

**RESOLUTION NO. 81-2023**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OMAK,  
WASHINGTON, APPROVING AN INTERLOCAL AGREEMENT BETWEEN  
THE CITY OF OMAK AND WASHINGTON STATE DEPARTMENT OF  
TRANSPORTATION**

**WHEREAS**, the Revised Code of Washington, RCW 39.34 authorizes units of government within the State to enter into cooperative agreements for the provision of goods and services to each other; and

**WHEREAS**, the City of Omak has the need to purchase road salt and brine; and


**WHEREAS**, the Washington State Department of Transportation maintains inventory of road salt and brine; and

**WHEREAS**, the Washington State Department of Transportation will allow the City of Omak to purchase materials as long as inventory allows.


**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Omak that the Interlocal Agreement between the City of Omak and the Washington State Department of Transportation, a copy of which is attached hereto as Exhibit "A", for the purchase of road salt and brine from the Washington State Department of Transportation. The Mayor is authorized to execute the same on behalf of the City, and the City Clerk is authorized to attest her signature.

6th **INTRODUCED AND PASSED** by the City Council of the City of Omak this day of November, 2023.


**APPROVED:**

  
Cindy Gagne, Mayor

**ATTEST:**

  
Connie Thomas, City Clerk

**APPROVED AS TO FORM:**

  
Michael D. Howe, City Attorney

# MEMORANDUM

To: Cindy Gagné, Mayor

From: Wayne Beetchenow, Public Works Director

Date: November 6, 2023

Subject: **Resolution No. 81-2023** Approving Interlocal Agreement with the Washington State Department of Transportation

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The Attached Resolution No. 81-2023, a Resolution of the City Council of the City of Omak, Washington Approving and Interlocal Agreement Between the City of Omak and Wahington State Department of Transportation, is forwarded for your consideration.

This resolution is an Interlocal Agreement that will allow the City of Omak to purchase road salt and brine at the local WSDOT shop. This is updating a previous agreement for the same products.

Road salt and brine are used for winter maintenance on the streets and sidewalks.

We are requesting approval of this resolution.



<b>Maintenance Agreement</b> Work by WSDOT for Other State, Federal, and Local Governmental Agencies	Agency and Billing Address  City of Omak Po Box 72 Omak WA 98841
Agreement Number JB0020	Agency Contact Name/Phone #/Email
WSDOT Agreement Manager Don. Becker	Wayne publicworks@omak.com
Statewide Vendor # or Federal Tax ID # 916001262	Estimated Costs \$30,000
Description of Work (herein after referenced as Work)  Sale of Winter Materials to the City of Omak from WSDOT North Central Region. The below materials will be sold to the City of Omak when WSDOT Area 3 inventory allows, which is dependent on funding and availability.  Road Salt, Liquid Brine.	

This Agreement is between the Washington State Department of Transportation (WSDOT) and the above-named governmental agency (Agency), hereinafter referred to individually as the "Party" and collectively as the "Parties."

### Recitals

1. The Agency has requested and WSDOT has agreed to perform certain maintenance work on Agency-owned facilities, hereinafter the "Work".
2. It is deemed to be in the public's best interest for WSDOT to complete the Work as requested.

Now Therefore, pursuant to chapter 39.34 RCW and in consideration of the terms, conditions, and performances contained herein, the recitals as stated above which are incorporated and made a part hereof, it is mutually agreed as follows:

#### 1. Purpose

- 1.1 WSDOT agrees to perform the above-described Work, using state labor, equipment and materials, as requested by the Agency.
- 1.2 The Agency agrees to reimburse WSDOT for the actual direct and related indirect costs of the Work. Administrative charges at current rate are considered part of indirect costs.

#### 2. Period of Performance

- 2.1 Subject to its other provisions, the period of performance of this Agreement shall commence on \_\_\_\_\_ and be completed on \_\_\_\_\_ unless terminated sooner as provided in this Agreement, or extended through a properly executed amendment.

