



AGENDA
OMAK CITY COUNCIL MEETING
Zoom Meeting
Monday, May 3, 2021 – 7:00 PM

A. CALL TO ORDER

B. CITIZEN COMMENTS

C. CORRESPONDENCE AND MAYOR'S REPORT

1. Proclamation – Mental Health Month

D. CONSENT AGENDA:

1. Approval of minutes from April 19, 2021
2. Approval of Claims & April 2021 Payroll



E. OLD BUSINESS:

1. Ord. 1905–2nd Read–Amend 2021 Budget–CDBG/Asotin Storm Drain Project



F. NEW BUSINESS:

1. J&M Liquidations LLC-Request for Fireworks Permit–Burger King Parking Lot
2. Res. 22-2021 – Appr. Amendment No. 1 – Gray & Osborne, Inc. – Sewer/Water Improvements
3. Res. 23-2021 – Appr. Agreement with Public Safety Testing – Law Enforcement Testing Svcs.
4. Res. 24-2021 – Approve Purchase of Two New Pumps for Koala Sewer Lift Station



G. OTHER BUSINESS:

1. Council Committee Reports
2. Staff Reports

 **Action by City Council**

In accordance with the "Stay Home, Stay Healthy" order from Governor Inslee, our Council Meeting will be conducted using Zoom Meetings (information on next page).

If you need support, contact the City Clerk in advance of the meeting by calling 509-826-1170 or e-mail clerk@omakcity.com for assistance.

**The City of Omak is inviting you to a scheduled Zoom meeting
May 3rd, 2021 @ 7:00pm**

Join Zoom Meeting

<https://us02web.zoom.us/j/85344955407?pwd=bVp2TUxOeXJwVGRxSW1ucG1XUG1Kdz09>

Meeting ID: 853 4495 5407

Passcode: 362839

One tap mobile

+12532158782,,85344955407#,,,,*362839# US (Tacoma)

+16699006833,,85344955407#,,,,*362839# US (San Jose)

Dial by your location

+1 253 215 8782 US (Tacoma)

+1 669 900 6833 US (San Jose)

+1 346 248 7799 US (Houston)

+1 301 715 8592 US (Washington DC)

+1 312 626 6799 US (Chicago)

+1 929 205 6099 US (New York)

Meeting ID: 853 4495 5407

Passcode: 362839

Find your local number: <https://us02web.zoom.us/j/kckchQ2Dp4>



PROCLAMATION

Mental Health Month 2021

“Tools 2 Thrive”

WHEREAS, mental health is essential to everyone’s overall health and well-being; and

WHEREAS, nearly one in five Americans lives with a mental illness while five in five Americans experience challenges in life, such as a pandemic, that can impact their mental health; and

WHEREAS, many people with preventable and/or treatable mental health concerns don’t receive help due to a lack of awareness about mental wellness, or because they are concerned about stigma, prejudice and discrimination against people with mental health concerns, and

WHEREAS, there are practical tools that all people can use to improve their mental health and increase resiliency; and

WHEREAS, with effective treatment, those individuals with mental health conditions can recover and lead full, productive lives; and

WHEREAS, each of us has a responsibility to promote mental wellness and support prevention and treatment efforts,

NOW, THEREFORE, I, Cindy Gagné, Mayor of the City of Omak, do hereby declare May 2021 to be
“Mental Health Month”

and encourage all people in our city to join me in this special observance and commit to increasing awareness and understanding of mental health, the steps our citizens can take to protect their mental health, and the need for appropriate and accessible services for all people with mental health conditions.

SIGNED this ____ day of _____, 2021

Cindy Gagné, Mayor

MEMORANDUM

To: Omak City Council
Cindy Gagnè, Mayor

From: Todd McDaniel

Date: April 19, 2020

Subject: Ordinance 1905 Amending Budget- CDBG/Asotin Storm Drain Project

The Attached Ordinance 1905- Amending the 2021 Budget for the City of Omak, Recognizing and Transferring all available Block Grant Funds to the Storm Drain Utility Fund and Appropriating Additional Expenditure for the CDBG Asotin Storm Drain Project, is forwarded for your consideration.

The City is required to use currently held CDBG program money for the Asotin Project. This Ordinance recognizes the actual revenues and balance of the Block Grant Fund and transfers it to the Storm Drain Utility Fund for the Asotin Storm Drain Project. It transfers all available funds in the Block Grant Fund to the Storm Drain Utility fund.

In the Storm Drain Fund actual beginning fund balance and the additional revenues from the Block Grant Transfer and CDBG reimbursements are recognized. The Asotin Storm Project was delayed in 2020 as a result we had reduced expenditure in 2020 and will see increased expenditure for this project in 2021. These Expenditures will be offset from CDBG reimbursements that did not materialize in 2020.

I approve this Ordinance and urge it Adoption

ORDINANCE No. 1905

**AN ORDINANCE AMENDING THE 2021 BUDGET FOR THE CITY OF OMAK
RECOGNIZING AND TRANSFERRING ALL BLOCK GRANT FUNDS TO THE
STORM DRAIN UTILITY FUND AND APPROPRIATING ADDITIONAL
EXPENDITURE FOR THE CDBG ASOTIN STORM DRAIN PROJECT.**

WHEREAS, the City of Omak adopted the 2021 Budget by passage of Ordinance No. 1899 on December 7, 2020; and

WHEREAS, at this time the actual ending fund balances from 2020 and the beginning fund balance for 2021 are better established; and

WHEREAS, it is appropriate to recognize the beginning fund balances for the 2021 budget year, that better reflects our actual balances at this time; and

WHEREAS, the agreement with the Community Development and Block Grant Program (CDBG) for the construction of the Asotin Storm Drain Project requires that all currently held funds from past CDBG programs be spent on the current Asotin Storm Drain Project; and

WHEREAS, the Storm drain Utility fund is administering the Asotin Storm drain project, and a transfer of the CDBG program money is needed to facilitate the project; and

WHEREAS, estimated expenditures for the Asotin Storm Drain Project were delayed in 2020. These expenditures will be realized in 2021, and

WHEREAS, said expenditures are not one of the emergencies specifically enumerated in RCW 35A.33.080; and

WHEREAS, the City of Omak is desirous of amending its budget pursuant to RCW 35A.33.090.

THE CITY COUNCIL OF THE CITY OF OMAK DO ORDAIN AS FOLLOWS:

Section 1. Ordinance No. 1899 adopting the 2021 Budget, shall be amended to include changes to the budget as shown in Attachment "A" of this ordinance.

