



Local Agency Participating Agreement Work by State - Actual Cost		Local Agency and Address Town of Metaline Falls, WA 203 E. 5th PO Box 277		RECEIVED DEPARTMENT OF TRANSPORTATION JUN 12 2009
		Agreement Number GCA 6105		Section/Location SR 31, North Pend Oreille Safety Project
State Route Number 31	Control Section Number 2605	Plans, Specifications and Cost Estimates (PS&E) for the Local Agency Work by LOCAL AGENCY? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
Region Eastern Region		PS&E Due Date		
Advance Payment Required <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		Description of Work Design and Construct Curb, Sidewalk, Illumination, and minor paving & surfacing within the Town of Metaline Falls along SR 31 from Mile Post 14.21 to 14.40		
Advance Payment Amount				
STATE		LOCAL AGENCY		
State Agency Representatives		Local Agency Representatives		
Name Ken Olson		Name Tara Leininger		
Title Project Engineer		Title Mayor		
Address 2714 N. Mayfair, Spokane, WA 99207-2090		Address 203 E. 5th, PO Box 277, Metaline Falls, WA 9915 8 ³		
E-mail Address Olsonken@WSDOT.wa.gov		E-mail Address metfalls@potc.net		
Phone 509-324-6141		Phone 509-446-2211		

This Agreement is made and entered into between the STATE OF WASHINGTON DEPARTMENT OF TRANSPORTATION (STATE) and the above named governmental entity (LOCAL AGENCY).

WHEREAS, the STATE is planning the construction or improvement of a section of the state route as shown above, and in connection therewith, the LOCAL AGENCY has requested that the STATE perform certain work for the LOCAL AGENCY as described above under Description of Work and/or further described in Exhibit B, (Work), and

WHEREAS, it is deemed to be in the public's best interest for the STATE to include the requested Work in the STATE's construction contract for the state route improvement, and

WHEREAS, the LOCAL AGENCY is obligated for the cost of the Work described herein,

NOW, THEREFORE, pursuant to RCW 47.28.140 and/or chapter 39.34 RCW and in consideration of the terms, conditions, and performances contained herein, and the attached Exhibits which are incorporated and made a part hereof,

IT IS MUTUALLY AGREED AS FOLLOWS:

1. PLANS, SPECIFICATIONS, AND COST ESTIMATES

1.1 The STATE, on behalf of the LOCAL AGENCY, agrees to perform the Work, as further provided herein and pursuant to the attached exhibits.

Exhibit A is the Cost Estimate and Exhibit B, if included as an attachment, further defines the Work to be constructed for the LOCAL AGENCY. The combination of the LOCAL AGENCY's Work and the STATE's improvements hereinafter constitute the Project.