#### 3. Payment

- 3.1 The estimated cost of the Work is stated above. The Agency, in consideration of the faithful performance of the Work performed by WSDOT agrees to reimburse WSDOT for the actual direct and related indirect costs of the Work. The agency represents and warrants that it has sufficient funds available to meet its financial obligations under this Agreement.
- 3.2 The Agency agrees to reimburse WSDOT within thirty (30) calendar days from receipt of an invoice (the Due Date). In the event the Agency fails to make payment by the Due Date, the Agency 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.

3.3 The Agency shall remit all payments to the following address:

DEPT. OF TRANSPORTATION  
CASHIER  
P.O. BOX 47305  
OLYMPIA WA 98504-7305

- 3.4 If the Agency 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 the Agency shall make every effort to settle the disputed portion, and if necessary utilize dispute resolution provided for herein. No interest shall be due on any portion of an invoice the Agency is determined not to owe following settlement between the Parties or completion of dispute resolution process.

**4. Increase in Cost**

- 4.1 In the event of unforeseen increased costs, the Parties agree that the estimated cost of the Work may be exceeded by a contingency of up to 20 %. In the event such increased costs exceed the contingency, the Parties may modify the estimated cost of Work by written amendment signed by both Parties. WSDOT shall notify the Agency of increased costs as they become known.

**5. Right of Entry**

- 5.1 The Agency grants to WSDOT a right of entry upon all land in which the Agency has interest for the purpose of accomplishing the Work described above.

**6. Claims For Damages**

- 6.1 After completion of Work by WSDOT, 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 performed by WSDOT for the Agency, the Agency shall defend such claims and hold harmless the WSDOT therefrom, and WSDOT shall not be obligated to pay any claim, judgement or cost of defense. Nothing in this Section, however, shall remove from WSDOT any responsibility defined by the current laws of the state of Washington or from any liability for damages caused by WSDOT's own negligent acts or omissions independent of the Work performed pursuant to this Agreement.

**7. General Provisions**

- 7.1 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.
- 7.2 Assurances: The Parties agree that all activity pursuant to this Agreement shall be in accordance with all applicable federal, state and local laws, rules, and regulations as they currently exist or as amended.
- 7.3 Interpretation: This Agreement shall be interpreted in accordance with the laws of the state of Washington. The titles to paragraphs and sections of this Agreement are for convenience only and shall have no effect on the construction or interpretation of any part hereof.
- 7.5 Termination:  
This Agreement may be terminated, without penalty or further liability in the event of the following:

7.5.1 Termination for Convenience

This Agreement may be terminated for convenience at any time. In such event, the terminating Party: (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 the other Party for any direct, indirect or consequential damages arising solely from the decision to terminate the Agreement.

7.5.2 Termination for Default

Upon prior written notice, the Agreement may be terminated for failure to perform or abide by any provision of this Agreement.

7.5.3 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.

#### 7.5.4 Termination for Withdrawal of Authority

In the event that WSDOT's authority to perform any of its duties is withdrawn, reduced, or limited in any way after the commencement of this Agreement, WSDOT may terminate this Agreement by [seven (7) calendar days or other appropriate time period] written notice. No penalty shall accrue to WSDOT in the event this section shall be exercised. This section shall not be construed to permit WSDOT to terminate this Agreement in order to acquire similar Services from a third-party.

#### 7.5.5 Termination for Non-Allocation of Funds

If funds are not allocated to continue this Agreement in any future period, this Agreement may be terminated by [seven (7) calendar days or other appropriate time period] written notice.

7.5.6 If this Agreement is terminated prior to the fulfillment of the terms stated herein, the Agency agrees to reimburse WSDOT 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.