Section 2. This ordinance shall become effective from and after the date of its passage by Council by a vote of one more than the majority of all Councilmembers, approval by the Mayor and publication as required by law.

PASSED by the City Council of the City of Omak, this _____ day of _____, 2021.

APPROVED:

Cindy Gagne, Mayor

ATTEST:

Connie Thomas, City Clerk

APPROVED AS TO FORM:

Michael Howe, City Attorney

Filed with City Clerk: _____

Passed by City Council:

1ST Reading _____

2nd Reading _____

Date Published: _____

Date Effective: _____

On the _____ day of _____, 2021, the City Council of the City of Omak passed Ordinance No. 1905.

DATED this _____ day of _____, 2021.

Connie Thomas, City Clerk

2021 BUDGET AMENDMENT ORDINANCE NO. 1905 ATTACHMENT "A"

Description	2021 Budget	Revenue	Expenditure	Revised Budget
<u>Block Grant Fund #109</u>				
Beginning Fund Balance 109.308.51.00.00	\$190.71	\$29,813.15		\$30,003.86
Block Grant Interest 109.361.11.00.00	\$100.00		\$86.80	\$ 13.20
Block Grant Mortgage Revenue 109.395.10.00.00	\$ 0.00	\$20,000.00		\$20,000.00
Ending Fund Balance 109.508.51.00.00	\$290.71		\$290.71	\$ 0.00
Operating Transfer Out to Storm 109.597.00.01.09	\$ 0.00		\$50,017.06	\$50,017.06
Total Expenditures	\$ 290.71			\$50,017.06
Block Grant Fund Total	\$290.71			\$50,017.06
<u>Storm Drain Utility Fund #405</u>				
Beginning Fund balance 405.308.51.00.00	\$176,116.93	\$ 64,602.14		\$240,719.07
Transfer In- Block Grant 405.397.00.00.00	\$ 0.00	\$ 50,017.06		\$50,017.06
CDBG-Storm Water Improvements 405.333.14.00.00	\$113,000.00	\$309,000.00		\$422,000.00
Asotin Storm Drain design 405.594.31.63.20	\$113,000.00		\$467,000.00	\$580,000.00
Ending Fund Balance 405.508.51.00.00	\$192,318.10		\$43,380.80	\$148,937.30
Total Expenditures	\$250,245.83		\$467,000.00	\$717,245.83
Current Expense Fund Total	\$442,563.93			\$866,183.13
Current Expense Fund:				

Ordinance No. 1905

April 19, 2020

Page 4 of 4

This amendment recognizes increased revenue of \$29,813.15 to Block Grant, Beginning Fund Balance, increased revenue of \$20,000 in Block Grant Mortgage Revenue, reduced revenue of \$86.80 in Block Grant Interest, and increased expenditure of \$50,017.06 Operating Transfer Out to Storm, expending all available funds in the Block Grant Fund.

Further, this amendment recognized increased revenue of \$64,602.14 to the Storm Drain Utility Fund, Beginning Fund Balance; increased of revenue of \$50,017.06 Transfer In-Block Grant, increased revenue of \$309,000.00 CDBG-Storm Water Improvements, increased expenditure of \$467,000.00 Asotin Storm Drain Project. Ending Fund Balance is reduced by \$43,380.80.



Omak Volunteer Fire Department

Phone (509) 826-0760
Fax (509) 826-6057

16 N. Ash St.
P.O. Box 72

Kevin Bowling, Fire Chief

Omak, Wash. 98841

MEMORANDUM

TO: Cindy Gagne, Mayor
Omak City Council

FROM: Kevin Bowling, Omak Fire Chief

DATE: May 3, 2021

SUBJECT: Request for Fireworks Permit

J & M Liquidations LLC is requesting a fireworks permit for retail sales of Consumer Fireworks to be sold at the Burger King parking lot during the 4th of July. They have complied with the Cities fireworks ordinance and needs Council approval.

I support this request and urge Council approval.

A handwritten signature in black ink, appearing to be "KB", is written over a horizontal line.

Kevin Bowling
Omak Fire Chief

MEMORANDUM

To: Cindy Gagné, Mayor

From: Ken Mears, Public Works Director

Date: May 3rd, 2021

Subject: **Resolution No. 22-2021** Approving Amendment No.1 with G&O for Design Engineering and Bid Award Services for Sanitary Sewer and Water System Improvements.

The Attached Resolution: **22-2021, A Resolution of the Omak City Council Approving Amendment No. 1 to the Professional Engineering Services Agreement with Gray & Osborne, Inc. for Sanitary Sewer and Water System Improvements,** is forwarded for your consideration.

The Cities Engineering Consultant has written up the Scope of Work for sanitary sewer and water system improvements and, as are explained in detail in Exhibit A & B. The project is design, bid, and award services for the project. The sewer project is located between West 2nd Avenue and West 6th Avenue from Jasmine Street to Okoma Drive.

Water system improvements from Dewberry Avenue from Kenwood Street to Locust Street.

I support this resolution.

RESOLUTION NO. 22-2021

A RESOLUTION OF THE OMAK CITY COUNCIL APPROVING AMENDMENT NO. 1 TO THE PROFESSIONAL ENGINEERING SERVICES AGREEMENT WITH GRAY & OSBORNE, INC. FOR SANITARY SEWER AND WATER SYSTEM IMPROVEMENTS

WHEREAS, the City of Omak extended the contract with Gray & Osborne, Inc. to provide On-Call Engineering Services by the approval of Resolution 05-2021; and

WHEREAS, it is necessary to secure professional engineer consulting services for the design, bid, and award of the Sanitary Sewer and Water System Improvements; and

WHEREAS, the scope of work and engineering cost for providing these services is estimated not to exceed a budget of \$160,000.00 as shown on the attached Exhibit "B".

NOW, THEREFORE BE IT RESOLVED by the Omak City Council, that **Amendment No. 1 to the Contract for Professional Engineering Services** between the City of Omak and Gray & Osborne, Inc., a copy of which is attached hereto as Exhibit "A" and "B" is hereby approved. The Mayor is authorized to execute this document on behalf of the City.

PASSED AND APPROVED this ____ day of _____, 2021.

SIGNED:

Cindy Gagné, Mayor

ATTEST:

Connie Thomas, City Clerk

APPROVED AS TO FORM:

Michael D. Howe, City Attorney

**AMENDMENT NO. 1
TO
CONTRACT FOR PROFESSIONAL ENGINEERING SERVICES**

THIS AMENDMENT, by and between the City of Omak, Washington, hereinafter referred to as the Agency, and Gray & Osborne, Inc., hereinafter referred to as the Engineer, hereby modifies the contract for engineering services dated (by Agency) February 1, 2021, for additional services related to the On-Call Engineering Services.

