

**LOCAL AGENCY PARTICIPATING AGREEMENT
WORK FOR LINK TRANSIT
EASY STREET ROUNDABOUT - BUS PULLOUT
WSDOT AGREEMENT #GCB 3631**

This Agreement is between the WASHINGTON STATE DEPARTMENT OF TRANSPORTATION, herein after the "WSDOT", and the Chelan-Douglas Public Transportation Benefit Area, d/b/a LINK TRANSIT, a Washington municipal corporation, hereinafter "LINK", individually referenced as "Party" and collectively the "Parties."

WHEREAS, WSDOT is planning the construction of "US 2/97 Easy Street – Roundabout", hereinafter the "Project," and

WHEREAS, LINK has requested that WSDOT 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, the WORK is on a WSDOT limited access highway requiring WSDOT design approval, and

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

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

NOW THEREFORE, pursuant to chapter 47.28.140 RCW and in consideration of the terms, conditions, and performances contained herein it is mutually agreed as follows:

1. LINK RESPONSIBILITIES

- 1.1.1 LINK agrees to provide authorized funding to WSDOT as identified in Exhibit A for the purposes of performing the WORK as shown in Exhibit B.
- 1.2 LINK agrees to pay the amount of One Hundred Eighty-Five Thousand Four Hundred Thirty Four dollars and NO cents (\$185,432.00) for the WORK.

2. WSDOT RESPONSIBILITIES

- 2.1 WSDOT, on behalf of LINK, agrees to perform the WORK, as further provided herein and pursuant to the attached exhibits. Exhibit A is the cost estimate and Exhibit B further defines the WORK to be constructed for LINK.
- 2.2 WSDOT will include the WORK within its PROJECT and design, advertise, award, and administer the construction for the WORK. WSDOT will provide LINK with one (1) reproducible copy of the stamped final Design Documentation prior to the proposed advertisement date.
- 2.3 WSDOT will provide LINK with one (1) reproducible copy of the Ad ready PS&E for the Project a minimum of fifteen (15) days prior to the proposed Ad date. LINK will have ten (10) working days to review the Ad ready PS&E for the Project, resolve any concerns, and provide WSDOT with written approval, conditional approval, or rejection of the Ad ready PS&E for the WORK. In the event the WORK is conditionally approved or rejected, LINK shall include the reasons for conditional approval or rejection. LINK may request an extension of time in writing, provided that WSDOT receives the written

request not later than ten (10) working days after LINK has received the Ad ready PS&E. WSDOT shall provide a written response, indicating the number of working days extended, if any.

- 2.4 If WSDOT does not receive LINK's written approval, conditional approval or rejection of the Ad ready PS&E within ten (10) working days and any approved extension of time pursuant to Section 2.3, or if WSDOT cannot accept LINK's condition(s) of approval, LINK agrees to reimburse WSDOT for engineering costs and actual direct and related indirect costs incurred by WSDOT associated with WSDOT's preparation of the PS&E for the WORK, as well as such costs incurred by either WSDOT or LINK deleting the WORK. This agreement shall then terminate upon receipt of all reimbursement payments in accordance with Section 7.

3. BID, AWARD, AND COST ADJUSTMENTS

- 3.1 WSDOT will advertise the Project for bids. WSDOT will be LINK's representative during the Ad and Project contract award period. When requested by WSDOT, LINK shall timely assist WSDOT in answering bid questions and resolving any design issues that may arise that are associated with the WORK. All comments and clarifications must go through WSDOT.
- 3.2 WSDOT shall provide LINK with written notification of the bid price for the WORK. LINK shall have five (5) working days from the date of written notification to provide WSDOT written approval of the bid price for the WORK, or request the WORK be deleted. LINK may request an extension of time in writing, provided that WSDOT received the written request not later than five (5) working days after LINK has received the written notification. WSDOT shall provide a written response indicating the number of working days extended, if any.
- 3.3 LINK acknowledges that if it fails to provide WSDOT with written approval of the bid price for the WORK or request that the WORK be deleted within five (5) working days and any approved extension of time pursuant to Section 3.2, WSDOT shall delete the WORK. In this event, LINK agrees to reimburse WSDOT for engineering costs and actual direct and related indirect costs incurred by WSDOT associated with all aspects of the WORK.

