

Sellar Additional Lane - Cooperative Agreement
LINK Transit
GCA- 5980

This Agreement is made and entered into between the STATE OF WASHINGTON, Department of Transportation, hereinafter the "STATE," and Chelan-Douglas Public Transportation Benefit Area, d/b/a LINK Transit, a Washington municipal corporation, hereinafter "LINK."

WHEREAS, the STATE has an active construction project to improve a section of State Route 285 titled, "SR285/George Sellar Bridge – Additional EB Lane," hereinafter the "Project," and

WHEREAS, the STATE will be removing pedestrian access during the duration of the Project, and

WHEREAS, the STATE will provide the option to pedestrians of free bus service across the George Sellar Bridge as mitigation for the closure of George Sellar Bridge to all pedestrian traffic during construction of the Project (the Mitigation Service), and

WHEREAS, LINK has existing routes starting and finishing at various fixed points which may, where possible, provide 30 minute interval shuttle service across the Columbia River via the open portion of the George Sellar Bridge, during LINK-designated service hours and times,

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

1. GENERAL

- 1.1 It is the STATE's intent to close the George Sellar Bridge to all pedestrian traffic for a period of twenty-two months currently scheduled to start on or about May 1, 2009 and end on or about February 28, 2011. The STATE will provide LINK two (2) weeks advance written notice of the determined closure date.
- 1.2 During the period in which pedestrians are prohibited from crossing the George Sellar Bridge, and on those days when LINK is operating its service, LINK agrees to provide the Mitigation Service for pedestrians that commute across the George Sellar Bridge (for ease of reference "pedestrians") by allowing pedestrians to ride LINK-operated vehicles for passage across the George Sellar Bridge without requiring a fare during LINK's normal hours of operation, as established by LINK, to and from the following locations:
 - a. the bus stop at the intersection of Bridge St. and S. Wenatchee Ave. to the bus stop at the Wenatchee Valley Mall;
 - b. the bus stop at the Wenatchee Valley Mall to the bus stop at the intersection of Bridge St. and S. Wenatchee Ave;
 - c. the bus stop at the intersection of Mission St. and Bridge St. to the bus stop at Fred Meyer in East Wenatchee;
 - d. the bus stop at Fred Meyer to the bus stop at the intersection of Mission St. and Bridge St;

- e. the bus stop at the intersection of Bridge St. and S. Wenatchee Ave to the bus stop at Petco on Valley Mall Parkway;
- f. the bus stop at Quizno's on Valley Mall Parkway to the bus stop at the intersection of Bridge St. and S. Wenatchee Ave;
- g. the trolley route from the bus stop at the intersection of Mission St. and Bridge St. to the bus stop at Walkers Furniture on Grant Road in East Wenatchee; and
- h. from any stop in East Wenatchee along the trolley route to the bus stop at the intersection of Mission St. and Bridge St.

1.3 LINK shall control and maintain its routes as it may determine from time to time in the ordinary course of its business. The Parties acknowledge that 30 minute interval bus service may not be possible from and to each of the locations stated in Section 1.2, but will provide the service if it is available in its ordinary course of its business.

2. MARKETING AND PUBLIC OUTREACH

2.1 LINK shall provide the marketing and/or outreach to the general public, notifying the public of available LINK's service during closure of the George Sellar Bridge. This outreach will include the following marketing methods:

- Informational posters
- Radio Advertising

3. PAYMENT

- 3.1 For LINK's Mitigation Services, the STATE shall pay to LINK a fee of \$1.00 (One dollar) per trip/per pedestrian, but not less than \$650.00 (Six Hundred Fifty Dollars) per month regardless of the number of pedestrians who use the Mitigation Service (the "Mitigation Service Fee"). Attached hereto as Exhibit A and incorporated herein by this reference are examples reflecting the calculation of the monthly Mitigation Service Fee due LINK from the STATE depending on the volume of pedestrians.
- 3.2 The STATE shall pay LINK a one-time lump sum fee of \$650.00 (Six Hundred Fifty Dollars) for the marketing and public outreach under section 2, due in full, at least sixty (60) calendar days before the Mitigation Service is to begin.
- 3.3 In accordance with existing agreement OH-00171, the STATE shall not pay for LINK overhead.
- 3.4 LINK shall provide the STATE a monthly usage summary and invoice (the "Summary") reflecting the actual number of pedestrians using the Mitigation Service for each month and the amount of the Mitigation Service Fee, by the 10th day of the month following the month to which the Summary applies. The Summary shall be provided in the manner set out below in Section 9. The STATE shall pay to LINK the Mitigation Service Fee amount set forth on each Summary within thirty (30) calendar days of receipt of the Summary by the STATE.

4. MODIFICATION

- 4.1 In the event of a change in the Project, or a change in the scope or duration of the Mitigation Services contemplated and/or an equitable adjustment to the fees and services set out in this Agreement, the Parties agree to meet and discuss the terms for an amendment to this Agreement.
- 4.2 No modification of this Agreement is valid unless evidenced in writing by amendment to this Agreement, signed by both Parties.