City of Omak – Sanitary Sewer and Water System Improvements

See the attached Exhibit A covering design engineering and bid and award services for the Sanitary Sewer and Water System Improvements project, with a not-to-exceed budget of \$160,000 as shown on the attached Exhibit B.

IN WITNESS WHEREOF, the parties hereto have executed, or cause to be executed by their duly authorized officials, this AMENDMENT to the Contract for Engineering Services in duplicate on the respective dates indicated below.

GRAY & OSBORNE, INC.

CITY OF OMAK

By: Michael B. Johnson
(Signature)

By: _____
(Signature)

Name: Michael B. Johnson, P.E., President
GRAY & OSBORNE, INC.

Name: _____
(Print)

Date: 4/19/21

Date: _____

"Equal Opportunity/Affirmative Action Employer"

EXHIBIT A

SCOPE OF WORK

CITY OF OMAK

SANITARY SEWER AND WATER SYSTEM IMPROVEMENTS

Based on our understanding of the project, this Scope of Work presents the professional engineering services requested by the City of Omak for design engineering and bid and award services for the Sanitary Sewer and Water System Improvements project. It is our understanding that the sanitary sewer system improvements consist of the replacement of gravity sewer pipe, manholes, cleanouts, and side sewers to within five feet of residences and buildings, all located between West 2nd Avenue and West 6th Avenue from Jasmine Street to Okoma Drive. The sanitary sewer system improvements will be designed around the specific construction technique of trenchless replacement, where feasible, of approximately 4,200 feet of existing 8-inch to 12-inch gravity sewer pipe with HDPE pipe. Where trenchless methods of pipeline replacement are not feasible, pipeline replacement will be achieved through traditional cut and cover construction methods.

Mapping for this work will incorporate the City's color digital orthographic imagery with 2-foot contour intervals as developed at the initiation of the City's Sewer System Improvements – Phase 1 project. Control and topographic survey work for the City's Sewer System Improvements – Phase 3 project, performed circa 2012, will be utilized for the development of project plans. Through discussions with the City it is our understanding that no underground utility work has occurred within the project area since the 2012 topographic survey work was performed.

The water system improvements consist of the installation of approximately 800 feet of 8-inch DI water main pipe, hydrants, valves, and appurtenances on Dewberry Avenue from Kenwood Street to Locust Street. Design of the water system improvements is currently in progress in accordance with Amendment No. 10 to the previous Contract for Professional Engineering Services with the City of Omak. Design plans and specification developed under Amendment No. 10 will be incorporated into the combined Sanitary Sewer and Water System Improvements project for bid and award.

More specifically, the work will include:

DESIGN ENGINEERING SERVICES

Project Management – This task will include the following:

- Incorporate overall project management as well as in-house quality assurance and quality control (QA/QC) reviews of all documents in order to address relevant issues that may affect the project.

Geotechnical Investigation – The objective is to review provide field exploration, investigations, and laboratory analysis; design and construction recommendations by the geotechnical subconsultant PanGEO, to support the sanitary sewer improvements project. This task will include the following:

- Document Review – Collect and review relevant information regarding site geological/geotechnical conditions.
- Site Reconnaissance – Observe surface conditions along the project to observe conditions that may impact the design and construction of the project. During the reconnaissance evaluate drilling equipment access, mark test boring locations for utility locates, and evaluate traffic control measures that may be needed during drilling.
- Subsurface Explorations (Test Borings) – Observe and log the drilling of four (4) test borings within the project area. The test borings will be advanced up to 15 feet below grade. Soil samples will be obtained from the test borings at 2 ½- and 5-foot depth intervals, using Standard Penetration Test (SPT) method. The proposed test borings will be drilled using hollow stem augers unless bedrock is encountered. If bedrock is encountered the use of wireline rock coring methods to advance the borehole will be used to advance the borehole to at least the sewer invert elevation.
- Groundwater Level Monitoring – One test boring will be developed with a standpipe piezometer to allow the City to monitor groundwater levels.
- Laboratory Testing – Conduct field and laboratory testing, as necessary, in general accordance with appropriate ASTM standards, including natural moisture content, grain size analysis, and bedrock compressive strength.
- Report – Prepare and submit draft report for review by the Engineer. The draft report will be revised and finalized once review comments are received. In general, the report will include:
 - A site map with approximate test boring locations;
 - Description of surface and subsurface (soil, groundwater) conditions, including summary exploration logs, and summary laboratory test results;
 - Geotechnical engineering recommendations regarding trenching and backfill, pipe bursting considerations, and dewatering considerations;
 - General earthwork recommendations, including selection of proper backfill material, compaction requirements, bedrock excavation, and wet weather earthwork considerations; and
 - Other recommendations as needed based on the results of the field exploration.

- Post-Report Consultation – Provide post-report consultation to assist with the design and preparation of plans and specifications on an as-needed basis.
- Traffic control, if needed, will be provided by the City.
- Drill cuttings will be spread out in the shoulder of the roadways.

Preliminary Design – The objective is to review City-provided information (described herein) to develop preliminary design concepts and construction drawings at preliminary design phase (35%). Design plans and specifications will be prepared in City-approved format. This task will include the following:

- Review City-provided video inspection records to determine specific pipeline replacement method recommendations for the various sewer pipelines with the project area.
- Review City-provided building sewer information, dye test results, and video inspection records to aid in development of design plans for side sewer replacement.
- Prepare preliminary plans at a scale of 1"=20'. These Plans will provide a planimetric view of existing sewers and also incorporate City design standards, as applicable.
- Review and identify possible sewer location and alignment issues.
- Incorporate available utility record drawing information, plat map (property line) and rights-of-way information. If necessary, we will assist the City with obtaining any additional easements or rights-of-way, define legal descriptions, and provide exhibits.
- Prepare preliminary specifications, to include proposal, contract, and bonding requirements.
- Incorporate water system design plans and specifications into combined sanitary sewer and water system improvements project.
- Provide preliminary construction cost estimate.
- Determine and describe local, state, and federal permits, and licenses required for construction of the proposed improvements. Prepare and submit said permits and approval applications prior to completion of design. The City will pay any permit and approval review fees.

- Perform a quality assurance and quality control (QA/QC) review of all documents in order to address those relevant issues that may affect the project.
- Review plans, specifications, and cost estimates with the City.

