

RESOLUTION NO. 54-2008

**AN AGREEMENT BETWEEN THE WASHINGTON STATE PATROL,
WASHINGTON STATE DEPARTMENT OF TRANSPORTATION AND
THE CITY OF OMAK FOR ELECTRONIC TICKETING AND
COLLISION REPORTS**

THE CITY COUNCIL OF THE CITY OF OMAK, Washington do hereby resolve that the Agreement attached hereto between the **CITY OF OMAK**, a municipal corporation, the **WASHINGTON STATE PATROL**, and **THE WASHINGTON STATE DEPARTMENT OF TRANSPORTATION**, to participate in an electronic ticketing and collision reporting system, is hereby approved. The Mayor is hereby authorized and directed to execute the same for and on behalf of the **CITY**; and the City Clerk is authorized and directed to attest her signature.

INTRODUCED and passed this 1st day of October 2008.

SIGNED:

Cindy Gagne
Cindy Gagne, Mayor

ATTEST:

Kathy Lobdell
Kathy Lobdell, City Clerk

APPROVED AS TO FORM:

Michael Howe
Michael Howe, City Attorney

COPY
ORIGINAL

WSP No. _____ WSDOT No. _____

**WASHINGTON STATE PATROL/
WASHINGTON STATE DEPARTMENT OF TRANSPORTATION
ELECTRONIC COLLISION REPORTS & ELECTRONIC COLLISION RECORDS
USER'S AGREEMENT**

This AGREEMENT is entered into between the Washington State Patrol (hereinafter "WSP"), the Washington State Department of Transportation (hereinafter "WSDOT"), both agencies of the State of Washington, and the Omak Police Department, a Municipal Law Enforcement Agency {insert type of organization} (hereinafter "the User").

RECITALS

A. In 1938, state law (currently RCW 46.52.060) authorized the WSP to file, tabulate and analyze collision reports and produce certain statistical information about collisions. For the next thirty years, the WSP maintained a largely manual system for filing collision reports generated over approximately five-year periods. The WSP also produced some limited statistical collision data, primarily fatality and accident rate summaries, using paper punch card technology. Analysis of collision data for highway safety purposes was not possible because the state did not have a uniform collision report, data on collision reports was primitive and inconsistent, collision reports were not coded by precise roadway location, and no computerized database system existed.

B. In 1966 and 1973, the federal Congress enacted laws requiring states to create computerized collision databases in order to analyze the need for highway safety improvements and participate in federal programs to fund those improvements. The federal laws, and associated funding, provided for states to adopt uniform collision reports containing detailed highway safety coding, and provided that information from these reports would be maintained in a computerized collision database with precise location coding of all collisions. These laws were implemented by WSP and WSDOT jointly. Beginning in approximately 1970, the WSP collected collision reports and entered the raw data into a computer. The data was then transferred to WSDOT for creation of the collision database required under federal law. The WSP maintained copies of individual collision records as well as its database, while WSDOT maintained their own collision database.

C. The WSP and WSDOT systems for filing individual collision reports, entry of raw data into a computer, and creation of the collision database, remained unchanged until 1996. By this time the original WSP computer system used for data entry and storage and retrieval of collision records had become obsolete. An attempt to convert to an optical character recognition system was not successful. After extensive discussion between WSP, WSDOT and the Washington State Office of Financial Management, the agencies concluded that functions related to the maintenance of copies of collision reports and computer input of raw collision report data could be most efficiently performed by WSDOT in conjunction with its already existing collision database function. Beginning in 2002, WSDOT not only created the collision database required by federal law, but also, pursuant to an interagency agreement with WSP, began entering all raw collision data into WSDOT's computer. In addition, pursuant to this same interagency agreement, WSDOT began work to develop an electronic imaging system to store and retrieve copies of individual collision reports. This imaging system was implemented in May of 2003.

