties acknowledge that these provisions were mutually negotiated and agreed upon by them.

11.2. King County Indemnification. The County shall protect, defend, indemnify, and save harmless Sound Transit and its officers, officials, employees, and agents, from any and all claims, demands, suits, penalties, losses, damages, judgments, or costs of any kind whatsoever (hereinafter "claims"), arising out of or in any way resulting from any negligent acts or omissions of the County's officers, employees, agents, contractors and/or subcontractors of all tiers in the performance of this Agreement, to the maximum extent permitted by law, including RCW 4.24.115, as now enacted or as hereinafter amended. In the event any such liability arises from the concurrent negligence of the indemnifying Party and the other Party, the indemnity obligation of this Section shall apply only to the extent of the negligence of the indemnifying Party's officers, employees, agents, contractors and/or subcontractors of all tiers.

11.2.1. The County's obligations under this Agreement shall include, but not be limited to:

11.2.1.1. The duty to promptly accept tender of defense and provide defense to Sound Transit at the County's own expense.

11.2.1.2. The duty to indemnify and defend Sound Transit from any such claim, demand, and/or cause of action brought by or on behalf of any of the County's employees, or agents. The foregoing duty is specifically and expressly intended to constitute a waiver of the County's immunity under the Washington Industrial Insurance Act, RCW Title 51, as respects Sound Transit only, with a full and complete indemnity and defense of claims made by the County's employees. The Parties acknowledge that these provisions were mutually negotiated and agreed upon by them.

11.3. Contractors' and Consultants' Indemnification. Except for the design and construction contract related to the PSST Electrical Room Work, each Party shall include, and cause their respective Design Consultants, other consultants, and contractors to include, a provision all design and construction contracts requiring the consultant/contractors to indemnify the other Party, its officers, employees and agents on terms substantially equivalent to the Parties indemnification obligations to each other under this Agreement, including a provision for the waiver by mutual negotiation, as respects the other Party, any immunity that would otherwise be available against claims brought by or on behalf of the consultants' and contractors' employees under the Washington Industrial Insurance Act, Title 51 RCW.

11.4. Notice of Claim. Any Party making a claim for indemnification pursuant to this Section (an “**Indemnified Party**”) must give the Party from whom indemnification is sought (an “**Indemnifying Party**”) written notice of such claim (an “**Indemnification Claim Notice**”) promptly after the Indemnified Party receives any written notice of any action, lawsuit, proceeding, investigation or other claim (a “proceeding”) against or involving the Indemnified Party by a government entity or other third party, or otherwise discovers the liability, obligation or facts giving rise to such claim for indemnification; provided that the failure to notify or delay in notifying an Indemnifying Party will not relieve the Indemnifying Party of its obligations pursuant to this Section except to the extent that the Indemnifying Party’s ability to defend against such claim is actually prejudiced thereby. Such notice shall contain a description of the claim and the nature and amount of such loss (to the extent that the nature and amount of such loss is known at such time).

11.5. Survival of Indemnity Obligations. The Parties’ mutual indemnity and hold harmless obligations will survive the termination of this Agreement.

12. OPERATIONS & MAINTENANCE PROTOCOLS AND RESPONSIBILITIES DURING AND AFTER THE END OF JOINT OPERATIONS

12.1. Existing Standard Operating Procedures (SOPs) and Standard Maintenance Procedures (SMP’s). The Parties will follow existing joint Sound Transit and King County SOPs and SMP’s throughout the period of joint operations in the DSTT.

12.2. Post-Joint Operations SOPs and SMP’s. The Parties will develop SOPs and SMP’s to address access to the Cut and Cover for the period after joint operations has ceased. Until any new SOPs or SMP’s are developed the existing will be followed.

12.3. PSST Electrical Room SOPs. The Parties will develop a new SOP for the PSST Electrical Room access to address the period of time after joint operations have ceased; with the intent that such new SOP would govern for as long as King County maintains interest in any tunnel facilities or equipment and operating agreements between the parties. Prior to joint operations ceasing and a new SOP(s) for the PSST Electrical Room as been jointly established and agreed upon, the existing SOP(s) pertaining to access to and from the PSST Electrical Room shall remain in full force and effect.

12.4. Other SOPs. The Parties will identify and develop any additional SOPs that are required for safe implementation of this Agreement or operations after this Agreement is implemented.

13. DISPUTE RESOLUTION

13.1. Dispute Escalation. The Parties agree to use their best efforts to resolve any disputes arising under this Agreement using good-faith negotiations between Sound Transit's Project Manager and King County Metro's Project Manager. The Parties further agree to communicate regularly to discuss matters arising under this Agreement and to prevent disputes from arising. Except as otherwise provided in this Agreement, the Parties agree to use the following dispute escalation process:

13.1.1. Step One. Sound Transit's Executive Director, Design, Engineering, and Construction Management and King County's Metro Transit Manager of Design and Construction or their designees shall confer and attempt to resolve the dispute within five (5) business days of written notification by either Party.

