



## Motion No. M2022-84

### Agreement with King County for the Transfer of the Downtown Seattle Transit Tunnel

Meeting:	Date:	Type of action:	Staff contact:
Rider Experience and Operations Committee	10/19/2022	Recommend to Board	<b>Kimberly Farley, Deputy CEO</b>
Board	10/27/2022	Final action	

### Proposed action

Authorizes the chief executive officer to (1) execute a transfer agreement with King County to transfer ownership of the Downtown Seattle Transit Tunnel to Sound Transit; and (2) execute three follow-on agreements as required in the transfer agreement.

### Key features summary

- King County will transfer ownership to Sound Transit of the assets that comprise the Downtown Seattle Transit Tunnel (DSTT). This includes real property rights, the physical structure, artwork, related agreements, and contracts.
- Sound Transit would take the DSTT in “as-is” condition and pays no financial consideration.
- In order to fully implement the transfer, the agreement requires that:
  - Sound Transit and King County execute an agreement (the “Metro Facilities Agreement”) that allows the county to retain ownership and use of certain transit-related assets, facilities, and equipment with the DSTT (the “Retained Assets”) and establishes a process for the County to propose placement of future additional transit assets within the DSTT (“Future Assets”).
  - Sound Transit and King County execute an agreement (the “Downtown Seattle Transit Tunnel Station Advertising Revenue Share Agreement”) to share net advertising revenue generated in DSTT stations and use that revenue to fund low-income fare programs (the “Advertising Agreement”).
  - The City of Seattle, Sound Transit, and King County execute a Transfer and Conveyance Agreement acknowledging the DSTT transfer and terminating certain agreements that become obsolete upon transfer.
- In addition, King County would provide transition support to Sound Transit for 5 years.
- The King County Council has approved the transfer agreement, including the execution of the follow-on agreements. The Seattle City Council must approve execution of the Transfer and Conveyance Agreement. Finally, Federal Transit Administration approval is required for the ownership transfer.

### Background

Sound Transit’s Link light rail has operated within the Downtown Seattle Transit Tunnel since 2009. The terms and conditions for Sound Transit’s operations were established through the 2002 Agreement regarding the Design, Construction, Operation, and Maintenance of the Downtown Seattle Transit Tunnel and Related Facilities (the “Joint Operating Agreement”), which was executed by Sound Transit,

the city, and the county. Between 2009 and 2019, the DSTT was jointly used for light rail and County and Sound Transit buses. When the County stopped operating buses in the DSTT in 2019, the parties began negotiations to transfer ownership to Sound Transit.

### History.

In 1990, the Municipality of Metropolitan Seattle (“Metro”), now merged with the County, completed construction of the Downtown Seattle Transit Tunnel (the “DSTT”). The DSTT provides an additional right of way for transit vehicles through downtown Seattle through an approximately 1.3 mile long pair of transit tunnels. In 1985, the City of Seattle granted Metro (now King County) the right to use the city right-of-way to construct and operate the DSTT for public transportation purposes through a Master Cooperation Agreement.

In 2002, Sound Transit, the city, and the county entered the Joint Operating Agreement allowing Sound Transit to close the DSTT to retrofit it for light rail use and subsequently to begin light rail operations. From 2009, when Link use commenced, to 2019, the DSTT was jointly used by county buses, Sound Transit buses and Sound Transit light rail. During that period, Sound Transit paid a share of the county’s outstanding bond payment obligations proportionate to its use of the DSTT. In total, Sound Transit paid \$86,666,479 in bond payments. King County has completed paying off the bonds for the DSTT.

In March 2019, the county stopped operating buses in the DSTT, leaving Sound Transit as the only operator within the DSTT. In July 2018, the county sold its Convention Place Station property, which had served as the northern terminus staging, bus stop and layover facility for buses using the DSTT. Sound Transit does not use Convention Place Station for Link service.

King County has owned and managed operations within the DSTT under the Joint Operating Agreement and has operated Link on behalf of Sound Transit under a series of intergovernmental agreements, most recently the July 15, 2019 Intergovernmental Agreement for the Operation and Maintenance of Link (the Link O&M Agreement), as amended in 2020 and 2021. When ownership transfers to Sound Transit, the Joint Operating Agreement will become obsolete, and the Link O&M Agreement will remain in effect.

### Due Diligence

To prepare for the transfer, the parties conducted due diligence of the DSTT physical condition, generating extensive documentation, including the DSTT Safety and Reliability Review Report dated December 11, 2020 and a January 31, 2019 Transit Facility Needs Condition Report. Based on these assessments and others, Sound Transit established the DSTT Capital Improvement program at \$96.4 million in 2019. The program has currently expended \$11 million at the end of 2021, with the current workplan continuing into 2028.

Pending the transfer, Sound Transit and the County entered into several interim agreements that allowed Sound Transit to address pressing maintenance and operations needs, including the DSTT 26KV System Interim Agreement between King County and Sound Transit dated August 10, 2021, (re: control of the 26KV system); the Transition Plan Regarding Security, Law Enforcement and Emergency Management within the DSTT dated February 12, 2019, (addresses control of DSTT security; and the First Amendment (2020) to the Link O&M Agreement dated July, 2019, (addresses control of vertical conveyances). Each of these agreements was authorized pursuant to the Link O&M Agreement.

Sound Transit has appraised the value of the DSTT structure and associated property rights as of October 8, 2019, to be \$27,250,000 in easement rights and \$528,000,000 in depreciated tunnel costs.