4. CONSTRUCTION

- 4.1 WSDOT will be LINK's representative during construction and will act as owner in the administration of the contract for the WORK. WSDOT will designate a WSDOT Project Engineer to provide all services and tools, including but not limited to construction administration, inspection, materials testing, and representation, necessary to administer and manage the contract to ensure that the WORK is constructed in accordance with the contract.
- 4.2 LINK may consult with and inquire of the WSDOT Project Engineer, attend all meetings, and have access to all documentation concerning the WORK. LINK shall not provide direction, directly or indirectly, to WSDOT's contractor. All formal contacts between LINK and the contractor shall be through WSDOT's representative.
- 4.3 When it becomes known that quantities for a unit bid item will exceed plan quantity for the WORK by ten (10) percent or result in a cost increase for the WORK exceeding the total amount by fifteen (15) percent, WSDOT shall consult with LINK on possible courses of action within three (3) working days in accordance with Section 5.

- 4.4 LINK may inspect the WORK. Any costs for such inspection shall be borne solely by LINK. All contact between said inspector and the contractor shall be only through WSDOT's inspector or WSDOT's representative.
- 4.5 WSDOT will prepare the final construction documentation in general conformance with WSDOT's Construction Manual. WSDOT will maintain one set of plans as the official "as-built" set, then make notations in red ink of all plan revisions typically recorded per standard practices, as directed by WSDOT's Construction manual. Once LINK has accepted the WORK per Section 6, WSDOT will provide one reproducible set of as-built plans to LINK within ninety (90) days.

5. CONTRACT CHANGES

- 5.1 Changes to the Project contract will be documented by change order in accordance with the most current edition of the WSDOT Standard Specifications for Road, Bridge and Municipal Construction, M 41-10 (Standard Specifications). WSDOT shall process change orders for all changes affecting the WORK in the manner set forth in subsection 1-2 4C (3) Approval of changes/Checklist, WSDOT Construction Manual, current edition.
- 5.2 Required changes involve such changes in quantities or alterations to the WORK as are necessary to satisfactorily complete the Project. All other changes affecting the WORK shall be considered elective changes.
- 5.3 LINK authorizes WSDOT to initiate all required changes affecting the WORK and to negotiate, document and execute the associated change orders. LINK agrees to pay for the increases in cost, if any, for the required changes affecting the WORK in accordance with Section 7.
- 5.4 WSDOT will advise LINK of any proposed required changes affecting the WORK as soon as possible and provide it with an opportunity, if time, permits, to review the change before implementation. WSDOT will determine the length of the review time based upon the need to expedite the change to avoid delay to the contractor.
- 5.5 LINK may request additions to the WORK through WSDOT in writing. WSDOT will implement the requested changes as elective changes, provided that a change does not negatively impact WSDOT's transportation system and complies with the Standard Specifications, project permits, state and/or federal law, applicable rules and/or regulations, and/or WSDOT design policies, and does not unreasonably delay critically scheduled Project contract activities. LINK agrees to pay for the increases in cost, if any, for the requested changes affecting the WORK in accordance with Section 7.
- 5.6 All elective changes to the WORK shall be approved in advance and in writing, with email being acceptable, by LINK before WSDOT directs the contractor to implement the changes, even if an executed change order is not required by the Project contract. LINK agrees to pay for the increases in cost, if any, for such elective changes that LINK has approved in writing in accordance with Section 7.
- 5.7 WSDOT will make available to LINK all change order documentation related to the WORK.
- 5.8 In the event it is determined that LINK does not have sufficient funds to complete the WORK, WSDOT 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 WSDOT will terminate the remainder of the WORK from the Project contract. In the event the WORK is terminated, Section 6 shall apply to that portion of the WORK completed up to the time of termination. LINK agrees to pay all costs associated with termination, including contractor claims, in accordance with Section 7.

