

**WASHINGTON STATE DEPARTMENT OF TRANSPORTATION  
AND  
LINK TRANSIT**

**US 2/DRYDEN – INSTALL SIGNAL**

**AGREEMENT GCA 5010**

This AGREEMENT is made and entered into this 26<sup>th</sup> day of October, 2006, between the STATE OF WASHINGTON, Department of Transportation, hereinafter the "STATE," and LINK Transit, 300 S. Columbia St., NW, Wenatchee, WA 98801, organized pursuant to chapter 36.57A RCW, hereinafter "LINK."

WHEREAS, the STATE is planning the construction of "US 2/Dryden – Install Signal," hereinafter the "Project," and in connection therewith, LINK has requested that the STATE perform certain modifications to allow for transit bus pullouts, pedestrian paths, and a bus shelter pad, hereinafter referred to as the "WORK," as herein described in Exhibit B, and

WHEREAS, it is deemed to be in the public's best interest for the STATE to include the WORK in the STATE's Project, and

WHEREAS, LINK is obligated for the cost of the WORK described herein,

NOW, THEREFORE, by virtue of Chapter 39.34 RCW and in consideration of the terms, conditions, covenants, and performances contained herein, or attached and made a part hereof, IT IS MUTUALLY AGREED AS FOLLOWS:

**1. GENERAL**

1.1 The STATE agrees to perform the WORK for LINK as described in Exhibit B, labeled "Description of Work," attached hereto and by this reference made a part of this AGREEMENT. A portion of the WORK shall be constructed on Chelan County right of way pursuant to a permit that has been obtained by the STATE. Further, a portion of the WORK shall be constructed within state-owned right of way, and LINK agrees to enter into a lease agreement with the STATE to operate and maintain the facility prior to construction of the shelter.

1.2 Plans, specifications and cost estimates (PS&E) shall be prepared by the STATE in accordance with the current State of Washington Standard Specifications for Road, Bridge, and Municipal Construction, and amendments thereto, and adopted design standards, unless otherwise noted for the WORK. The STATE will incorporate the plans and specifications into

the STATE's Project and thereafter advertise the resulting Project for bid and, assuming bids are received and a contract is awarded, administer the contract.

1.3 An estimate for the WORK is outlined in Exhibit A, attached hereto and made a part of this AGREEMENT. In the event the PS&E cost is more than \$10,000 above the estimate in Exhibit A, LINK shall have the option of directing the STATE to delete all or a portion of the WORK from the STATE's Project.

1.4 In the event that the actual bid price results in an excess over the total estimate in Exhibit A by more than \$10,000, the STATE shall provide written notification to LINK of the increased cost and shall provide written notification to LINK of the total actual bid price for the WORK. LINK shall have five (5) working days from the date of either written notification to inform the STATE to delete the WORK. Should LINK exercise its option to delete the WORK, LINK agrees, upon billing by the STATE, to reimburse the STATE for the preliminary engineering costs as shown in Exhibit A.

1.5 LINK may, if it desires, furnish an inspector for the WORK solely for the purposes of inspecting the WORK. Any costs for such inspection will be borne solely by LINK. All contact between said inspector and the STATE's contractor shall be through the STATE's representative.

## **2. PAYMENT**

2.1 LINK, in consideration of the faithful performance of the WORK to be done by the STATE, agrees to reimburse the STATE within thirty (30) days from receipt of a STATE invoice for the actual direct and related indirect cost of the WORK.

2.2 Partial payments shall be made by LINK upon request of the STATE, to cover costs incurred. These payments are not to be more frequent than one (1) per month. It is agreed that any such partial payment will not constitute agreement as to the appropriateness of any item and that, at the time of the final payment, all required adjustments will be made and reflected in a final payment.

## **3. INCREASED COSTS**

3.1 In the event unforeseen conditions require an increase in costs over the awarded amount (including sales tax, engineering, and contingencies) by more than \$10,000, the Parties agree to amend this AGREEMENT, covering such increase.

## **4. CHANGE ORDERS**

4.1 Changes to the WORK will be documented by change order as defined in the 2006 edition of the Standard Specifications.

4.2 Required change orders involve such changes in quantities or alterations in the WORK as are necessary to satisfactorily complete the Project as determined by the STATE. All other change orders shall be considered elective. The STATE shall process all required change orders in the manner as set forth in subsection 1-2.4C(3), Approval of Changes, STATE Construction Manual, current edition.