### The Downtown Seattle Transit Tunnel Transfer Agreement.

This Board action will approve execution of the Transfer Agreement, whereby King County will transfer to Sound Transit all assets it owns comprising the DSTT. This includes the structure itself, all associated

real property rights, contracts and agreements, and artwork. The county will transfer the DSTT in an “as-is” condition for no financial consideration.

In addition, the Transfer Agreement calls for King County and Sound Transit to execute new agreements, as well as to amend or terminate existing agreements, to fully implement the transfer. Sound Transit and the county will execute the Metro Facilities Agreement and the Advertising Revenue Share Agreement, each of which is more fully described below. Sound Transit, the county and the City of Seattle will execute the Transfer and Conveyance Agreement more fully described below to address issues related to transit use of city right of way. And finally, as a condition of the transfer, Sound Transit and the county must amend the Link O&M Agreement to make technical changes needed to conform to the change in ownership. That amendment is the subject of a separate board action.

- Metro Facilities Agreement.
  - The Metro Facilities Agreement describes the terms and conditions by which King County may continue to operate and maintain its retained assets located within the DSTT, including:
    - Procedures and routes for County access into the DSTT;
    - Sound Transit obligations to provide 26KV and other utility services to King County at the county’s expense;
    - Process for relocating retained assets at Sound Transit request;
    - Process for review and placement of future assets within the DSTT, provided their placement does not interfere with or have a negative impact on current and future operations of the DSTT;
    - King County responsibilities to provide transition support to Sound Transit for a period of five years.
- Advertising Revenue Share Agreement.
  - Sound Transit will manage advertising within the DSTT stations consistent with its own policies and business practices.
  - Sound Transit will share net revenue generated from advertising within the DSTT stations evenly with King County through June 31, 2042, or until the County receives \$25,000,000, whichever occurs first.
  - During this period, Sound Transit and King County will use the net revenue generated from the DSTT station advertising solely to fund reduced or no-cost fare pricing for low-income public transit customers.
- Transfer and Conveyance Agreement.
  - The DSTT is primarily located within City of Seattle right of way. In July, 2000, the city granted Sound Transit the right to use city right of way for Link light rail, through that certain Agreement Transit for Grant of Non-Exclusive Use of a Light Rail Transit Way as Related to the Central Link Light Rail Project (the “Transit Way Agreement”).
  - By executing the Transfer and Conveyance Agreement, the City of Seattle, Sound Transit and King County (a) acknowledge the transfer of the DSTT, (b) acknowledge that DSTT’s presence in street right of way will now be exclusively governed by the Transit Way Agreement, (c) terminate the Master Cooperation Agreement, and (d) terminate the Joint Operating Agreement.

Conditions and Timing of Ownership Transfer

The King County Council must approve the Transfer Agreement and the City Council must approve execution of the Transfer and Conveyance Agreement. FTA must approve the County's transfer of the DSTT and Sound Transit's acceptance of the DSTT. Sound Transit and the County must amend the Link O&M Agreement as described above. Closing of the ownership transfer will occur within 90 days of receiving all necessary approvals.

## **Fiscal information**

The DSTT will be transferred without Sound Transit payment of financial consideration.

The Agency's financial plan assumes the capital replacement cost of the infrastructure of the tunnel, stations and will include in future budget development process vertical conveyances, and other infrastructure within the DSTT.

Sound Transit will become responsible to insure the DSTT upon the transfer of ownership. These costs are included in the Proposed 2023 Budget and TIP.

The agency will split DSTT generated advertising revenues with King County until 2042 or \$25 million, whichever earlier. ST's portion of advertising revenues will be used to solely to fund reduced or no-cost fare pricing for low-income public transit customers. The impact of this action on the remaining available debt capacity in the minimum year (2042) is 0.0% in the minimum year. This is a negligible impact of agency affordability and does not impact the affordability of the finance plan.

## **Disadvantaged and small business participation**

Not applicable to this action.

## **Public involvement**

Not applicable to this action.

## **Time constraints**

A delay in approval of this motion would not cause significant impact.

## **Prior Board/Committee actions**

Motion No. M2002-64: Authorized the Executive Director to execute a Memorandum of Agreement among Sound Transit, King County, and the City of Seattle defining the terms and conditions to permit the joint operations of trains and buses in the Downtown Seattle Transit Tunnel.

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**Environmental review** – KH 10/13/22

**Legal review** – JB 10/13/22

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**Motion**

It is hereby moved by the Board of the Central Puget Sound Regional Transit Authority that the chief executive officer is authorized to (1) execute a transfer agreement with King County to transfer ownership of the Downtown Seattle Transit Tunnel to Sound Transit; and (2) execute three follow-on agreements as required in the transfer agreement.

APPROVED by the Board of the Central Puget Sound Regional Transit Authority at a regular meeting thereof held on \_\_\_\_\_.

\_\_\_\_\_  
 Kent Keel  
 Board Chair

**Attest:**

\_\_\_\_\_  
 Kathryn Flores  
 Board Administrator



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A motion of the Board of the Central Puget Sound Regional Transit Authority authorizing the chief executive officer to (1) execute a transfer agreement with King County to transfer ownership of the Downtown Seattle Transit Tunnel to Sound Transit; and (2) execute three follow-on agreements as required in the transfer agreement.

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APPROVED by the Board of the Central Puget Sound Regional Transit Authority at a regular meeting thereof held on October 27, 2022.

  
\_\_\_\_\_  
Kent Keel  
Board Chair

**Attest:**

  
\_\_\_\_\_  
Kathryn Flores  
Board Administrator