

Third Amendment (2022)  
to the  
Intergovernmental Agreement  
Between  
Sound Transit and King County  
For the Operations and Maintenance of the Link Light Rail System  
April 2019

This Third Amendment to the Intergovernmental Agreement between Sound Transit and King County for the Operations and Maintenance of the Link Light Rail System, executed July 2019, is dated \_\_\_\_\_, 2022. The Central Puget Sound Regional Transit Authority (“Sound Transit”) and King County (the “County”) may be referred to individually as “Party” and collectively as “Parties.”

BACKGROUND

- A. The Parties entered into an Intergovernmental Agreement Between Sound Transit and King County for the Operation and Maintenance of Link Light Rail in April 2019 (“Link O&M Agreement”).
- B. The Parties amended the Link O&M Agreement in 2020 (“First Amendment”) to assign to Sound Transit the obligations, cost, and expense to operate and maintain the elevators and escalators in the Downtown Seattle Transit Tunnel (“DSTT”).
- C. The Parties amended the Link O&M Agreement in 2021 (“Second Amendment”) to extend King County’s responsibilities under the Link O&M Agreement to include operations to the new Northgate Station and, in anticipation of the transfer of the DSTT from King County to Sound Transit, to incorporate certain responsibilities for the operation and maintenance of the DSTT previously performed by the King County Facilities Division under the terms of the DSTT Agreement, to the King County Rail Division under the Link O&M Agreement.
- D. The Parties intend for this Amendment 3 to be executed simultaneously with the Downtown Seattle Transit Tunnel Transfer Agreement.

NOW, THEREFORE, the Parties agree as follows:

AMENDED TERMS AND CONDITIONS

- 1. All capitalized terms (other than proper names) used and not specially defined herein have the meaning or meanings given to them in the Link O&M Agreement.
- 2. Section 7.2 Operations Plans, is amended to read as follows:

7.2 Operations Plans

The County’s operation and management of the Link system will be guided by several plans including the Link Operations Plan, the Link Maintenance Plan, the Link Fleet Management Plan, the Link Security Program Plan, and such other safety, security, and emergency management plans as

may be required by federal or state authorities with jurisdiction over Link, or as Sound Transit may adopt in its reasonable discretion (collectively and as may be revised over time, the “Link System Plans”). These plans will be prepared by Sound Transit with support by the County. If Sound Transit proposes any revisions to the Link System Plans then Sound Transit will provide such revisions to the County and will discuss them with the County before Sound Transit determines whether to adopt such revisions. The Link System Plans will serve as the basis for the County to develop staffing plans, training programs, operating and maintenance rules, and standard operating procedures for Link service.

3. Section 8, OPERATIONS and MAINTENANCE, is amended by adding a new subsection 8.4.3 as follows:

#### 8.4.3 26kV System in DSTT

The Rail Traction Power group in King County’s Rail Division is responsible for operation and maintenance of the 26kV distribution in the Downtown Seattle Transit Tunnel (DSTT). Distribution of 26kV power in the DSTT is fed from a shared King County (KC) Metro Facility, IDS #40, on 40-W-511 (primary) and 512 (backup) where they feed King County surface street trolley operations and Link light rail operations. From IDS #40, the 26kV is distributed to the Pine St. Substation N00, where 511 lands on N00-W-401 and the 512 lands on N00-W-402. A tie breaker, N00-W-408, is utilized to tie both sides of the bus bar together, as the 26kV is fed from either the primary or the backup. At N00 the 26kV is then distributed to the Central Link Pine St. rectifier transformer through N00-W-406, transformer T1A through N00-W-405, and transform T1B through N00-W-404. Additionally, there are two back feeds from the Capitol Hill Link Station on N00-W-403 and 407, along with two empty cubicles on N00-W-409 and 410 for future North Link expansion. If breaker operation is required, the Rail Traction Power group must communicate with the King County Transit Facilities Division, along with any other impacted Metro Transit division. Preventative maintenance tasks and schedules must adhere to the Sound Transit Operations Maintenance Management Plan (MMP) and must minimize any potential operational impacts. The Rail Traction Power group must comply with safe work practices under chapters 296-45 and 296-46B WAC.

4. Section 13, DOWNTOWN SEATTLE TRANSIT TUNNEL (DSTT) is deleted in its entirety.
5. Section 27, RISK MANAGEMENT AND CLAIMS is amended to read as follows:

#### 27.0 RISK MANAGEMENT AND CLAIMS

##### 27.1 Link Risk Fund

##### 27.1.1 Creation

For a period of three years from the date of the transfer of the DSTT, the County will maintain the existing Link Risk Fund as a separate fund from which the County will make payments and reimbursements as specified in Section 27.0, but only for claims that accrue prior to the date of the transfer and only for that portion of any settlement or judgment for which Sound Transit is responsible, as prescribed in the claims manual, as amended. The Parties’ Risk Managers shall periodically meet and confer to determine the level of funding for the Link Risk Fund. Sound Transit will make payments as are necessary to maintain the Link Risk Fund. If one Party proposes an alternative amount, and the other Party does not agree to the alternative, the matter may be

submitted to the Dispute Resolution process in Section 25. The County will not be required to make any payments into the Link Risk Fund. At the end of this three year period, any money, including interest earned on money, held in the Link Risk Fund that is in excess of the amount determined to be necessary by the Parties will be returned to Sound Transit.