4.3 LINK authorizes the STATE to initiate, negotiate, document and execute all required change orders.

4.4 The STATE will advise LINK of any proposed required change orders that modifies the WORK and provide it with an opportunity, if time permits, to review the change order before execution. The STATE will determine the length of the review time based upon the need to expedite the change order to avoid delay to the Project.

4.5 Any elective change order that modifies the WORK, shall require the written approval of LINK. A decision to execute an elective change order shall be made by mutual agreement of the STATE and LINK.

4.6 LINK may request additions to the WORK through the STATE. The STATE will comply with the requested change provided that the change complies with the Standard Specifications, Project permits, state and/or federal law and applicable rules and/or regulations and/or design policies.

4.7 The STATE will make available to LINK all change order documentation.

4.8 In the event it is determined that LINK does not have sufficient funds to complete the WORK, the STATE and LINK shall negotiate to determine the future of the WORK. If it is determined that the WORK cannot proceed, the WORK shall be brought to a level that is safe for public use and the STATE will delete the balance of the WORK from the Project. LINK shall still be responsible for all costs incurred by the STATE, except for deleted WORK.

## **5. PROJECT ACCEPTANCE**

5.1 Prior to acceptance of the WORK, the STATE and LINK will perform a joint final inspection. LINK agrees, upon satisfactory completion of the WORK and receipt of a Notice of Physical Completion, as determined by the STATE, to deliver a letter of acceptance which shall include a release of the STATE from all future claims, or demands of any nature resulting from

the performance of the WORK, subject to any Contractor claims caused by the negligent acts or omissions of the STATE in administering the WORK. If a letter of acceptance is not received by the STATE within thirty (30) days following the Notice of Physical Completion of the WORK, the WORK shall be considered accepted by LINK and shall release the STATE from all future claims and demands of any nature resulting from the performance of the WORK, subject to any Contractor claims caused by the negligent acts or omissions of the STATE in administering the project.

5.2 LINK may withhold this acceptance of the WORK by submitting written notification to the STATE within thirty (30) days following the Notice of Physical Completion of the WORK. This notification shall include all reason(s) for withholding the acceptance.

## **6. OWNERSHIP, OPERATION AND MAINTENANCE**

6.1 LINK shall own and be responsible for the operation and maintenance of the shelter pad and path located within WSDOT right of way. LINK shall be responsible to acquire any necessary permits or lease for construction of the future shelter. In accordance with Section 1.1, LINK shall enter into a lease with the STATE for the continued operation and maintenance of the shelter pad, path and bus shelter located on state-owned property prior to the construction of the shelter.

6.2 The STATE shall own and be responsible for the operation and maintenance of the bus pullout.

## **7. SEVERABILITY**

7.1 Should any part, term or provision of this AGREEMENT be determined to be invalid, the remainder of this AGREEMENT shall not be affected, and the same shall continue in full force and effect.

## **8. RIGHT OF ENTRY**

8.1 The STATE hereby grants to LINK the right of entry upon all land on which the STATE has interest, within or adjacent to the right of way to the highway, for the purpose of maintaining the path and shelter pad constructed under this AGREEMENT within STATE right-of-way.

## **9. LEGAL RELATIONS**

9.1 Each of the Parties, shall protect, defend, indemnify, and save harmless the other Party, its officers, officials, employees, and agents, while acting within the scope of their employment as such, from any and all costs, claims, judgments, and/or awards of damages (both to persons and/or property), arising out of, or in any way resulting from, each of the Party's own negligent acts or omissions in relation to the WORK covered by this AGREEMENT. No Party will be required to indemnify, defend, or save harmless the other Party if the claim, suit, or action for injuries, death, or damages (both to persons and/or property) is caused by the sole negligence of the other Party. Where such claims, suits, or actions result from the concurrent negligence of the Parties or involves those actions covered by RCW 4.24.115, the indemnity provisions provided herein shall be valid and enforceable only to the extent of a Party's own negligence.

9.2 LINK shall protect, defend, indemnify, and save harmless the STATE, its officers, officials, employees, and agents, while acting within the scope of their employment as such, from any and all costs, claims, judgments, and/or awards of damages (both to persons and/or property), arising out of, or in any way resulting from the elements of the WORK constructed pursuant to this AGREEMENT which will be located on Chelan County property.