Final Design Contract Documents – The objective is to provide final Contract Documents and cost estimate in City-approved format. This task will include the following:

- Prepare final plan designs and project specifications to and including final quantities, order of work, details associated with by-pass pumping, schedule, and cost estimates.
- Submit Contract Documents and cost estimate to the City, to include incorporation of all previous City comments.
- Conduct an on-site review with the City.
- Perform a quality assurance and quality control (QA/QC) review of all documents in order to address those relevant issues that may affect the project.

Information to be provided by the City – We will work with the City to ensure that all of the information needed to complete the design is obtained. Information that we will need from the City includes, but is not limited to, the following:

- Digital video, inspection records, and dye testing results of the existing sewer pipelines and side sewers within the project area of sufficient quality to assess pipeline conditions to support the design work.
- Horizontal and vertical location of each building sewer within the project area in sufficient detail to incorporate into the project design. It is our understanding that this will be accomplished through efforts by the City to contact each building owner within the project area to investigate each building sewer location.

Bid and Award Services – The objective is to assist the City in bid and award of the project. This task will include the following:

- Provide the City with the Call for Bids for advertisement for bids (City will pay all publishing costs) and the Contract Documents and construction cost estimate (in both hard copy and electronic formats).
- Provide access to Contract Documents to local plan centers, licensed contractors and material suppliers free-of-charge via Gray & Osborne Bid Document Distribution System website at <http://gobids.grayandosborne.com>.

- Answer questions from potential bidders and issue any addenda, as required.
- Attend the bid opening, review the bids, check bidder references, prepare the bid summary, and recommend award of the construction contract.

Construction administration services are not included in this Scope of Work. A separate Amendment for construction administration services will be prepared for City approval once the construction contract is awarded.

BUDGET

The maximum amount payable to the Engineer for completion of all work associated with this Scope of Work, including contingencies, salaries, overhead, direct non-salary costs and net fee shall be as shown in Exhibit B. This amount shall not be exceeded without prior written authorization of the City.

EXHIBIT "B"

**ENGINEERING SERVICES
SCOPE AND ESTIMATED COST**

City of Omak - Sanitary Sewer and Water System Improvements

Tasks	Principal Hours	Project Manager Hours	Project Engineer Hours	AutoCAD/ GIS Tech./ Eng. Intern Hours	Professional Land Surveyor Hours
Project Management		16			
Preliminary Design		40	236	360	16
QA/QC	8	8	8	8	8
Final Design Contract Documents		16	64	96	8
Bid and Award Services		16	8		
Hour Estimate:	8	96	316	464	32
Fully Burdened Billing Rate Rate:*	\$138 to \$205	\$125 to \$205	\$119 to \$148	\$50 to \$134	\$118 to \$155
Estimated Fully Burdened Billing Rate:*	\$160	\$160	\$150	\$140	\$150
Fully Burdened Labor Cost:	\$1,280	\$15,360	\$47,400	\$64,960	\$4,800

Total Fully Burdened Labor Cost:	\$ 133,800
Direct Non-Salary Cost:	
Mileage & Expenses (Mileage @ current IRS rate)	\$ 3,521
Printing	\$ 200
Subconsultant:	
PanGeo	\$ 20,435
Subconsultant Overhead (10%)	\$ 2,044
TOTAL ESTIMATED COST:	\$ 160,000

* Actual labor cost will be based on each employee's actual rate. Estimated rates are for determining total estimated cost only. Fully burdened billing rates include direct salary cost, overhead, and profit.



INTEROFFICE MEMORANDUM

TO: MAYOR GAGNÉ
OMAK CITY COUNCIL

FROM: THE FINANCIAL DEPARTMENT

SUBJECT: RESOLUTION 23-2021–PUBLIC SAFETY TESTING AGREEMENT

DATE: MAY 3, 2021

The attached **Resolution 23-2021 - A Resolution Approving a New Subscriber Agreement with Public Safety Testing for Law Enforcement Written and Physical Ability Testing Services**, is presented to you for your review and consideration.

This Resolution renews the agreement the City of Omak has had with Public Safety Testing. The new Subscriber Agreement professional fees for the years 2021-2022 are \$780 annually. Subsequent years will include an annual increase of 3%. Regarding the agreement termination, we recommend the annual automatic renewal. Either party can terminate with a 60-day notice. We intend on using Public Safety Testing for years to come to assist in our hiring process. Public Safety Testing has provided the City with streamlined recruiting service and testing and has saved significant staff time, money and reduced liability that comes along with initiating written and physical testing inhouse.

I approve this Resolution and respectfully request your adoption.

RESOLUTION NO. 23-2021

**A RESOLUTION APPROVING A NEW SUBSCRIBER AGREEMENT WITH
PUBLIC SAFETY TESTING FOR LAW ENFORCEMENT WRITTEN AND
PHYSICAL ABILITY TESTING SERVICES**

WHEREAS, the City of Omak has contracted entry level and lateral level law enforcement written and physical ability testing services through a Subscriber Agreement with Public Safety Testing since 2004; and

WHEREAS, the current Subscriber Agreement expires on June 30, 2021 and, the new Subscriber Agreement is \$780 for the first year and will renew annually with a three percent increase until terminated; and

WHEREAS, this company has performed extremely well for the City in providing qualified test scores from individuals who wish to be considered for both Entry Level and Lateral Level law enforcement positions.

NOW, THEREFORE, BE IT RESOLVED, the City Council of the City of Omak does hereby approve a three-year Subscriber Agreement effective July 1, 2021 through June 30, 2024, a copy attached as Exhibit "A", with **PUBLIC SAFETY TESTING**, a private corporation, to provide written and physical ability testing and scores for prospective law enforcement candidates. The Mayor is hereby authorized to execute the Agreement, as attached to this resolution, and the City Clerk is directed to attest her signature.

INTRODUCED AND PASSED this _____ day of _____, 2021.

SIGNED:

Cindy Gagné, Mayor

ATTEST:

Connie Thomas, City Clerk

APPROVED AS TO FORM:

Michael D. Howe, City Attorney



SUBSCRIBER AGREEMENT

WHEREAS, Public Safety Testing, Inc. is a skilled provider of pre-employment testing services to police, fire, and other public safety agencies, and

WHEREAS, the subscriber public agency, either directly or through a civil service commission, tests, evaluates, ranks and hires law enforcement and/or firefighters and/or other public safety positions in the performance of its public safety functions, and

WHEREAS, the subscribing public entity desires to join in a Subscriber Agreement, NOW, THEREFORE,

Public Safety Testing, Inc. (the "Contractor") and the City of Omak, a municipal corporation of the state of Washington (hereinafter "Subscriber") do enter into this Subscriber Agreement under the terms and conditions set forth herein.