- 1.2 If indicated in the above heading, the LOCAL AGENCY shall provide the STATE with plans, specifications and cost estimates (PS&E) for the Work.
- 1.2.1 The PS&E shall be in accordance with the state of Washington Standard Specifications for Road, Bridge and Municipal Construction, and its amendments thereto (Standard Specifications), current at the time of Project advertisement, mutually acceptable design standards, or the LOCAL AGENCY's standards, if applicable and specified by the LOCAL AGENCY. Backup calculations for quantities and breakdowns for lump sum items shall be included with the PS&E for the Work.
- 1.2.2 If the PS&E for the Work, with backup calculations and breakdowns, is not delivered by the above PS&E due date, the STATE, at its sole discretion, may proceed without the LOCAL AGENCY Work included with the STATE's improvements. The LOCAL AGENCY agrees to reimburse all STATE costs incurred up to and as a result of the LOCAL AGENCY's failure to timely provide the PS&E. This Agreement shall terminate upon receipt of all reimbursement payments in accordance with Section 6.
- 1.3 The STATE will incorporate the LOCAL AGENCY's Work or Work PS&E into the STATE's PS&E for the STATE's improvements to produce a combined advertisement (Ad) ready PS&E for the Project. The STATE will document STATE-performed engineering design work required to incorporate the Work or Work PS&E into the STATE's PS&E (Design Documentation). The State shall provide up to two intermediate review sets of the PS&E and Design Documentation at mutually agreeable milestones. The STATE will provide the LOCAL AGENCY with one (1) reproducible copy of the stamped final Design Documentation prior to the proposed Ad date.
- 1.4 The STATE will provide the LOCAL AGENCY with one (1) reproducible copy of the Ad ready PS&E for the Project a minimum of thirty (30) working days prior to the proposed Ad date. The LOCAL AGENCY will have fifteen (15) working days to review the Ad ready PS&E for the Project, resolve any concerns, and provide the STATE with written approval, conditional approval, or rejection of the Ad ready PS&E for the Work portion of the Project. In the event the Work portion of the Ad ready PS&E is conditionally approved or rejected, the LOCAL AGENCY shall include the reasons for conditional approval or rejection. The LOCAL AGENCY may request an extension of time in writing, provided that the STATE receives the written request not later than fifteen (15) working days after the LOCAL AGENCY has received the Ad ready PS&E. The STATE shall provide a written response, indicating the number of working days extended, if any.
- 1.5 If the STATE does not receive the LOCAL AGENCY's written approval, conditional approval or rejection of the Work portion of the Ad ready PS&E within fifteen (15) working days and any approved extension of time pursuant to Section 1.4, or if the STATE cannot accept the LOCAL AGENCY's condition(s) of approval, or if the LOCAL AGENCY has not acquired all right of way and permits required to construct, maintain, and operate the Work, the STATE may, at its sole discretion, delete the Work from the Project and advertise the STATE's improvements. The LOCAL AGENCY agrees to reimburse the STATE for engineering costs and actual direct and related indirect costs incurred by the STATE associated with either the STATE or LOCAL AGENCY deleting the Work from the Project. This Agreement shall then terminate upon receipt of all reimbursement payments in accordance with Section 6.
2. **BID, AWARD, AND COST ADJUSTMENTS**
- 2.1 The STATE will advertise the Project for bids. The STATE will be the LOCAL AGENCY's representative during the Ad and Project contract award period. When requested by the STATE, the LOCAL AGENCY shall timely assist the STATE 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 the STATE.
- 2.2 If the LOCAL AGENCY is responsible for preparing the Work PS&E, the LOCAL AGENCY agrees to provide the STATE with any addenda required for the Work during the Ad period, to the Parties' mutual satisfaction.
- 2.3 The STATE shall provide the LOCAL AGENCY with written notification of the bid price for the Work. The LOCAL AGENCY shall have five (5) working days from the date of written notification to provide the STATE written approval of the bid

price for the Work and authorize award, or request the Work be deleted from the Project. The LOCAL AGENCY may request an extension of time in writing, provided that the STATE receives the written request not later than five (5) working days after the LOCAL AGENCY has received the written notification. The STATE shall provide a written response indicating the number of working days extended, if any.

2.4 The LOCAL AGENCY acknowledges that if it fails to provide the STATE with written approval of the bid price for the Work or request that the Work be deleted from the Project within five (5) working days and any approved extension of time pursuant to Section 2.3, the STATE shall delete the Work from the Project. In this event, the LOCAL AGENCY agrees to reimburse the STATE for engineering costs and actual direct and related indirect costs incurred by the STATE associated with deleting the Work from the Project. The LOCAL AGENCY understands that deleting the Work from the Project may require an equitable adjustment to the Project contract and agrees to reimburse the STATE for costs associated with the equitable adjustment. This Agreement shall then terminate upon receipt of all reimbursement and equitable adjustment payments in accordance with Section 6.

2.5 Upon LOCAL AGENCY written approval of the bid price for the Work, the STATE may award and execute the Project contract.

2.6 If the LOCAL AGENCY approves the bid price for the Work and the STATE does not award or execute the Project contract, but thereafter re-advertises the Project for bids, the STATE agrees to pay all STATE costs to re-advertise the Project. The LOCAL AGENCY agrees that the STATE is not responsible for increased bid prices or delay to the Work or other impacts to the LOCAL AGENCY resulting from re-advertising the Project.

2.7 If the LOCAL AGENCY approves the bid price for the Work and the STATE does not award or execute the Project contract and does not re-advertise the Project for bids, this Agreement shall terminate upon receipt of all reimbursement payments in accordance with Section 6. The LOCAL AGENCY agrees that the STATE is not responsible for potential increased costs for the Work, delay to the Work or other impacts to the LOCAL AGENCY resulting from not awarding the Project.