6. ACCEPTANCE OF WORK

- 6.1 Prior to WORK acceptance, WSDOT and LINK will perform a joint final inspection. LINK agrees, upon satisfactory completion of the WORK as determined by WSDOT, and receipt of a Notice of Physical Completion of the WORK, to deliver a letter of acceptance to WSDOT which shall include a release of WSDOT from all future claims or demands of any nature resulting from the performance of the WORK and WSDOT administration thereof, outside WSDOT right of way, subject to any contractor claim (Section 8) caused by the negligent acts or omissions of WSDOT in administering the WORK.
- 6.2 If a letter of acceptance is not received by WSDOT within ninety (90) days following delivery of a Notice of Physical Completion of the WORK to LINK, the WORK and WSDOT administration thereof, LINK shall not be obligated to pay such claims or their cost of defense to the extent that the claims are caused by the negligent acts or omissions of WSDOT in administering the WORK.
- 6.3 LINK may withhold its acceptance of the WORK by submitting written notification to WSDOT within thirty (30) days following delivery of a Notice of physical completion of the WORK. This notification shall include the specific reason(s) for withholding acceptance, and shall be limited solely to claims that the Work was not completed in accordance with the Contract requirements for the Work.

7. PAYMENT

- 7.1 LINK, in consideration of the faithful performance of the WORK performed by WSDOT and its contractor, agrees to reimburse WSDOT for the actual direct and related indirect costs of the WORK, as estimated in Exhibit A.
- 7.2 WSDOT shall provide detailed invoices to LINK for the WORK performed by WSDOT and its contractor for costs incurred as provided in Sections 2.4, 3.3, 5.8, and 8.4, and LINK agrees to make payment within thirty (30) days from receipt of an invoice. A payment will not constitute agreement as to the appropriateness of any item. At the time of the final invoice, the Parties will resolve any discrepancies prior to final payment.
- 7.3 In the event unforeseen conditions require an increase in the cost of the WORK above the cost estimate (including sales tax, engineering, and contingencies) by more than twenty five (25) percent, the Parties agree to modify this Agreement by executing a written amendment to address the increase pursuant to Section 10.1, or implement Section 5.8.

8. CLAIMS

- 8.1 In the event the contractor makes claims for additional payment associated with the WORK, WSDOT will immediately notify LINK of such claims. Such claims shall be made in the manner and form as provided for in the Standard Specifications. LINK shall be ultimately responsible for the payment of any contractor claims, unless Section 8.2 below applies.
- 8.2 LINK shall not be obligated to pay such claims, or their cost of defense, to the extent that the claims are caused solely by the negligent acts or omissions of WSDOT in administering the WORK.
- 8.3 LINK shall have the right to review and comment on any settlement for claims associated with the WORK. However, WSDOT shall have the ultimate right to settle such claims. In the event LINK does not agree with the claim settlement as negotiated by WSDOT, LINK shall reserve the right to not

financially participate in the negotiated claim settlement. If agreement cannot be reached between LINK and WSDOT on a claim settlement, the Parties agree to follow the dispute resolution procedure in Section 10.3.

- 8.4 If WSDOT agrees, LINK may defend contractor claims associated with the WORK at its own cost, and in doing so, LINK agrees to pay any resulting settlement, court judgment or arbitration award. WSDOT will cooperate with LINK in LINK's defense of the claims. LINK agrees to reimburse any WSDOT costs, including attorney's fees, incurred in providing such assistance.