SUBSCRIBER: City of Omak, WA

POSITIONS: Law Enforcement Officer (entry-level)
 Law Enforcement Officer (lateral/experienced)
☞ Check all that apply

COMMENCEMENT DATE: July 1, 2021

PROFESSIONAL FEES: Law Enforcement Officer written &/or physical ability testing
• Year #1 (7/1/2021 – 6/30/2022) @ \$780 annually
• Subsequent years (beginning July 1, 2022) will include an annual increase of three percent (3%).

TERMINATION: This agreement terminates:
☞ Select one
 June 30, 2022
 June 30, 2024
 This agreement will automatically renew annually unless either party provides a 60-day notice as outlined in Section 7. Each annual renewal includes a 3% increase in professional fees, the first commencing July 1, 2022.

RECRUITING AT PST WRITTEN EXAM EVENTS Opportunity for Subscriber to recruit candidates at PST written exam events. Written exams occur in-person or virtual (online, in-home). Subscriber may appear in-person (physical exam locations) or via 60-second video provided by Subscriber (physical exam location or virtual exam). Subscriber will be invoiced \$10 per candidate that adds Subscriber agency to their list prior to the start of the exam.
☞ Check to request

FINANCIAL HARDSHIP WAIVER Subscriber agrees to pay candidate financial hardship waivers, each
☞ *Check to request* pre-approved by the Subscriber at the following rates:
☐ \$50 for Law Enforcement written examination

1. Description of Basic Services. This Agreement begins on the date as noted on page one (1) of this Agreement. The Contractor will provide the following services to the Subscriber:

1.1 Advertising and recruiting assistance, application intake processing, and administration of pre-employment written examinations and/or physical ability tests for those positions noted on Page One (1) of this Agreement.

1.1.1 Written examinations are administered in-person at Contractor's test events, including those conducted by Subscribing agencies; remotely through a network of certified college testing facilities; and, through the Contractor's online, virtual in-home testing program.

1.1.2 Physical ability tests for law enforcement and corrections applicants are administered at Contractor's test events, including those conducted by Subscribing agencies, and, through a network of partner gym and fitness facilities.

1.2 Report to the Subscriber the scores of applicants, with all information necessary for the Subscriber to place passing applicants upon its eligibility list and rank them relative to other candidates on appropriately constituted continuous testing eligibility lists. Contractor will report "raw" test scores to the Subscriber – no preference points will be factored into applicant scores and it is the Subscriber's responsibility to factor veteran's preference points in accordance with applicable federal and state laws. Written examination scores will be reported to the Subscriber as a percentage score (based on 100%) and physical ability test scores will be reported as "Pass" or "Fail". The passing score for written examinations is set by the test developer at 70%. For dispatcher candidates, the typing test results will be reported as words per minute (wpm) and accuracy rate (%).

1.3 Appear in any administrative or civil service proceeding in order to testify to and provide any and all necessary information to document the validity of the testing process, to participate in the defense of any testing process conducted by the Contractor pursuant to this Agreement and to otherwise provide any information necessary to the Subscriber to evaluate challenges to or appeals from the testing process. The Contractor shall appear without additional charge. The Subscriber shall pay the reasonable cost of travel and appearance for any expert witness deemed necessary by the Subscriber to validate the testing process, including but not limited to, representatives of any company which holds the copyright to any testing material and whose testimony or appearance is deemed necessary to validate the process.

Provided, however, Contractor shall not be required to appear at its cost nor to defend in any administrative or court proceeding arising from or out of a claim or challenge relating to Subscriber's use of other testing process(es) or out of Subscriber's attempt to establish multiple or blended eligibility lists for the same position based in whole or in part on other testing process(es). "Other testing process(es)" means any test or testing process other than those provided by the Contractor under this Agreement.

1.4 Term & Fees. The term of this agreement and the related professional fees are noted on page one (1) of this Agreement.

1.5 Payment. Subscriber shall pay an amount equal to twenty-five percent (25%) of the annual fee set forth above quarterly for services rendered in the previous quarter and for basic services including but not limited to, software relating to online application, advertising formats, previously advertised scheduling of test dates, model civil service rules, testing systems, as well as ongoing testing and recruitment, and any and all other work developed at the cost of the Contractor prior to or contemporaneous with the execution of this Agreement. Payment shall be made within 45 days of receipt of invoice.

1.5.1 Direct Deposit (ACH Enrollment). Subscribers are encouraged to set up direct deposit (ACH enrollment) for their payments. There will be no additional fee for payments made using direct deposit (ACH enrollment).

1.5.2 Credit Card. A three percent (3%) fee will be added at the time of payment to each payment made using a credit card. The purpose of such fee is to cover Contractor's credit card processing fees.

2. Additional Services. In addition to the services provided under this Agreement, the Subscriber may, at its sole discretion, elect to purchase additional services from the Contractor. Such services shall be requested by and contracted for pursuant to separate written agreement.

3. Acknowledgements of Subscriber. The Subscriber understands and acknowledges, and specifically consents to the following stipulations and provisions:

3.1 Because applicable civil service law prohibits having multiple eligibility lists for the same class of hire, this Agreement is an exclusive agreement for these services.

3.2 The written and physical agility scores of any applicant shall be valid for 18 months from the date of certification by the Contractor or 12 months from the date of placement upon the Subscriber's eligibility list, whichever first occurs, following the report of the Contractor, and rules compatible with continuous testing shall be adopted. The Subscriber shall review its applicable hiring processes, advertisements, personnel policies and civil service rules (as applicable) to ensure compliance with the provisions of this Agreement.

3.3 An applicant may, in addition to the Subscriber's eligibility list, elect to have his/her score reported to and subject to placement on the eligibility list of any

other Subscriber. Nothing in this Agreement shall be interpreted to prohibit the use of an applicants' score for consideration in or processing through any other subscriber's hiring and/or civil service eligibility process. The Subscriber agrees that if an applicant is hired by another agency through this service, the applicant's name shall be removed from Subscriber's eligibility list.