3. CONSTRUCTION

3.1 The STATE will be the LOCAL AGENCY's representative during construction and will act as owner in the administration of the contract for the Work. The STATE will designate a STATE 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.

3.2 The LOCAL AGENCY may consult with and inquire of the STATE Project Engineer, attend all meetings, and have access to all documentation concerning the Work. The LOCAL AGENCY shall not provide direction, directly or indirectly, to the STATE's contractor. All formal contacts between the LOCAL AGENCY and the contractor shall be through the STATE's representative.

3.3 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 the percentage listed under Section 6.6, the STATE shall consult with the LOCAL AGENCY on possible courses of action within three (3) working days in accordance with Section 4.

3.4 The LOCAL AGENCY may inspect the Work. Any costs for such inspection shall be borne solely by the LOCAL AGENCY. All contact between said inspector and the contractor shall be only through the STATE's inspector or the STATE's representative.

3.5 The STATE will prepare the final construction documentation in general conformance with the STATE's Construction Manual. The STATE 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 STATE practices, as directed by the STATE's Construction Manual. Once the LOCAL AGENCY has accepted the Work per Section 5, the STATE will provide one reproducible set of as-built plans to the LOCAL AGENCY within ninetv (90) working days.

4. CONTRACT CHANGES

4.1 Changes to the Project contract will be documented by change order in accordance with the Standard Specifications. The STATE 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, STATE Construction Manual, current edition.

- 4.2 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.
- 4.3 The LOCAL AGENCY authorizes the STATE to initiate all required changes affecting the Work and to negotiate, document and execute the associated change orders. The LOCAL AGENCY agrees to pay for the increases in cost, if any, for the required changes affecting the Work in accordance with Section 6.
- 4.4 The STATE will advise the LOCAL AGENCY 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. The STATE will determine the length of the review time based upon the need to expedite the change to avoid delay to the contractor.
- 4.5 The LOCAL AGENCY may request additions to the Work through the STATE in writing. The STATE will implement the requested changes as elective changes, provided that a change does not negatively impact the STATE's transportation system and complies with the Standard Specifications, Project permits, state and/or federal law, applicable rules and/or regulations, and/or STATE design policies, and does not unreasonably delay critically scheduled Project contract activities.
- 4.6 All elective changes to the Work shall be approved in writing by the LOCAL AGENCY before the STATE directs the contractor to implement the changes, even if an executed change order is not required by the Project contract. The LOCAL AGENCY agrees to pay for the increases in cost, if any, for such elective changes in accordance with Section 6.
- 4.7 The STATE will make available to the LOCAL AGENCY all change order documentation related to the Work.
- 4.8 In the event it is determined that the LOCAL AGENCY does not have sufficient funds to complete the Work, the STATE and the LOCAL AGENCY 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 terminate the remainder of the Work from the Project contract. In the event the Work is terminated, Section 5 shall apply for that portion of the Work completed up to the time of termination. The LOCAL AGENCY agrees to pay all costs associated with termination, including contractor claims, in accordance with Section 6.

5. ACCEPTANCE

- 5.1 Prior to Work acceptance, the STATE and LOCAL AGENCY will perform a joint final inspection. The LOCAL AGENCY agrees, upon satisfactory completion of the Work and receipt of a Notice of Physical Completion of the Work, as determined by the STATE, to deliver a letter of acceptance to the STATE which shall include a release of the STATE from all future claims or demands of any nature resulting from the performance of the Work and STATE administration thereof, outside STATE right of way, subject to any contractor claims (Section 8) caused by the negligent acts or omissions of the STATE in administering the Work.
- 5.2 If a letter of acceptance is not received by the STATE within ninety (90) days following delivery of a Notice of Physical Completion of the Work to the LOCAL AGENCY, the Work and STATE administration thereof shall be considered accepted by the LOCAL AGENCY, and the STATE shall be released from all future claims and demands of any nature resulting from the performance of the Work and the STATE's administration thereof, outside STATE right of way, subject to any contractor claims (Section 8) caused by the negligent acts or omissions of the STATE in administering the Work.
- 5.3 The LOCAL AGENCY may withhold its acceptance of the Work by submitting written notification to the STATE within fifteen (15) days following delivery of a Notice of Physical Completion of the Work. This notification shall include the reason(s) for withholding acceptance.