9. OWNERSHIP, OPERATION, AND MAINTENANCE

- 9.1 Upon acceptance of the WORK as provided in Section 6, LINK shall be sole owner of the WORK.
- 9.2 LINK will be responsible for plowing snow on the widened portion of US 2/97 that was added by the WORK, the concrete pad for the future pedestrian shelter, and the asphalt path constructed by this WORK. WSDOT shall assist LINK with snow removal during significant events as the availability of WSDOT resources allow.
- 9.3 Any future installation of a pedestrian shelter by LINK will require a new Transit Stop agreement from WSDOT.
- 9.4 WSDOT will be responsible for the maintenance and electric billing for the luminaire(s) placed adjacent to US2/97.

10. FAILURE TO PERFORM MAINTENANCE

- 10.1 WSDOT reserves the right to perform the maintenance required of LINK that lie within WSDOT owned right of way to the extent necessary for the safe operation and maintenance of the highway, should LINK fail to perform the maintenance pursuant to this Agreement.
- 10.1.1 If LINK fails to perform the maintenance required under this Agreement, WSDOT will notify LINK, in writing with email being acceptable, and LINK shall perform the maintenance. If LINK does not perform the identified maintenance, WSDOT reserves the right to perform the maintenance in accordance with minimum WSDOT highway standards.
- 10.1.2 In the event WSDOT is required to perform any of the maintenance required to be performed by LINK, LINK shall reimburse WSDOT for its actual direct, and related indirect costs, for all maintenance performed. LINK, will issue payment within thirty (30) days of the date of the invoice from WSDOT. In the event LINK fails to make payment by the Due Date, the entity will pay WSDOT interest on outstanding balances at the rate of twelve percent (12%) per annum, or the highest rate of interest allowable by law, whichever is greater. Interest shall be calculated from the Due Date to the date of payment. If the entity objects to all or any portion of an invoice, it shall notify WSDOT within twenty (20) calendar days from the date of receipt and shall pay only that portion of the invoice not in dispute. WSDOT and LINK shall make every effort to settle the disputed portion, and if necessary, utilize dispute resolution provided for in Section 10.3. No interest shall be due on any portion of an invoice the entity is determined not to owe following settlement between the Parties or completion of dispute resolution process.

11. GENERAL PROVISIONS


- 11.1 This Agreement may be amended or modified only by the mutual agreement of the Parties. Such amendments or modifications shall not be binding unless they are in writing and signed by persons authorized to bind each of the Parties.
- 11.2 Either Party may terminate this Agreement prior to award of WSDOT's contract to perform the WORK. Once the contract has been awarded, this Agreement may not be terminated by either party except under the following conditions:
- 11.2.1 Termination for Default
Upon prior written notice, either Party may terminate this Agreement for either Party's failure to perform or abide by any provision of this Agreement.
- 11.2.2 Termination for Cause
If for any cause either Party does not fulfill in a timely and proper manner its obligations under this Agreement, or if either Party violates any of these terms and conditions, the aggrieved Party will give the other Party written notice of such failure or violation. The responsible Party will be given the opportunity to correct the violation or failure within 15 working days. If the failure or violation is not corrected, this Agreement may be terminated immediately by written notice of the aggrieved Party to the other.
- 11.2.3 Termination for Withdrawal of Authority
In the event that either Party's authority to perform any of its duties is withdrawn, reduced, or limited in any way after the commencement of this Agreement, that Party may terminate this Agreement by seven (7) calendar days written notice. No penalty shall accrue to that Party in the event this section shall be exercised.
- 11.3 In addition to those rights of termination set forth in Section 11.2 above, WSDOT may terminate this agreement for convenience, in whole or in part, at any time and without penalty or further liability. In such event, WSDOT : (i) shall provide the other Party as much advance notice as reasonably possible, with no less than 30 days prior written notification; and (ii) shall not be liable to LINK for any direct, indirect or consequential damages arising solely from the decision to terminate the Agreement.
- 11.4 In the event that a dispute arises under this Agreement, it shall be resolved as follows: WSDOT and LINK shall each appoint a member to a Dispute Board, these two members shall select a third board member not affiliated with either Party. The three-member board shall conduct a dispute resolution hearing that shall be informal and unrecorded. An attempt at such dispute resolution in compliance with aforesaid process shall be a prerequisite to the filing of any litigation concerning the dispute. The Parties shall equally share in the cost of the third disputes board member: however, each Party shall be responsible for its own costs and fees.
- 10.4 In the event that either Party deems it necessary to institute legal action or proceedings to enforce any right or obligation under this Agreement, the Parties agree that any such action or proceedings shall be brought in Thurston County Superior Court. Further, the Parties agree that each will be solely responsible for payment of its own attorney fees, witness fees, and costs.
- 10.5 All records for the WORK in support of all costs incurred during the contract shall be maintained for a period of six (6) years. LINK shall have full access to and right to examine said records, during normal business hours and as often as it deems necessary. Should LINK require copies of any records, it agrees to pay the cost thereof. The Parties agree that the WORK performed herein is subject to audit by either or both Parties and/or the federal government.