- 3.4 The Subscriber specifically understands and acknowledges that the Contractor may charge a reasonable testing fee from any and all applicants.
 - 3.5 The Subscriber is encouraged to and may also conduct advertising as it deems necessary to support/enhance recruiting efforts. The Subscriber shall link PublicSafetyTesting.com on its agency's website, if it so maintains one.
 - 3.6 Public Safety Testing views recruiting as a partnership with the Subscriber. The Subscriber agrees to actively participate in recruiting efforts for positions within the Subscriber agency.
 - 3.7 The Subscriber agrees to keep the Contractor up-to-date as to the agency's hiring status, minimum and special requirements, all information appearing on the agency's PST website profile and the names of any candidates hired through these services.
 - 3.8 Subscriber understands and acknowledges that a candidate's PST Personal History Statement (PHS) will be stored electronically by PST for 24 months from the date the candidate uploads the PHS to the PST website. Any PHS stored more than 24 months will automatically be deleted and will no longer be available to the Subscriber from the PST server.
4. Testing Standard and Warranty of Fitness for Use. All testing services conducted under this Agreement shall be undertaken in accordance with the provisions of the Washington State Civil Service Statutes, Chapter 41.08 and/or 41.12 and/or 41.14 RCW, or the terms of other applicable statute as the Subscriber shall notify the Contractor that the Subscriber must meet. Tests shall also be conducted in accordance with the general standards established by the Subscriber; the Subscriber shall be responsible for notifying the Contractor of any unusual or special process or limitation. The test utilized, the proctoring of the test and any and all other services attendant to or necessary to provide a valid passing or failing score to the Subscriber shall be conducted in accordance with generally accepted practice in the human resources, Civil Service and Public Safety Testing community. The Subscriber may monitor the actions and operations of the Contractor at any time. The Contractor shall maintain complete written records of its procedures and the Subscriber may, on reasonable request, review such records during regular business hours. The Contractor expressly agrees and warrants that all tests and written materials utilized have been acquired by the Contractor in accordance with the appropriate copyright agreements and laws and that it has a valid right to use and administer any written materials and tests in accordance with such agreements and laws. If Subscriber uses or authorizes the use of other testing process(es) this warranty shall be null and void.

5. Independent Contractor. The Contractor is an independent contractor. Any and all agents, employees or contractors of the Contractor, shall have such relation only with the Contractor. Nothing herein shall be interpreted to create an employment, agency or contractual relationship between the Subscriber and any employee, agent or sub-contractor of the Contractor.
6. Indemnity and Hold Harmless. The parties agree and hold harmless each other, their officers, agents and employees in accordance with the following provisions:
 - 6.1 The Contractor shall indemnify and hold harmless the Subscriber, its employees and agents from any and all costs, claims or liability arising from:
 - 6.1.1 Violation of any copyright agreement or statute relating to the use and administration of the tests or other written materials herein provided for;
 - 6.1.2 Any cost, claim or liability arising from or out of the claims of an employee, agent or sub-contractor to the end that the Contractor shall be an independent Contractor and the Subscriber shall be relieved of any and all claims arising from or relating to such employment relationships or contracts between the Contractor and third parties;
 - 6.1.3 The alleged negligent or tortious act of the Contractor in the provision of services under this Agreement.
 - 6.1.4 This indemnity shall not apply to any administrative or court proceeding arising from or out of any process in which the Subscriber has utilized or authorized other testing process(es).
 - 6.2 The Subscriber shall indemnify and hold harmless the Contractor, its officers, agents and employees from any and all cost, claim or liability arising from or out of the alleged negligent or tortious act of the Subscriber in the provision of services hereunder.
7. Termination. This agreement terminates as noted in the *Termination* section on Page 1 of this Agreement. The Contractor and/or the Subscriber may also withdraw from this Agreement at any time for any reason with 60 days written notice, provided, however, that the provisions of paragraphs 1.3, 4, 5 and 6 shall remain in full force and effect following the termination of this Agreement with respect to, and continuing for so long as any applicant tested by the Contractor remains on the eligibility list of the Subscriber.

8. Entire Agreement, Amendment. This is the entire Agreement between the parties. Any prior agreement, written or oral, shall be deemed merged with its provisions. This Agreement shall not be amended, except in writing, at the express written consent of the parties hereto.

This Agreement is dated this _____ day of _____, 2021.

CITY OF OMAK, WA

By: _____

Print: _____

Its: _____

Contact: _____

Address: _____

City/State/Zip: _____

Telephone: _____

Email: _____

Subscriber's Contact & Address for Billing:

(Please complete if different from contact information above)

Contact: _____

Title: _____

Agency: _____

Address: _____

City/State/Zip: _____

Telephone: _____

Email: _____

PUBLIC SAFETY TESTING, INC.

By:  _____ April 20, 2021

Print: Jon F. Walters, Jr.

Its: President

Jon Walters

20818 – 44th Ave. W., Suite 160

Lynnwood, WA 98036

425.776.9615

jon@publicsafetytesting.com

Agency Recruiter:

Name: _____

Title: _____

Email: _____

Agency Hiring Representative/Supervisor:

Name: _____

Title: _____

Email: _____

Chief or Agency Director:

Name: _____

Title: _____

Email: _____

MEMORANDUM

To: Cindy Gagné, Mayor

From: Ken Mears, Public Works Director

Date: May 3rd, 2021

Subject: **Resolution No. 24-2021** Approving the purchase of two new pumps for the Koala sewer lift station.

The Attached Resolution: **24-2021, A Resolution of the Omak City Council Approving the Purchase of Two New Pumps at the Koala Sewer Lift Station,** is forwarded for your consideration.

We had a pump failure on one of the two pumps during regular maintenance at the Koala lift station, leaving only one pump in operation. Currently, the spare backup pump was already at Whitney Equipment Company being evaluated as a possible rebuild leaving us with no spare for the failed pump. This leaves the lift station operating on one pump that was rebuilt years ago. Due to this bad timing of the pump failure, we contacted Whitney Equipment Company about the situation. The cost to rebuild the pump is \$7,811.70 because of the amount of damage and corrosion found. A new pump is \$10,898.54.

The situation leaves us in a potential emergency, and pumps would be four weeks out before delivery. And after approval from the Mayor and City Administrator, we placed an order for two new pumps. And we scheduled Infrastructure Committee Meeting to discuss the situation and inform them based on the immediate needs to receive the pumps as soon as possible.

I support this resolution.

RESOLUTION NO. 24 -2021

A RESOLUTION OF THE OMAK CITY COUNCIL APPROVING THE SOLE SOURCE PURCHASE OF TWO NEW PUMPS AT THE KOALA SEWER LIFT STATION

WHEREAS, during regularly scheduled testing, one of the sewer pumps at the Koala lift station failed; and

WHEREAS, the failure resulted while the spare pump was sent off for inspection to replace or have rebuilt, leaving the lift station operating on one old rebuilt pump; and

WHEREAS, this system must be restored as quickly as possible to provide the sewer lift station with the redundancy necessary to assure that no failure or permit violations occur; and

WHEREAS, the estimated cost of these new pumps is approximately \$21,798 plus freight from Whitney Equipment Company, Inc., the Sole Source provider.