D. The current system for filing paper collision reports and creating the collision database as to this User will remain in effect until WSP, WSDOT and the User approve this Agreement establishing the new electronic system to file collision reports and transmit collision report data to WSDOT. The Statewide Electronic Collision and Ticket Online Records (SECTOR) software was developed through a collaborative partnership that includes the WSP, WSDOT, Administrative Office of the Courts, Department of Licensing, and local law enforcement agencies. SECTOR enables officers to create electronic collision reports and other forms in the field, pursuant to federal, state and local requirements. This data is then transferred to a central database where it is available for review, analysis and reporting by the local law enforcement agency.

E. The Department of Licensing is an agency of the State of Washington authorized by law (RCW 46.52.030) to receive full access to collision reports for purposes of maintaining case records under RCW 46.52.120, supplying abstracts of driving records under RCW 46.52.130, and to administer the financial responsibility requirements

when drivers are involved in traffic collisions under chapter 46.29 RCW. To perform these functions, they must review collision reports that are filed by law enforcement agencies and citizens.

F. The procedures established in this Agreement are intended to satisfy federal law (23 U.S.C. § 409) which provides that information from the collision database created pursuant to federal highway safety laws not be available for use in damage litigation against transportation authorities. However, under this Agreement individual collision reports are available to all who satisfy requirements of state law for access to such reports and collision database information is available to all who request such data except for those who request it for purposes which violate the federal restriction on the availability of this data for use in litigation against transportation authorities. In *Pierce County v. Guillen*, 537 U.S. 129, 123 S. Ct. 720, 154 L. Ed. 2d 610 (2003), the United States Supreme Court upheld the constitutionality of the federal statute as a proper exercise of federal commerce clause power to act to prevent state tort liability from interfering with federal efforts to improve highway safety. The Federal Highway Administration subsequently required state compliance with 23 U.S.C. § 409 as a mandatory condition for state participation in the federal highway program.

G. The User under this Agreement is a general authority law enforcement agency within the State of Washington and a criminal justice agency as defined in RCW 10.97.

H. The User, WSP, and WSDOT are authorized to enter into this Agreement pursuant to Chapter 39.34 RCW.

AGREEMENT

NOW THEREFORE, in light of the foregoing understandings and conditions, and other valuable considerations more fully set out or incorporated herein by reference, the parties, by their duly authorized officials, do mutually agree as follows:

SECTION 1 - PURPOSE

The purpose of this Agreement is to provide the User, the ability to submit traffic collision reports electronically to WSDOT and the Washington Department of Licensing, and to protect the confidentiality of such reports as required by law.

SECTION 2 – DEFINITIONS AND ACRONYMS

“AOC” shall mean the Washington Administrative Office of the Courts.

“DIS” shall mean the Washington Department of Information Services.

“DOL” shall mean the Washington State Department of Licensing.

“IGN” shall mean the Washington Intergovernmental Network.

“JINDEX” shall mean the Washington Justice Information Data Exchange.

“SECTOR” shall mean the Washington Statewide Electronic Collision and Ticket Online Records application.

“SGN” shall mean the Washington State Governmental Network.

“User Contact” shall mean the User employee assigned to be the primary contact for the User in matters relating to electronic collision reporting under this Agreement.

“WSDOT” shall mean the Washington State Department of Transportation

“WSP” shall mean the Washington State Patrol.

“WSP SECTOR System Administrator” shall mean the WSP employee designated to be the primary system support contact for users under this Agreement.

SECTION 3 - RESPONSIBILITIES

3.1 User Requirements. The User hereby certifies that it operates electronic equipment to create vehicle collision reports pursuant to federal, state and local requirements.

3.2 Submission and Distribution of Collision Report Data. Upon performing a review and/or approval of the collision reports to ensure that they have been accurately completed by the investigating officer, the User will submit the collision reports and related information electronically to the JINDEX (Justice Information Data Exchange). The JINDEX will distribute the electronic records to the authorized agencies for analysis and reporting purposes. These agencies include, but are not limited to, WSP, WSDOT and DOL.