6. PAYMENT

- 6.1 The LOCAL AGENCY, in consideration of the faithful performance of the Work performed by the STATE and its contractor, agrees to reimburse the STATE for the actual direct and related indirect costs of the Work, as estimated in Exhibit A.

- 6.2 If the Parties have a reciprocal overhead agreement in place effective as of the date of this Agreement, the STATE's overhead rate will not be charged. In this event, the STATE will only invoice for actual direct salary and direct non-salary costs for the STATE's contract administration.
- 6.3 The STATE shall provide detailed invoices to the LOCAL AGENCY for the Work performed by the STATE and its contractor or for costs incurred as provided in Sections 1.2.2, 1.5, 2.4, 4.8 or 8.1.4, and the LOCAL AGENCY 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.
- 6.4 The LOCAL AGENCY agrees that if it does not make payment within ninety (90) days after receipt of an invoice, the STATE may deduct and expend any monies to which the LOCAL AGENCY is entitled to receive from the Motor Vehicle Fund.
- 6.5 Advance Payment: If an advance payment is required, the LOCAL AGENCY agrees to pay the STATE the "Advance Payment Amount," shown above, within twenty (20) days after receipt of Project contract award notification. The advance payment represents approximately fifteen percent (15%) of the cost estimate and covers costs incurred by the STATE in the initial stages of the Work. The advance payment will be carried throughout the life of the LOCAL AGENCY's cost obligations, with final adjustment made in the final invoice.
- 6.6 Increase in Cost: 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 4.8.

7. RIGHT OF ENTRY

- 7.1 The LOCAL AGENCY hereby grants to the STATE and its authorized agents, contractors, subcontractors, and employees, a right of entry upon all land in which the LOCAL AGENCY has an interest for the purpose of constructing the Project.

- 7.2 Where applicable, the LOCAL AGENCY hereby grants to the STATE and its authorized agents, contractors, subcontractors, and employees, a right of entry upon all land in which the LOCAL AGENCY has an interest for the STATE to construct, operate, maintain and/or reconstruct signal loop detectors and appurtenances for signals belonging to the STATE, if any, that are constructed within the LOCAL AGENCY's right of way. The terms of this Section 7.2 shall survive the termination of this Agreement.

8. CLAIMS

8.1 Claims for Additional Payment

- 8.1.1 In the event the contractor makes claims for additional payment associated with the Work, the STATE will immediately notify the LOCAL AGENCY of such claims. Such claims shall be made in the manner and form as provided for in the Standard Specifications.
- 8.1.2 The LOCAL AGENCY 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 the STATE in administering the Work.
- 8.1.3 The LOCAL AGENCY shall have the right to review and comment on any settlement for claims associated with the Work. However, the STATE shall have the ultimate right to settle such claims. In the event the LOCAL AGENCY does not agree with the claim settlement as negotiated by the STATE, the LOCAL AGENCY shall reserve the right to not financially participate in the negotiated claim settlement. If agreement cannot be reached between the LOCAL AGENCY and the STATE on a claim settlement, the Parties agree to follow the dispute resolution procedure in Section 10.7.
- 8.1.4 If the STATE agrees, the LOCAL AGENCY may defend contractor claims associated with the Work at its own cost, and in doing so, the LOCAL AGENCY agrees to pay any resulting settlement, court judgment or arbitration award. The STATE will cooperate with the LOCAL AGENCY in the LOCAL AGENCY's

defense of the claims. The LOCAL AGENCY agrees to reimburse any STATE costs, including attorneys fees, incurred in providing such assistance in accordance with Section 6.

8.2 Claims for Damages: After Work acceptance, in the event of claims for damages or loss attributable to bodily injury, sickness, death, or injury to or destruction of property that occurs within the limits of the Work located on the LOCAL AGENCY's right of way, the LOCAL AGENCY shall defend such claims and hold harmless the STATE therefrom, and the STATE shall not be obligated to pay any claim, judgment or cost of defense. Nothing in this Section, however, shall remove from the STATE any responsibility defined by the current laws of the state of Washington or from any liability for damages caused by the STATE's own negligent acts or omissions independent of the Work performed pursuant to this Agreement.

9. OWNERSHIP, OPERATION, AND MAINTENANCE

9.1 Upon acceptance of the Work as provided in Section 5, the LOCAL AGENCY shall be the sole owner of that portion of the Work located within the LOCAL AGENCY's right of way, and the LOCAL AGENCY shall be solely responsible for ownership and all future operation and maintenance of the Work at its sole cost, without expense, cost, or liability to the STATE.