NOW, THEREFORE BE IT RESOLVED by the City Council of the City of Omak do hereby approve the purchase of two new pumps for Koala Sewer Lift Station from Whitney Equipment Company, quote attached as Exhibit "A" in the estimated amount of \$21,798.

INTRODUCED AND PASSED this _____ day of _____, 2021.

APPROVED:

Cindy Gagné, Mayor

ATTEST:

APPROVED AS TO FORM:

Connie Thomas, City Clerk

Michael D. Howe, City Attorney

EXHIBIT A



WECI

Whitney Equipment Company, Inc

Quote

WECI Service Department

16120 Redmond-Woodinville Road NE
Suite 3
Woodinville WA 98072
United States

Quote#: **44591**
Quote Date: **04/26/21**
Quote Expires: **05/26/21**
Customer #: **OMAK**

Sales Rep.: **Andrew Klempel**
Terms: **NET30 - Net 30 Days**
Ship-To #: **1**

Bill To: **City of Omak**
PO Box 72
Omak, WA 98841
United States

Ship To: **Omak WWTF**
Omak WWTF
635 S Fir St
Attn: Nancy Morter
Omak, WA 98841
United States

Phone **(509) 826-1170** Fax:

Contact:
Phone:

Ship Via: **STANDARD-Ground**
FOB:

Line #	Item	Description	Site	Qty, UOM	Price, UOM	Extended Price
1	31020700009	NP464-4 3.9/230/1 50' FM FLS+ FV	SVC	1.00 EA	8,704.0000 EA	8,704.00
To replace the existing Flygt NP3102.090-464						
2	START-UP	Start-Up & Training	SVC	1.00 DL	850.0000 DL	850.00
3	FREIGHT	Freight Shipping and Handling	FREIGHT	1.00 EA	500.0000 EA	500.00

Shipping charges are estimated and prepay and add
Lead time: Approx. 4 weeks ARO

Sub-Total:	10,054.00
Misc. Charges:	0.00
Freight:	0.00
Tax:	844.54
Total:	10,898.54

NP 3102 MT 3~ Adaptive 464

Technical specification



Motor - General

Motor number N3102.070 18-11-4AL-W 5hp	Phases 3~	Rated speed 1760 rpm	Rated power 5 hp
Approval FM	Number of poles 4	Rated current 13 A	Stator variant 1
Frequency 60 Hz	Rated voltage 230 V	Insulation class H	Type of Duty S1
Version code 070			

Motor - Technical

Power factor - 1/1 Load 0.80	Motor efficiency - 1/1 Load 86.9 %	Total moment of Inertia 0.601 lb ft ²	Starts per hour max. 30
Power factor - 3/4 Load 0.74	Motor efficiency - 3/4 Load 87.3 %	Starting current, direct starting 86.1 A	
Power factor - 1/2 Load 0.62	Motor efficiency - 1/2 Load 85.9 %	Starting current, star-delta 28.7 A	

Project
Block 0

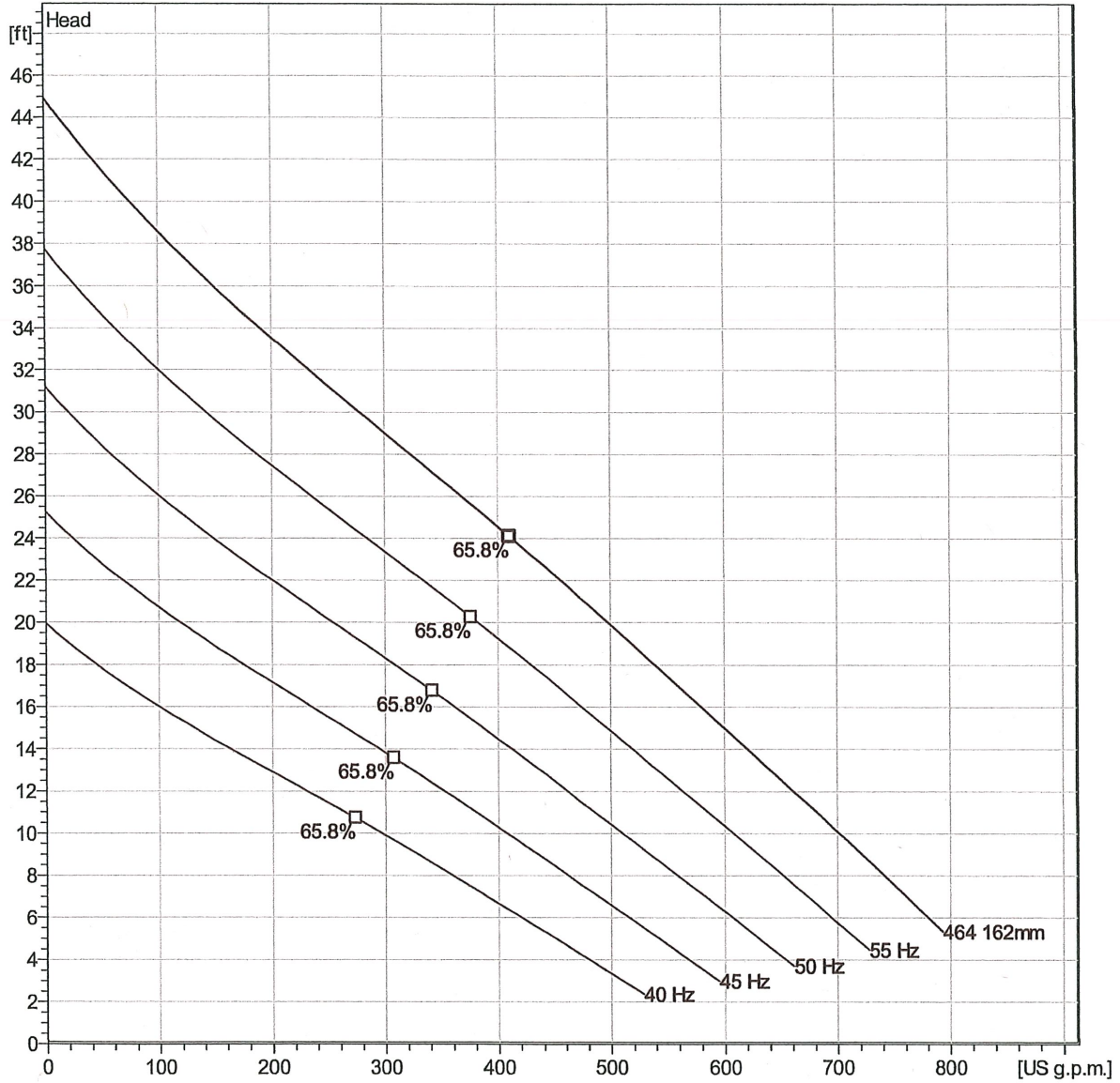
Created by Colette Moilanen
Created on 4/26/2021 **Last update** 4/26/2021