3.3 Reporting Requirements. The User will submit to WSDOT collision data that is compliant with the state's business rules and data format and in the standardized collision report form approved by the Chief of the Washington State Patrol. This information is available at <http://www.trafficrecords.wa.gov/etrip.htm>.

3.4 Modifications to Reporting Requirements. Because business rules, data format, report forms and other items may change in the future, the User agrees to comply with any such changes. WSDOT and WSP will endeavor to not make changes to these items any more frequently than once each quarter per calendar year. These items are described in the document "Hardware and Software Requirements for Submitting Electronic Collision Reports", available at <http://www.trafficrecords.wa.gov/etrip.htm>. Changes or updates to these requirements will be set forth at this same web address. In addition, the User will be notified when any changes or updates to these requirements occur.

3.5 Laws. The User agrees to comply with all applicable federal and state laws, regulations, rules, and procedures regarding the reporting and dissemination of collision reports and record information.

3.6 Electronic Submittal Authorization. The WSP and DIS, through the Washington Intergovernmental Network (IGN), the State Governmental Network (SGN), or the Internet, and JINDEX, will furnish the User with the capability to submit collision reports electronically to WSDOT and DOL.

3.7 SECTOR Software.

3.7.1 The User will use either the SECTOR software or other User-supplied software to create and transmit electronic collision reports. If the User desires, SECTOR software will be provided to the User at no charge to the User.

3.7.2 Alternative Software. If the User desires to use electronic collision reporting software other than SECTOR, the software must maintain compliance with the business rules and data format and the standardized collision report form approved by the Chief of the Washington State Patrol, and must be approved by the WSP and WSDOT.

3.8 Equipment. Equipment, including computers and associated software, bar code scanners, printers, servers and server certificates, including purchase and maintenance, are the responsibility of the User. For further information on these items, please refer to the document "Hardware and Software Requirements for Submitting Electronic Collision Reports" at <http://www.trafficrecords.wa.gov/etrip.htm>.

3.9 Servers.

3.9.1 At its option, the User shall use one of the following servers to store and transmit electronic collision reports: User's own server; a WSP SECTOR server if available; or an alternative server identified by User.

3.9.2 Use of the WSP SECTOR server is included with the approval to use the SECTOR software. Upon approval, WSP will provide network connectivity and security information to each user that will allow them to access and use the WSP SECTOR server. If the User chooses to use the WSP SECTOR server, the WSP will provide authorization for the User to access their (the User's) collision records for the following limited purposes:

- A. For the review of the User's unapproved collision reports; and
- B. For the analysis and reporting of WSDOT-approved collision reports.

3.10 Network Connection. At the option of the User, the network connection to the JINDEX will be made through either the IGN or SGN administered by the Washington Department of Information Services (DIS), or else via the Internet. The operation and maintenance of the IGN, SGN and JINDEX is the responsibility of DIS. For further details on JINDEX connectivity, please go to the following web site: <http://www.trafficrecords.wa.gov/etrip.htm>. The User shall promptly notify the WSP SECTOR System Administrator of sustained or repeated network problems that affect electronic collision reporting services. Such notices shall be given by email to the following address:

SECTOR@wsp.wa.gov

The notice address as provided herein may be changed by written notice given as provided above.

3.11 Secure System. The User shall take necessary measures to make its electronic collision reporting equipment and system secure and prevent unauthorized use. WSP reserves the right to review and approve equipment security measures, and to suspend or withhold service until such matters are corrected to the reasonable satisfaction of WSP.

3.12 Software Updates. The User shall take necessary measures to upgrade their electronic collision reporting software as updates are provided to them. This includes updates provided by WSP to the SECTOR software, or if utilizing an alternative software, updates necessary for the User's alternative software to remain compliant with WSP and WSDOT requirements. WSP reserves the right to suspend or withhold service until the latest upgrade has been implemented to the reasonable satisfaction of WSP.

