

**OMAK TRAIL
MAINTENANCE AGREEMENT
Washington State Department of Transportation
City of Omak**

AGREEMENT No. GM 1578

This Agreement is made and entered into between the Washington State Department of Transportation, hereinafter the "STATE," and the City of Omak, hereinafter "CITY," collectively called the "Parties" and individually, the "Party."

WHEREAS, the CITY is a municipal corporation duly organized and existing under the laws of the State of Washington having boundaries within the State of Washington, and

WHEREAS, the STATE and the CITY each have authority to own, operate and maintain trails within their respective jurisdictions, and

WHEREAS, the STATE has constructed a 1,323 foot pedestrian pathway as shown in Exhibit B, hereinafter the TRAIL, on state-owned property, and

WHEREAS, the STATE does not have the equipment necessary to efficiently perform snowplowing activities (Work) for the TRAIL, and

WHEREAS the STATE has requested the CITY and the CITY has agreed to perform the Work described herein,

NOW, THEREFORE, by virtue of RCW 47.28.140, the above recitals which are incorporated herein as if fully set forth below, and in consideration of the terms, conditions, covenants, and performances contained herein as well as the attached Exhibits A and B which are incorporated and made part hereof,

IT IS MUTUALLY AGREED AS FOLLOWS:

1. CITY RESPONSIBILITIES

- 1.1 The CITY, at STATE expense, agrees to perform the snowplowing Work for the 1,323 foot portion of the TRAIL as shown in Exhibit B.
- 1.2 The Work frequency will coincide with the CITY's snowplowing activities for snow removal on the CITY's streets and trails.
- 1.3 The CITY shall not make capital improvements to the TRAIL. If the CITY finds that capital improvements to the TRAIL are desirable, the CITY may submit a written recommendation to

the STATE identifying the need. However, the primary responsibility of identifying and evaluating potential capital improvements and repairs shall remain with the STATE.

- 1.4 When the CITY becomes aware of any incidents involving personal injury and/or property damage occurring on the Exhibit B portion of the TRAIL, the CITY agrees to report said incidents to the STATE within five (5) calendar days of becoming aware of said incidents.
- 1.5 When the CITY becomes aware of any damage to the TRAIL that creates a hazard, occurring on the Exhibit B portion of the TRAIL, the CITY agrees to notify the STATE within five (5) calendar days of becoming aware of such damage.
- 1.6 The CITY will contact the North Central Region Maintenance Superintendent at 509-826-7364 for Sections 1.4 and 1.5.

2. STATE RESPONSIBILITIES

- 2.1 The STATE will continue to own, operate, and maintain the TRAIL, except for the Work to be performed by the CITY.

3. PAYMENT

- 3.1 The STATE, in consideration of the faithful performance of the Work to be done by the CITY, agrees to reimburse the CITY for the hourly cost of the Work, as defined in Exhibit A. The CITY agrees to invoice the STATE on or before March 30 of each year for the Work performed during the preceding winter and provide supporting documentation for all charges, and the STATE agrees to pay the CITY within thirty (30) days of receipt of an invoice. The hourly costs identified in Exhibit A will be updated annually by mutual agreement of the Parties to account for increases in the CITY's labor cost and the equipment utilized.

4. RIGHT OF ENTRY

- 4.1 The STATE grants to the CITY a right of entry upon all land in which the STATE has interest for the purpose of accomplishing the Work.

5. TERMINATION

- 5.1 The term of this Agreement shall be for one year, beginning on the date of execution of this Agreement and ending on December 31 of the first year and each year thereafter. This Agreement shall automatically renew on a calendar year basis unless written notice of termination is given by either Party in accordance with section 5.2.

- 5.2 Notice of Termination shall be made by the preceding November 1 of any year. Failure of either Party to notify the other of termination on or before November 1 shall cause this Agreement to automatically renew for the next calendar year.

6. DISPUTES AND VENUE

- 6.1 In the event that a dispute arises under this Agreement, it shall be resolved as follows: The STATE's Secretary of Transportation or designee and CITY's designee shall review the applicable facts, contract terms, statutes and rules affecting the dispute to resolve the matter. If the Parties cannot reach a resolution, the Parties agree that any legal action to enforce any right or obligation under this Agreement may only be brought in Thurston County Superior Court. The Parties agree that each shall be solely responsible for payment of its own attorneys fees and costs.

7. MODIFICATION

- 7.1 This Agreement may be amended by the mutual Agreement of the Parties. Such amendments or modification shall not be binding unless put in writing and signed by persons authorized to bind each of the Parties.

8. INSURANCE

- 8.1 The CITY warrants that it is a member of the Cities Insurance Association of Washington, (CIAW) a risk retention group, and agrees to provide acceptable evidence of its status to the STATE. The CITY's coverage must provide coverage that includes public liability coverage for bodily injury, property damage, and personal injury of not less than Two Million Dollars (\$2,000,000.00) combined single limit per occurrence, with a general aggregate amount of not less than Four Million Dollars (\$4,000,000.00) per policy period.
- 8.2 Coverage, if obtained by the CITY in compliance with this section, shall not be deemed as having relieved the CITY of any liability in excess of such coverage,
- 8.3 In the event CITY, after commencement of this Agreement, elects to terminate its membership in the CIAW and secure commercial liability coverage, CITY will promptly notify STATE, and provide a certificate of insurance from an insurer licensed to conduct business in the State of Washington, in the amounts and types as set forth in paragraph 8.1. above. Further, the CITY shall provide a certificate of insurance within Ten (10) days of receiving a written notice from STATE for an increase in the coverage amounts.

10. INDEMNITY

- 10.1 The CITY shall protect, defend, indemnify, and hold harmless the STATE, its 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 CITY's Work pursuant to the provisions of this Agreement. The CITY will not be required to indemnify, defend, or hold 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 its employees and/or agents. Where such claims, suits, or actions result from concurrent negligence of both 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 each Party's own negligence.
- 10.2 The CITY agrees that its obligations under this section extend to any claim, demand and/or cause of action brought by, or on behalf of, any of its employees or agents while performing work pursuant to the provisions of this Agreement while located on STATE right of way. For this purpose, the CITY, by mutual negotiation, hereby waives with respect to the STATE only, any immunity that would otherwise be available to it against such claims under the Industrial Insurance provisions chapter 51.12 RCW.
- 10.3 Sections 10.1 and 10.2, indemnification and waiver provisions, respectively, shall survive termination of this Agreement

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year last written below.

CITY OF OMAK

**WASHINGTON STATE DEPARTMENT
OF TRANSPORTATION**

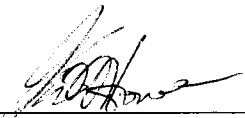
By: Cindy Gagne
CINDY GAGNE
(print name)
Mayor
(title)

By: Paul J. Mahre
Paul J. Mahre
(print name)
Local Programs Engineer
(title)

Date: 12.21.11

Date: 12/21/2011

APPROVED AS TO FORM

By: 

Michael Howe, City Attorney

Date: 12-20-11

APPROVED AS TO FORM

By: 

Ann E. Salay, Assistant Attorney

Date: 12-19-11

Omak Trail Agreement

GM 1578

Exhibit A

The hourly rate for this agreement is calculated as follows:

Labor: \$46.15per hour

Bobcat: \$22.00 per hour (based on blue book rates for 2007 S2500 Bobcat)

Total: \$68.15per hour