- 10.6 If any term or condition of this Agreement is held invalid, such invalidity shall not affect the validity of the other terms or conditions of this Agreement.
- 10.6 The employees or agents of each Party who are engaged in the performance of this Agreement shall continue to be employees or agents of that Party and shall not be considered for any purpose to be employees or agents of the other Party.
- 10.7 Unless otherwise provided herein, the term of this Agreement shall commence as of the date this Agreement is fully executed and shall continue so long as the WORK completed for the bus infrastructure remains in WSDOT right of way.
- 10.8 Each Party to this Agreement, 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 with respect to the provisions of 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, the indemnity provisions provided herein shall be valid and enforceable only to the extent of each Party's own negligence. Each Party agrees to waive its immunity under Title 51 RCW solely to the extent it is required to indemnify, defend and hold harmless the other Parties and their agencies, officials, agents or employees pursuant to this Section. The Parties waiver of immunity by the provisions of this Section does not extend to claims by any employee of a Party directly against said Party. This waiver has been mutually negotiated by the Parties. The indemnification obligation described in this section shall survive the termination of this Agreement.

12. COUNTERPARTS AND ELECTRONIC SIGNATURE

This Agreement may be executed in counterparts or in duplicate originals. Each counterpart or each duplicate shall be deemed an original copy of this Agreement signed by each Party, for all purposes. Electronic signatures or signatures transmitted via e-mail in a "PDF" may be used in place of original signatures on this Agreement. Each Party intends to be bound by its electronic or "PDF" signature on this Agreement and is aware that the other Parties are relying on its electronic or "PDF" signature.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date signed last by the Parties below.

LINK	WASHINGTON STATE DEPARTMENT OF TRANSPORTATION
By 	By
Name <i>NICK R. COVEY</i>	Name
Title <i>CHIEF OF STAFF/FIN MGR</i>	Title
Date <i>10/25/22</i>	Date