3.13 User Costs. The User agrees: to pay all personnel, operating, maintenance, and data transmission costs; to submit collision reports to WSP and WSDOT as required by law; and to pay the costs and maintenance related to any interface developed between the User's electronic collision reporting application and the User's local records management system.

3.14 User Contact. The User agrees to assign a coordinator to serve as the primary contact person for the User in matters relating to electronic collision reporting. The User also agrees to notify the WSP immediately, in writing, of any changes to the User Contact person.

3.15 Technical Configuration. As a prerequisite of entering into this Agreement, the User has completed the SECTOR assessment survey. The User also agrees to notify the WSP immediately, in writing, of any changes to this Technical Configuration.

SECTION 4 – TERM

This Agreement is effective on the date of final signature, and shall continue until terminated as provided elsewhere herein.

SECTION 5 – TERMINATION

5.1 Termination for Convenience.

5.1.1 Termination by User. Except as otherwise provided in this Agreement, the User may terminate its participation in this Agreement upon thirty (30) days written notification to WSP and WSDOT.

5.1.2 Termination by WSP and WSDOT. WSP or WSDOT may terminate this Agreement as to the User upon not less than thirty (30) days prior written notice, unless an emergency exists, as determined by WSP or WSDOT, then immediately, if WSP or WSDOT determines that it is in the best interest of the State of Washington to terminate this Agreement.

5.1.3 Termination of WSP and WSDOT Participation.

A. WSP and WSDOT may jointly terminate their participation in this Agreement upon thirty (30) days written notification to the User; Provided, that any such termination must be mutually agreed

WSP/WSDOT ELECTRONIC COLLISION REPORTS USER'S AGREEMENT

upon by both WSP and WSDOT prior to the issuance of the notice to terminate as provided in Subsection B below.

B. WSP and WSDOT acknowledge that in order for the electronic transmissions contemplated under this Agreement to operate, it is necessary for both WSP and WSDOT to remain parties to this Agreement. In the event either party desires to terminate its participation in this Agreement, such party shall notify the other party of this desire, WSP and WSDOT shall resolve any matters that may result from the termination of this Agreement, and WSP and WSDOT shall issue a joint notice of termination to the User as provided in Subsection A above.

5.1.4 In the event this Agreement is terminated for convenience, the parties shall be liable only for performance in accordance with the terms of this Agreement for performance prior to the effective date of termination.

5.2 Termination for Default.

5.2.1 The violation of any term or condition of this Agreement by the User, or the failure to fulfill in a timely and proper manner any requirement in this Agreement by the User shall constitute a default of this Agreement.

5.2.2 In the event of a default by the User, WSP and WSDOT may, upon the mutual agreement of WSP and WSDOT, terminate this Agreement without penalty or further liability, upon not less than thirty (30) days prior written notice to the User; Provided, that the User has failed to cure such default within that thirty (30) day period, or such longer period, as may be reasonably determined by the mutual agreement of WSP and WSDOT if the User is diligently working to cure the default. If the default is not cured within the cure period, WSP and WSDOT may, upon mutual agreement between WSP and WSDOT, immediately terminate this Agreement by giving written notice to the User. The option to terminate shall be at the sole discretion of WSP and WSDOT.

5.2.3 In the event of a User default, WSDOT and WSP reserve the right to suspend all or part of this Agreement (A) during the investigation of the alleged User default; (B) pending corrective action by User of a default; or (C) pending a decision by WSDOT and WSP to terminate this Agreement.

5.2.4 Waiver or acceptance of any User default of the terms of this Agreement by WSDOT or WSP shall not operate as a release of User's responsibility for any prior or subsequent default.

5.2.5 If the User defaults on any provision in this Agreement three (3) times within a six (6) month period, the third default shall be deemed "non-curable" and this Agreement may be terminated by WSDOT and WSP on not less than thirty (30) days written notice.