13.1.2. Step Two. In the event Sound Transit's Executive Director, Design, Engineering, and Construction Management and King County Metro Transit Manager of Design and Construction or their designees are unable to resolve the dispute within five (5) business days as provided in step one, either party may refer the dispute to Sound Transit's Deputy Chief Executive Officer and King County Metro's Deputy General Manager or their designees. They shall confer and attempt to resolve the dispute within five (5) business days of receiving the referral.

13.1.3. Step Three. In the event Sound Transit's Deputy Chief Executive Officer and King County Metro Transit's Deputy General Manager or their designees are unable to resolve the dispute within five (5) business days as provided in step two, either party may refer the dispute to the Chief Executive Officer of Sound Transit and King County Metro Transit's General Manager. They shall confer and attempt to resolve the dispute within five (5) business days after receiving the referral.

13.2. Mediation. If the Parties are unable to resolve the dispute utilizing the process set forth in Section 13.1.1 to 13.1.3, the Parties may, by agreement, choose to submit the matter to a non-binding mediator. The Parties shall share equally in the cost of the mediator.

13.3. Prerequisite Litigation. Neither Party shall have the right to seek relief in a court of law until and unless the procedural steps in this section 13 are exhausted.

14. MISCELLANEOUS

14.1 Severability. Should any of the provisions of this Agreement be found to be invalid, illegal, or unenforceable by any court of competent jurisdiction, such provision shall be stricken and the remainder of this Agreement shall nonetheless remain in full force and effect unless striking such provision shall materially alter the intention of the Parties.

14.2 Notices. All notices or requests required or permitted under this

Agreement shall be in writing, and shall be personally delivered, or sent by certified mail, return receipt requested, postage prepaid, or sent by nationally recognized overnight courier, or by facsimile transmission, and notice shall be deemed given when so delivered, received, or faxed (provided the fax machine has issued a printed confirmation of receipt). All notices or requests to any Party shall be sent to all other Parties as follows:

If to Sound Transit:

John Sleavin, P.E. Deputy Executive
Director

Union Station

401 South Jackson Street

Seattle, WA 98104-2826

With copies to:

Jennifer Belk, Deputy General Counsel

Union Station

401 South Jackson Street

Seattle, WA 98104

If to King County:

King County Metro Transit

Attn. Ron Moattar

201 South Jackson Street

Seattle WA 98104

201 Jackson Street

Any Party may change the address to which notices shall be sent by notice to the other Party.

14.3. Binding Effect. This Agreement shall be binding upon, and inure to the benefit of, the Parties hereto and their respective successors, as well as such assigns as may be permitted.

14.4. Authority. Sound Transit is a regional transit authority, duly organized under Chapter 81.112 RCW, validly existing and in good standing under the laws of the State of Washington. King County is a home rule charter county and political subdivision of the State of Washington. By execution of this Agreement, Sound Transit and King County each represent to the other that it has authority to enter into this Agreement and perform its obligations hereunder.

14.5 Relationship of the Parties. The Parties execute and implement this Agreement as separate entities. No partnership, joint venture or joint undertaking shall be construed from this Agreement.

14.6. No Third Party Rights. The provisions of this Agreement are intended solely for the benefit of, and may only be enforced by, the Parties hereto, and their respective successors and permitted assigns. Nothing in this Agreement is intended to, nor shall be construed to give any rights or benefits in the Agreement to anyone other than Sound Transit and the County, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Sound Transit and the County and not for the benefit of any other Party.

14.7 Accounting, Inspection, and Audit. The Parties shall keep such full and detailed accounts and records as may be necessary for proper financial management under this Agreement. Until six (6) years after completion of all Work, any of either Party's records related to any matters covered by this Agreement not

otherwise privileged shall be subject to inspection, review, or audit by either Party at the requesting Party's sole expense. Such records shall be made available for inspection during regular business hours within a reasonable time of the request.

14.8. Waiver. Waiver of any breach of any term or condition of this Agreement shall not be deemed a waiver of any prior or subsequent breach. No term or condition shall be waived, modified or deleted except by an instrument, in writing, signed by the Parties hereto.

14.9. Counterparts. This Agreement may be executed in counterparts, each of which shall constitute an original and all of which constitute but one original.

14.10. Joint Drafting Effort. This Agreement shall be considered for all purposes as prepared by the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof.

14.11. Governing Law/Venue. This Agreement shall be governed and construed in accordance with the laws of the state of Washington. In the event any action is brought to enforce any of the provisions of this Agreement, the Parties agree that venue shall lie exclusively in King County Superior Court.

14.12. Effective Date. This Agreement shall become effective upon signature by both Parties. The provisions of this Agreement apply only to events and actions that occur after the Effective Date.

15. ATTACHMENTS

ATTACHMENT A

SIGNATURES APPEAR ON FOLLOWING PAGE

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date and year set forth below.