#### 27.1.2 Link Risk Fund Administration

The Parties agree that during the three year period following the transfer of the DSTT, the primary duties for the administration of the Link Risk Fund include, at a minimum:

- A. Establishing reserves for potential payments and transfers from the Link Risk Fund;
- B. Making payments and transfers from the Link Risk Fund;
- C. Accounting, reporting and auditing on the Link Risk Fund; and
- D. Continuation of the Link Risk Fund and these procedures during the three year period described above, in order to administer Claims that accrue prior to the expiration or termination.

#### 27.2 Third Party Claims Accruing Prior to Transfer of DSTT

##### 27.2.1 County Responsibilities

For the three year period described above, the County will investigate, respond to, tender responsibility to contractors and/or insurance carriers, if appropriate, and attempt to settle Third Party Claims that accrue prior to the transfer of the DSTT. For those Claims only, consistent with the claims manual developed by the Parties, the County's Claims management process must include, at a minimum, the following provisions:

- A. Processes for administering Third Party Claims and seeking Sound Transit guidance and approval in the handling of such Claims with a reserve value of at least \$50,000;
- B. Process for retaining additional staff or staff with expertise for certain Third-Party Claims that are reasonably likely to require extraordinary efforts to investigate, settle or litigate;
- C. Process for administering Third Party Claims and sharing the cost with the County's Risk Fund for matters in which the County's acts or omissions unrelated to Link are alleged to be a contributing cause;
- D. Process for administering Third Party Claims and sharing the cost with Sound Transit for matters in which Sound Transit's acts or omissions unrelated to Link are alleged to be a contributing cause;
- E. Process for administering Third Party Claims that are Claims made against the Link Risk Fund by either Party for injuries to persons and/or damages to property sustained by that Party's personnel and property when not engaged in Link Functions;

- F. Standards and process for seeking payments from contributory Third Parties, either before or after payment from the Link Risk Fund, including the joining of Third Parties in litigation, collection efforts and filing subrogation actions; and
- G. Process for tendering defense to and seeking payments from the County's or Sound Transit's contractors and/or insurance carriers.

#### 27.2.2 Use of Attorneys and Experts

For Claims that accrue prior to the transfer of the DSTT, the County will primarily use the Office of the Prosecuting Attorney to obtain any necessary legal advice and representation in the investigation, defense or settlement of Claims. To the extent such costs exceed the amount budgeted for such purposes in a given year's Baseline Cost, the County will request written approval for further funding from Sound Transit in accordance with Subsection 22.1.6.

#### 27.2.3 Payment of Claims – Pre-DSTT Transfer to Sound Transit

The County will use the Link Risk Fund to pay any settlement or adjudicated amount due for Third Party Claims accruing prior to the effective date of the transfer of the DSTT to Sound Transit. For such Claims, if the Link Risk Fund is inadequate to make such payment, Sound Transit will deposit additional funds into the Link Risk Fund as necessary to enable the County to make such payment and to replenish the Link Risk Fund to the level as agreed to by the Parties.

#### 27.2.4 Payment of DSTT Premises Liability Claims After the Transfer of the DSTT to Sound Transit.

Sound Transit will investigate, respond to, administer, tender responsibility to the County if pursuant to Section 28.4 of this Agreement, or to contractors and/or insurance carriers, if appropriate, and attempt to settle Third Party Claims regarding premises liability in the DSTT as well as the rest of the Link system. The claims manual developed by the Parties will be inapplicable to such Claims. Sound Transit will defend, indemnify, and hold harmless the County and its officials, officers and employees, except to the extent the conduct of a County official, officer or employee is found to be intentional or grossly negligent.

#### 27.2.5 Contract Provisions for Third Party Contracts

If the County or Sound Transit enters into a contract with a Third Party to perform Link Functions, then the contract must require:

- A. That the contractor defend, indemnify, and hold harmless (i) Sound Transit, and (ii) the County, and (iii) their respective officers, officials and employees against any liability arising out of the contractor's acts and omissions; and
- B. That the contractor be required to obtain insurance coverage, as typically required by the Party for such contracts, naming (i) Sound Transit and (ii) the County, and (iii) their respective officers, officials and employees as additional insureds.

#### 27.2.6 Claims Accruing After Transfer of DSTT to Sound Transit

All Claims that accrue after the transfer of the DSTT to Sound Transit will be administered and adjusted by Sound Transit or its insurance carriers, at Sound Transit's sole discretion and subject to the Parties' indemnification obligations contained in this Agreement.

#### 27.3 Waiver of Contribution and Subrogation

##### 27.3.1 Waiver of Claims and Contribution

The Parties hereby release and waive any Claims and rights of contribution for Claims each may have against the other arising out of the acts or omissions of the other and its employees, agents, or contractors engaged in Link Functions. For clarification, the release and waiver under this Subsection 27.3.1 does not apply to each Party's right under contract law to enforce the provisions of this Agreement.