SECTION 6 - INDEMNIFICATION

The User agrees to indemnify and save harmless the State of Washington, the Washington State Patrol and its employees, and the Washington State Department of Transportation and its employees from and against any and all claims, demands, actions, suits, including but not limited to, any liability for damages by reason of or arising out of any misuse of the SECTOR software, or any cause of action whatsoever, and against any loss, cost, expense, and damage resulting there from, including attorney's fees.

SECTION 7 -- DISPUTE RESOLUTION

7.1 The following individuals are the Designated Representatives for the purpose of resolving disputes that arise under this Agreement:

WSP: The WSP representative will be identified upon negotiation of the user agreement.

WSDOT: General Manager, Transportation Data Office

User: Agency Contact Name: Ralph Malone

Contact Information: PO Box 72 Omak, WA 98841 509-826-1170

7.2 The Designated Representatives shall confer to resolve disputes that arise under this Agreement as requested by any party. The Designated Representatives shall use their best efforts and exercise good faith to resolve such disputes.

7.3 In the event the Designated Representatives are unable to resolve the dispute, a representative from WSP to be determined upon negotiation of the User's Agreement, the Chief of Staff or her/his designee for WSDOT, and {insert title for User representative} the Omak City Administrator for User or her/his designee shall confer and exercise good faith to resolve the dispute.

SECTION 8 – GENERAL

8.1 Recitals and Exhibits. The Recitals and Exhibits attached hereto, are hereby incorporated by reference into this Agreement.

8.2 Assignments. This Agreement cannot be assigned.

8.3 Modifications. This Agreement contains all the agreements and conditions made between the parties hereto pertaining to the User's ability to electronically submit collision reports to WSDOT and DOL, and may not be modified orally or in any other manner other than by a written agreement signed by all parties hereto. Failure on the part of any party to enforce any covenant or provision herein contained shall not discharge or invalidate such covenant or provision or affect the right of said party to enforce the same in the event of any subsequent breach or default.

8.4 Interpretation. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Washington. The titles to paragraphs or sections of this Agreement are for convenience only and shall have no effect on the construction or interpretation of any part hereof.

8.5 Venue. The parties agree that the venue of any action or suit concerning this Agreement shall be in the Thurston County Superior Court and all actions or suits thereon shall be brought therein, unless applicable law requires otherwise.

8.6 Totality of Agreement. It is understood that no guarantees, representations, promises, or statements expressed or implied have been made by the WSP or WSDOT except to the extent that the same are expressed in this Agreement.

8.7 Notices. Unless otherwise provided herein, wherever in this Agreement written notices are to be given or made, they will be served, personally delivered or sent by certified or overnight mail addressed to the parties at the address listed below unless a different address has been designated in writing and delivered to the other party.

WSP: Specific contact information to be determined upon negotiation of the User's Agreement.

WSDOT:

General Manager, Transportation Data Office
PO Box 47380
Olympia, WA 98504-7380

User:

Name: Ralph Malone Title: City Administrator

Contact Information: PO Box 72 Omak, WA 98841

509-826-1170

WSP No. _____ WSDOT No. _____

8.9. Attorneys' Fees and Costs. Except as otherwise provided in this Agreement, in the event of any controversy, claim, or dispute arising out of this Agreement, each party shall be solely responsible for the payment of its own legal expenses, including but not limited to, attorney's fees and costs.

8.10 Contract Execution. The signatories to this Agreement represent that they have the authority to bind their respective organizations to this Agreement.

IN WITNESS THEREOF, the duly authorized officials of the respective parties have executed this written agreement on the day and year first hereinafter written.

USER AGENCY

WASHINGTON STATE PATROL

BY Andy Gagne

BY _____

TITLE Mayor

TITLE _____

DATE 10.6.08

DATE _____

WASHINGTON STATE DEPARTMENT OF TRANSPORTATION

BY _____

TITLE _____

DATE _____

APPROVED AS TO FORM

Assistant Attorney General
Washington State Department of Transportation

Assistant Attorney General
Washington State Patrol

Date: _____

Date: _____