SOUND TRANSIT:

By: _____

Name: _____

Title: _____

Date _____, 2018

KING COUNTY:

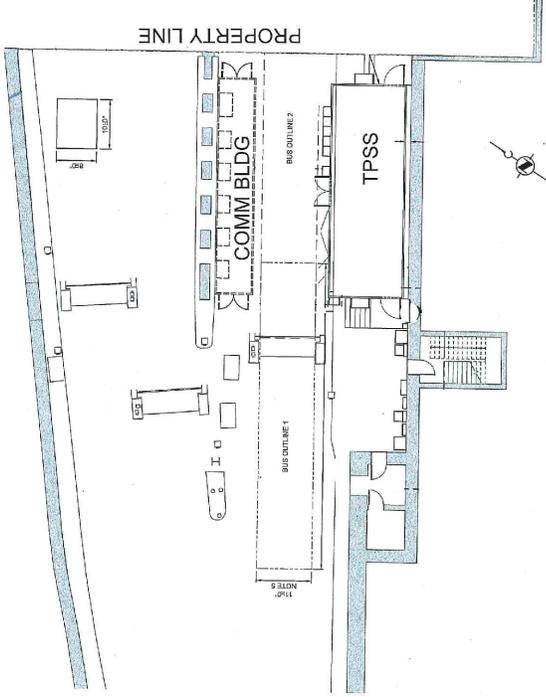
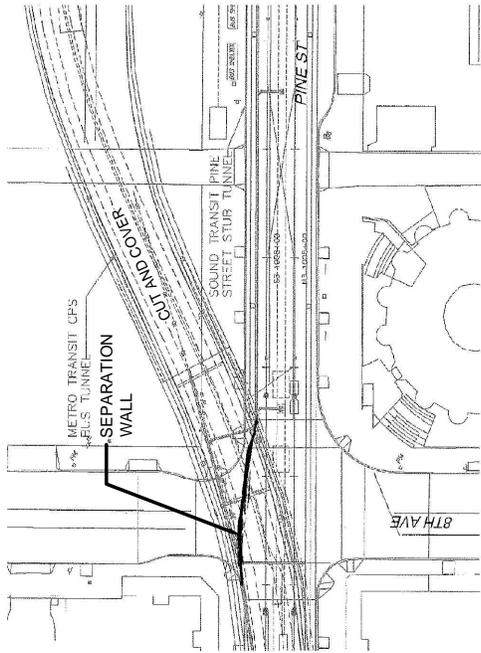
KING COUNTY, a political subdivision of the State of Washington

By: _____

Name: _____

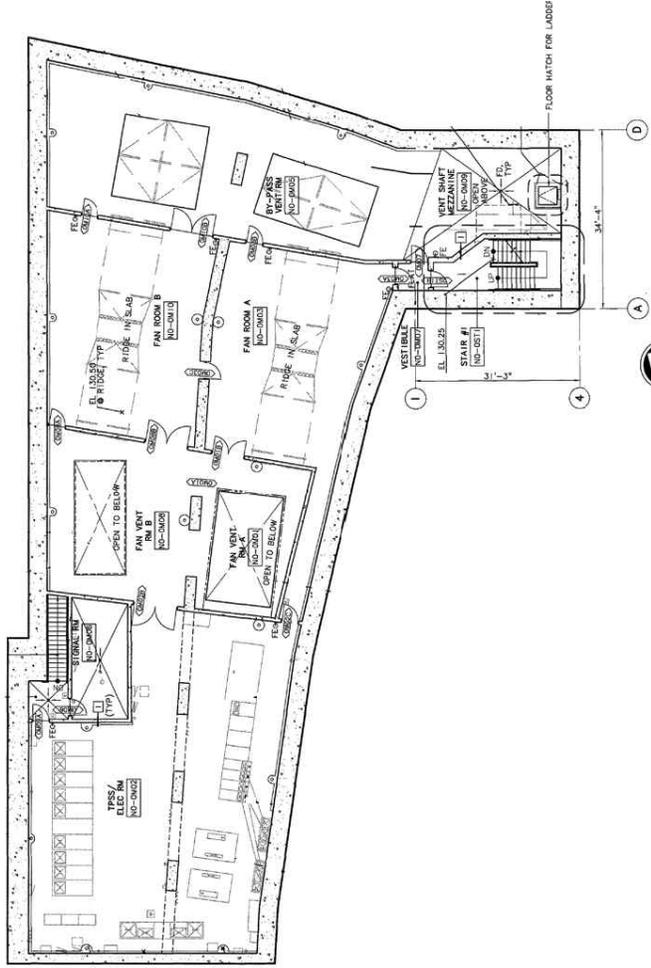
Title: _____

Date: _____, 2018



CUT & COVER DIVIDING WALL

TEMPORARY COMMUNICATIONS ROOM



PINE STREET ELECTRICAL ROOM