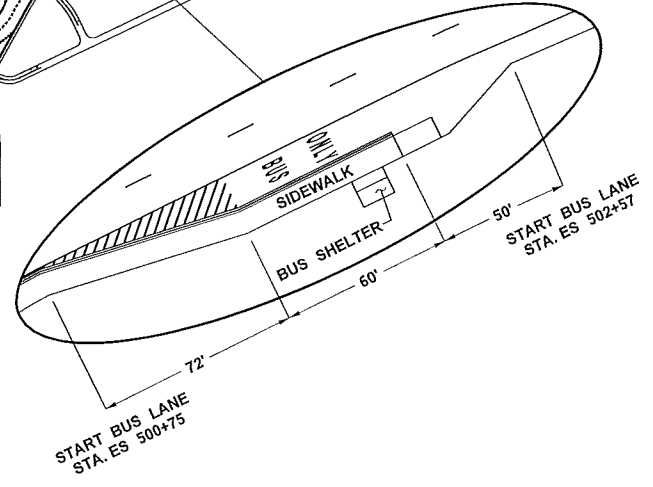
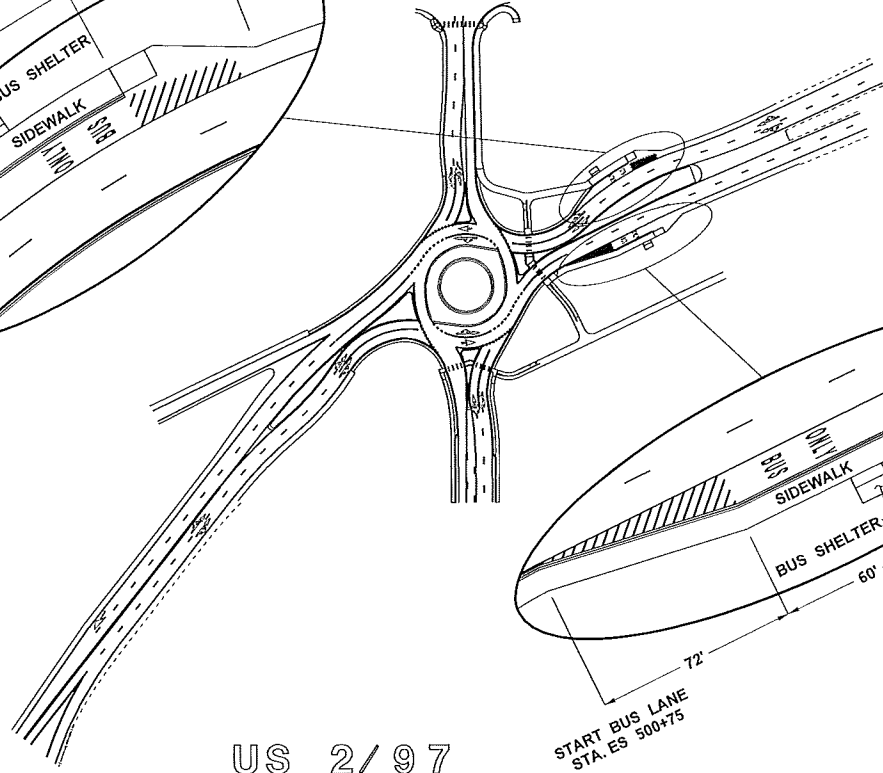
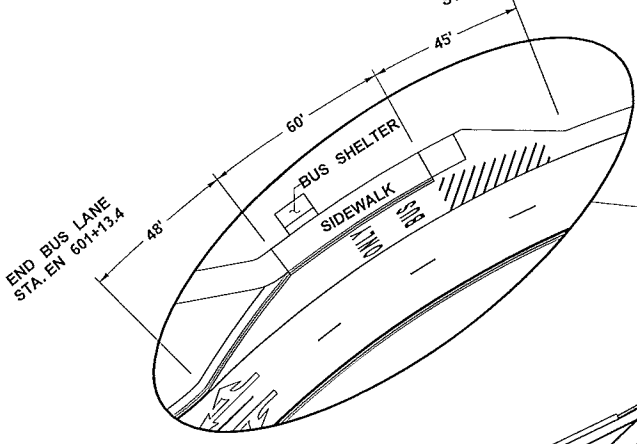
Approved as to form	Approved as to form on behalf of WSDOT
Name	Name:

Title	Title: Assistant Attorney General
Date	Date:

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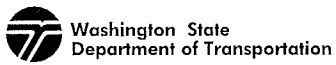
T. 23N. R.23E. W.M. SECTION 21

GCB 3631 EXHIBIT "B"



US 2/97 MP 118.97 TO MP 119.37 CHELAN COUNTY

US 2/97 EASY STREET ROUNDABOUT - EXHIBIT B



LINK TRANSIT AGREEMENT # GCB 3631
CONTROL SECTION # 040111

PLOTTED BY: FrazierJ
DATE: 12/7/2021 TIME: 4:03:35 PM

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