##### 27.3.2 Waiver by Insurance Carriers

The Parties will require their respective insurers to waive subrogation rights against the other Party and such other Party's insurers. This Subsection 27.3.2 shall be inapplicable to the extent it would have the effect of invalidating any insurance provided to the Parties.

#### 27.4 Insurance Coverage

27.4.1 Coverage. Sound Transit, at its sole discretion, shall determine the type, nature, and amount of insurance coverages it will carry, *if any*. Except for Workers' Compensation and Employment Practices Liability, any insurance policies will contain, or be endorsed to contain the following provisions, unless unavailable:

- A. the County and Sound Transit, their officers, officials, employees and agents are to be covered as named insured as respects liability arising out of activities performed by or on behalf of the County in connection with operation and maintenance of Link;
- B. insurance coverage to be primary insurance with respect to the County, Sound Transit, and their officers, officials, employees and agents. Insurance and self-insurance maintained by the County, its officers, officials, employees, and agents will not contribute with Sound Transit insurance or benefit Sound Transit in any way; and
- C. such insurance must apply separately to each insured against whom a Claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability.

27.4.2 Cost of Insurance. In addition to its obligations to fully fund the Link Risk Fund, Sound Transit will pay for the cost of the insurance premiums for each year's insurance policies, as respects the operations and maintenance of the Link system.

27.4.3 Evidence of Insurance. On an annual basis, Sound Transit will provide the County Risk Management Office with a certificate of insurance and endorsements certifying the issuance of the insurance purchased by Sound Transit herein. County reserves the right to require complete, certified copies of all required insurance policies, including endorsements and riders, which may be

redacted of any confidential or proprietary information. Sound Transit shall deliver such policies to the County within five (5) business days of County's request.

27.4.4 Outside Counsel. The County and Sound Transit will work together to propose outside counsel for pre-approval by Sound Transit's insurers.

6. Section 28.4, Workers' Compensation and Employment Practice Claims, is corrected to read as follows:

Subject to section 27.2, each Party shall defend, indemnify, and hold harmless the other Party and its elected officials, employees, agents and contractors against all Workers' Compensation Claims and Employment Practices Claims made by their respective employees. For this purpose, the Parties mutually agree to expressly waive, with respect to the other Party only, any immunity that would otherwise be available against such Claims under the Industrial Insurance provisions of Title 51 RCW.

7. Section 28.5, Other Agreements Not Superseded, is deleted in its entirety.
8. The definitions in Exhibit A: GENERAL DEFINITIONS, are amended as follows:

- A. Amended definitions.

"DSTT" means the Downtown Seattle Transit Tunnel consisting of the Tunnel, the Tunnel Control Center, the 26kV electrical system, the DSTT South Portal and Tunnel Annex.

- B. Deleted definitions.

The definition for the term "Merge Zone" is deleted.

- C. Additional definitions.

The following definitions are added to the Link O&M Agreement:

"DSTT South Portal," formerly referred to as the "Merge Zone" means that portion of the limited access area owned by the Washington State Department of Transportation that extends from the DSTT south to Royal Brougham Way, where light rail vehicles enter the DSTT from the south. This area was formerly known as the "Merge Zone," and was where northbound buses and light rail trains previously shared use of the right-of-way until buses were removed from the DSTT.

"Link System Plans" means the Link Operations Plan, the Link Maintenance Plan, the Link Fleet Management Plan, the Link Security Program Plan, and such other safety, security, and emergency management plans as may be required by federal or state authorities with jurisdiction over Link, or as Sound Transit may adopt in its reasonable discretion.

9. This Third Amendment together with the 2019 Link O&M Agreement and the First Amendment (2020) and Second Amendment (2021) to the 2019 Link O&M Agreement represent the entire agreement between the Parties regarding the operations and maintenance of the Link light rail system. If there is any conflict or ambiguity between this Third Amendment and the 2019 Link O&M Agreement or the First Amendment or Second Amendment to the 2019 Link O&M Agreement

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regarding the subject matter of this Third Amendment, then this Third Amendment controls. The Parties hereby ratify and confirm the 2019 Link O&M Agreement as modified by the First Amendment, Second Amendment, and this Third Amendment.

10. This Third Amendment is effective upon execution by both Parties.
11. Electronic Signatures or Counterparts. This Third Amendment may be signed through electronic signature technology or hand-signed counterparts. Each hand-signed counterpart is considered an original, but all of which constitute one and the same instrument.

**KING COUNTY  
("The County")**

**CENTRAL PUGET SOUND REGIONAL TRANSIT  
AUTHORITY  
("Sound Transit")**

\_\_\_\_\_  
Terry White  
General Manager, Metro Transit  
Department

\_\_\_\_\_  
Julie Timm  
Chief Executive Officer

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Approved as to form:

Approved as to form:

\_\_\_\_\_  
Deputy Prosecuting Attorney

\_\_\_\_\_  
Sound Transit Legal Counsel