9.2 STATE facilities constructed on LOCAL AGENCY right of way, if any, as identified in Section 7.2 shall be owned by the STATE, and the STATE shall be responsible for the operation and maintenance of such facilities at the STATE's sole cost, until removed. The terms of this Section shall survive the termination of this Agreement.

10. GENERAL PROVISIONS

10.1 Amendment: 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.

10.2 Termination: Neither the STATE nor the LOCAL AGENCY may terminate this Agreement without

the written concurrence of the other Party, except as otherwise provided under Sections 1.2.2, 1.5, 2.4, and 2.7.

10.2.1 If this Agreement is terminated prior to the fulfillment of the terms stated herein, the LOCAL AGENCY agrees to reimburse the STATE for the actual direct and related indirect expenses and costs it has incurred for the Work up to the date of termination, as well as the costs of non-cancelable obligations.

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

10.3 Independent contractor: The STATE shall be deemed an independent contractor for all purposes, and the employees of the STATE or any of its contractors, subcontractors, consultants, and the employees thereof, shall not in any manner be deemed to be employees of the LOCAL AGENCY.

10.4 Indemnification: The Parties shall protect, defend, indemnify, and hold harmless each other and their employees, authorized agents, and/or contractors, 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 Party's obligations to be performed pursuant to the provisions of this Agreement. The Parties shall not be required to indemnify, defend, or hold 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 negligence of the other Party; provided that, if such claims, suits, or actions result from the concurrent negligence of (a) the STATE, its employees, authorized agents, or contractors and (b) the LOCAL AGENCY, its employees or authorized agents, 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 the negligence of each Party, its employees, authorized agents, and/or contractors. This indemnification shall survive termination of this Agreement.

10.5 Acceptance of Liability: The LOCAL AGENCY agrees and accepts full liability for (1) the PS&E provided for the Work to the STATE, if any; and (2) for any Work the LOCAL AGENCY has provided direction to the STATE to design and/or construct outside the STATE's right of way and/or STATE's jurisdiction that does not meet STATE standards.

- 10.6 Survivability: Sections 10.4 and 10.5 shall survive the termination of this Agreement.
- 10.7 Disputes: In the event that a dispute arises under this Agreement, it shall be resolved as follows: The STATE and the LOCAL AGENCY shall each appoint a member to a disputes 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.
- 10.8 Venue: 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 attorneys fees, witness fees, and costs.

- 10.9 Audits/Records: All Project records for the Work in support of all costs incurred shall be maintained by the STATE for a period of three (3) years. The LOCAL AGENCY shall have full access to and right to examine said records, during normal business hours and as often as it deems necessary. Should the LOCAL AGENCY require copies of any records, it agrees to pay the costs thereof. The Parties agree that the Work performed herein is subject to audit by either or both Parties and/or their designated representatives; and/or state of Washington and/or the federal government.
- 10.10 Term of Agreement: Unless otherwise provided herein, the term of this Agreement shall commence as of the date this Agreement is fully executed and shall continue until the Work is accepted by the LOCAL AGENCY pursuant to Section 5, or as otherwise provided herein, and all obligations for payment have been met.
- 10.11 Working Days: Working days for this Agreement are defined as Monday through Friday, excluding Washington State holidays per RCW 1.16.050.

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

LOCAL AGENCY

**STATE OF WASHINGTON
DEPARTMENT OF TRANSPORTATION**

By Jay Leininger

By [Signature]

Name Jana Leininger

Name Keith A. Metcalf

Title Mayor

Title Eastern Region Administrator

Date Jun 9, 2009

Date 6/15/09

**GCA 6104
Exhibit A**

**Cost Estimate North Pend Oreille - SR 31 Safety Project
Metaline Falls**

Item Description	Quantity	Unit	Unit Cost	Dollars
Mobilization	LS	LS	LS	\$1,000
Cement Conc. Sidewalk	117	SY	\$20.00	\$2,340
Illumination System	LS	LS	LS	\$10,000
			Const. Total	\$13,340

15% CE	\$2,001
4% Contingency	\$534
8.6% Tax	\$1,147
30% PE	\$4,002
Total	\$21,024