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

- 7.6 Waiver: A failure by a Party to exercise its rights under this Agreement shall not preclude that Party from subsequent exercise of such rights and shall not constitute a waiver of any other rights under this Agreement unless stated to be such in writing signed by an authorized representative of the waiving party and attached to the original Agreement.
- 7.7 Independent capacity: 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.
- 7.8 Indemnification: To the extent allowable in law, each Party to this Agreement will 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 property), arising out of, or in any way resulting from, each Party's negligent acts or omissions with respect to the provisions of this Agreement. Neither 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 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, their agents, officials or employees, and/or involve those actions covered by RCW 4.24.115, the indemnity provisions provided herein will be valid and enforceable only to the extent of the negligence of the indemnifying Party, its agents, officials or employees.


The Parties agree that their obligations under this section extend to any claim, demand, and/or cause of action brought by, or on behalf of, any of their officers, officials, employees or agents. For this purpose only, the Parties, by mutual negotiation, hereby waive, with respect to each other only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW.

This indemnification and waiver will survive the termination of this Agreement.

- 7.9 Severability: 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.
- 7.10 Disputes: In the event that a dispute arises under this Agreement, it shall be resolved as follows: WSDOT and the Agency 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. The Parties shall equally share in the cost of the third Dispute Board member; however, each Party shall be responsible for its own costs and fees.
- An attempt at such dispute resolution in compliance with aforesaid process shall be a prerequisite to the filing of any litigation concerning the dispute.
- 7.11 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 the superior court situated in Spokane, Washington unless filing in another county is required under any provision of the Revised Code of Washington. Further, the Parties agree that each shall be responsible for its own attorneys' fees and costs.

- 7.12 Audits/Records: All Project records for the Work in support of all costs incurred shall be maintained for a period of six (6) years. Each Party 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 by either or both Parties and/or their designated representatives, and/or state of Washington and/or the federal government. In the event of litigation or claim arising from the performance of this Agreement, the Parties agree to maintain the records and accounts until such litigation, appeal or claims are finally resolved. This section shall survive the termination of this Agreement.
- 7.13 Working Days: Working days for this Agreement are defined as Monday through Friday, excluding Washington State holidays per RCW 1.16.050.
- 7.14 All Writings Contained Herein: This Agreement contains all of the terms and conditions agreed upon by the Parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the Parties.
- 8. Counterparts And Electronic Signature**
- 8.1 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 Party is relying on its electronic or "PDF" signature..

In Witness Whereof, the Parties hereto have executed this Agreement as of the date signed last below.

Agency	Washington State Department of Transportation
By: <u></u>	By: _____
Printed: <u>Cindy Gagné</u>	Printed: _____
Title: <u>Mayor</u>	Title: _____
Date: <u>11.6.23</u>	Date: _____





<b>Maintenance Agreement</b> <b>Work by WSDOT for Other State, Federal, and Local Governmental Agencies</b>	Agency and Billing Address  City of Omak Po Box 72 Omak WA 98841
Agreement Number JB0020	Agency Contact Name/Phone #/Email
WSDOT Agreement Manager Don. Becker	Wayne publicworks@omak.com
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The Parties agree that their obligations under this section extend to any claim, demand, and/or cause of action brought by, or on behalf of, any of their officers, officials, employees or agents. For this purpose only, the Parties, by mutual negotiation, hereby waive, with respect to each other only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW.

This indemnification and waiver will survive the termination of this Agreement.

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In Witness Whereof, the Parties hereto have executed this Agreement as of the date signed last below.

Agency	Washington State Department of Transportation
By: 	By: _____
Printed: <u>Cindy Gagné</u>	Printed: _____
Title: <u>Mayor</u>	Title: _____
Date: <u>11.6.23</u>	Date: _____



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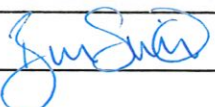
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In Witness Whereof, the Parties hereto have executed this Agreement as of the date signed last below.

Agency	Washington State Department of Transportation
By: 	By: 
Printed: <u>Cindy Gagné</u>	Printed: <u>Ryan Smith</u>
Title: <u>Mayor</u>	Title: <u>Area 3 Highway Maintenance Supervisor</u>
Date: <u>11.6.23</u>	Date: <u>11/14/2023</u>