5. ASSIGNMENT

- 5.1 Neither Party to this Agreement shall transfer or assign any right or obligation hereunder without the prior written consent of the other Party.

6. SEVERABILITY

- 6.1 Should any section, 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.

7. HOLD HARMLESS/INDEMNIFICATION

- 7.1 LINK shall protect, defend, indemnify, and hold 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 services provided by LINK pursuant to the provisions of this Agreement. LINK will not be required to indemnify, defend or save harmless the STATE 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 STATE or involves those actions covered by RCW 4.24.115. 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.
- 7.2 The STATE shall protect, defend, indemnify, and hold harmless LINK, 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 services provided by the STATE pursuant to the provisions of this Agreement. The STATE will not be required to indemnify, defend or save harmless LINK if the claim, suit, or action for injuries, death, or damages (both to persons and/or property) is caused by the sole negligence of LINK or involves those actions covered by RCW 4.24.115. 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.
- 7.3 The STATE agrees that its obligations under Section 7 extend to any claim, demand and/or cause of action brought by, or on behalf of, any of its employees, agents, and subagents while performing work under this Agreement while located on LINK-owned right of way. For this purpose, the STATE, by mutual negotiation, hereby waives with respect to LINK only, any immunity that would otherwise be available to it against such claims under the Industrial Insurance provisions chapter 51.12 RCW.

7.4 These indemnifications and waiver shall survive the termination of this Agreement.

8. ARBITRATION OF DISPUTES

- 8.1 Any and all disputes, claims, or controversies between the Parties (“Parties” specifically including, but not being limited to, any assignee of a Party) arising out of or relating to this Agreement that are not resolved by their mutual agreement shall, as the sole and exclusive means of resolution be resolved by binding arbitration pursuant to chapter 7.04A RCW, in Chelan County, Washington, unless the filing in Chelan County conflicts with the provisions of RCW 47.28.120.
- 8.2 The dispute shall be submitted to one arbitrator, who shall have sole authority to determine procedural questions, including arbitrability, standing, and real party in interest, as well as the merits of the claim.
- 8.3 Any judgment upon the award rendered by the arbitrator(s) shall be final and binding upon the Parties and may be entered in any court having jurisdiction over the Parties.

9. NOTICES

- 9.1 Any notices, including the Summary, to be given hereunder shall be effected in writing either by personal delivery or by mail, first class postage prepaid, or by e-mail. Notices delivered personally shall be deemed communicated as of actual receipt. Mailed notices shall be deemed communicated the second business day after the effective date of mailing. Notices sent by e-mail shall be deemed communicated as of the date the e-mail is delivered. Notices sent by mail or by e-mail shall be sent to the following mail or e-mail addresses as set out below, unless actual notice in writing served as set forth herein of a different address for notices is received by the other Party.

STATE OF WASHINGTON, Department of Transportation
Attention: Kevin Waligorski, Project Engineer
2830 Euclid Ave.
Wenatchee, WA, 98801
E-mail: waligok@wsdot.wa.gov

Chelan-Douglas Public transportation Benefit Area, d/b/a LINK Transit
LINK Transit
Attention: Lyle Bland
2700 Euclid Ave.
Wenatchee, WA 98801
E-mail: lyle@linktransit.com

10. TERMINATION

- 10.1 Either Party may terminate this Agreement upon twenty (20) days prior written notice to the other, without cause.

10.2 Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.

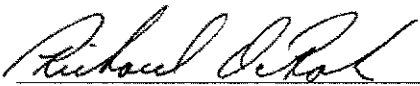
11. AUDITS AND RECORDS

11.1 All LINK records in support of Mitigation Service Fees charged shall be maintained by LINK for a period of three (3) years from completion of the work performed in this Agreement. The state and/or federal government shall have full access to and right to examine said records, during normal business hours and as often as it deems necessary. The Parties agree that the work performed herein is subject to audit.

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

LINK TRANSIT

STATE OF WASHINGTON
DEPARTMENT OF TRANSPORTATION

By: 

By: 

Richard DeRock
General Manager


Dan Sarles,
Acting Region Administrator

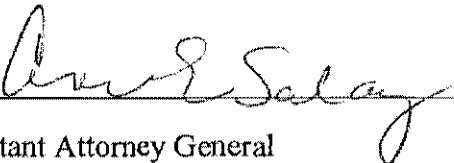
Date: 4/6/2009

Date: 4/6/09

APPROVED AS TO FORM

APPROVED AS TO FORM

By: 

By: 

LINK Attorney

Assistant Attorney General

Date: April 2, 2009

Date: 3-26-09

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Exhibit A
Estimate of Cost

	COST/dollars
Marketing and Public Outreach Fee	\$650
Mitigation Service (\$650 per month), assume 22 month duration	\$14,300
Total est. Mitigation Service fee for exceeding 650 pedestrians per month (\$1 for each pedestrian X est. 100 ped./month X 22 months)	\$2,200
	TOTAL
	\$17,150