9.3 These indemnifications and/or waivers shall survive the termination of this AGREEMENT.

## **10. VENUE**

10.1 In the event that a Party deems it necessary to institute legal action or proceedings to enforce any right or obligation under this AGREEMENT, the Parties hereto agree that any such action or proceedings shall be brought in Thurston County Superior Court.

## **11. TERMINATION**


11.1 This AGREEMENT may not be terminated unless mutually agreed to in writing by both Parties once the contract has been awarded.

**12. DISPUTE RESOLUTION**

12.1 Should a dispute arise, the Parties agree to work together to settle the dispute. Should the STATE and LINK be unable to resolve the dispute, the STATE shall have the final say as to how the WORK will be completed. Nothing resulting from the STATE's right to final say shall lessen the responsibility of LINK to pay the actual direct and related indirect costs of the WORK under this AGREEMENT.

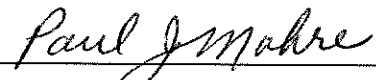
IN WITNESS WHEREOF, the Parties hereto have executed this AGREEMENT as the day and year first above written.

**LINK TRANSIT**

By:   
Richard DeRock  
(name printed)  
General Manager  
(title)

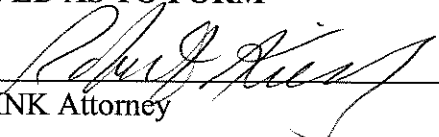
Date: 10/25/06

**STATE OF WASHINGTON  
DEPARTMENT OF TRANSPORTATION**

By:   
Paul J Mahre  
(name printed)  
NCR State/Fiscal Program Manager  
(title)

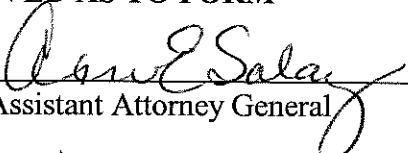
Date: 10/26/06

**APPROVED AS TO FORM**

By:   
LINK Attorney

Date: 10-25-06

**APPROVED AS TO FORM**

By:   
Assistant Attorney General

Date: 11-13-06

**STATE OF WASHINGTON  
DEPARTMENT OF TRANSPORTATION  
ESTIMATE SHEET**

**US 2/Leavenworth to Cashmere Paving, XL2576  
Link Bus Pullouts, Pedestrian Pads, and Bus Shelter Pads, US 2/97 MP 106.49  
ENGINEER'S ESTIMATE DATE : 10/3/06**

ITEM NO.		STD. ITEM No.	UNITS	UNIT PRICE	QUANTITY	AMOUNT
<b>PREPARATION</b>						
1	MOBILIZATION - AGREEMENT GCA 5010	1	LS		1	\$2,329.00
2	ROADWAY EXCAVATION INCL. HAUL	0310	CY	\$15.00	510	\$7,650.00
3	SCHEDULE A CULV. PIPE 12 IN. DIAM.	1180	LF	\$40.00	70	\$2,800.00
4	CRUSHED SURFACING TOP COURSE	5120	TON	\$25.00	380	\$9,500.00
5	ANTI-STRIPPING ADDITIVE	5334	EST			\$70.00
6	HMA C. 1/2 IN. PG 64-28	5767	TON	\$55.00	70	\$3,850.00
7	PLASTIC LINE	6807	LF	\$1.50	335.00	\$502.50
8	PLASTIC WIDE LINE	6818	LF	\$3.00	194.00	\$582.00
9	PLASTIC TRAFFIC LETTER	6871	EACH	\$50.00	22.00	\$1,100.00
10	PROJECT TEMPORARY TRAFFIC CONTROL	6971	LS			\$1,502.00
11	COMMERCIAL CONCRETE	7027	CY	\$500.00	2	\$1,000.00
12	SPCC PLAN	7736	LS		1.00	\$16.00
CONSTRUCTION TOTAL						\$30,901.50
SALES TAX				8.00%		\$2,472.12
SUB TOTAL						\$33,373.62
ENGINEERING & CONTINGENCIES				14.00%		\$4,672.31
<b>PROJECT TOTAL</b>						<b>\$38,045.93</b>
PRELIMINARY ENGINEERING						\$5,000
<b>PROJECT TOTAL &amp; PRELIMINARY ENGINEERING</b>						<b>\$43,045.93</b>
OVERHEAD				11.44%		\$4,924.45
<b>GRAND TOTAL</b>						<b>\$47,970.38</b>