NP 3102 MT 3~ Adaptive 464

Duty Analysis



Curves according to: Water, pure, 39.2 °F, 62.43 lb/ft³, 1.6888E-5 ft²/s



Operating characteristics

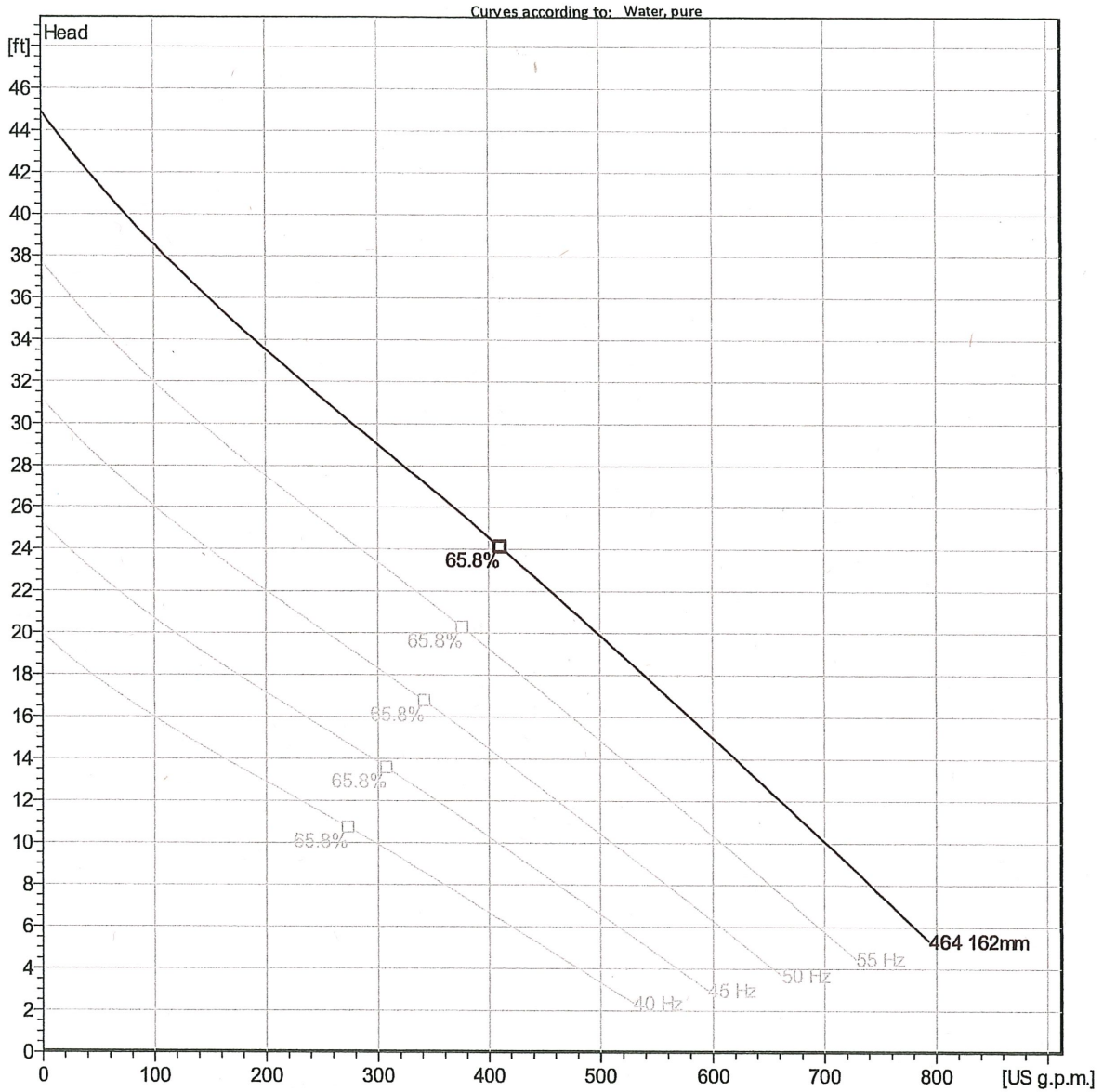
Pumps / Systems	Flow	Head	Shaft power	Flow	Head	Shaft power	Hydr. eff.	Specific Energy	NPSHre
-----------------	------	------	-------------	------	------	-------------	------------	-----------------	--------

Project
Block 0

Created by Colette Moilanen
Created on 4/26/2021 Last update 4/26/2021

NP 3102 MT 3~ Adaptive 464

VFD Analysis



Operating characteristics

Pumps / Systems	Frequency	Flow	Head	Shaft power	Flow	Head	Shaft power	Hydr. eff.	Specific Energy	NPSHre
-----------------	-----------	------	------	-------------	------	------	-------------	------------	-----------------	--------

Project
Block 0

Created by Colette Moilanen
Created on 4/26/2021 Last update 4/26/2021

WHITNEY EQUIPMENT CO., INC.
WOODINVILLE, WA
STANDARD CONDITIONS OF SALE

These are Whitney Equipment Co., Inc., the Seller, Standard Terms and Conditions and the basis of our offer to the Buyer, unless specifically altered in writing as permitted herein. Any changes may affect the quoted price. These Standard Terms and Conditions and the bid quote, purchase order, or other order form to which they are attached (the "Bid Quote") form a contract between Buyer and Seller for the sale of products described in the Bid Quote (the "Contract").

ACCEPTANCE: Submission of this Contract to Buyer constitutes Seller's offer to the Buyer and on acceptance becomes a binding contract on the terms set forth herein. Buyer's acceptance is expressly limited to the terms of this Contract. Seller rejects all terms included in any response by the Buyer to this Contract that are in conflict with, inconsistent with, or in addition to the terms and conditions contained herein. But if a conflict arises between the terms of a purchase order first issued by Buyer and the terms of this Contract, the terms of this Contract shall take precedence.

ENTIRE AGREEMENT: The Contract comprises the entire agreement between the Buyer and the Seller, and supersedes all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. This Contract prevails over any terms and conditions of purchase provided by Buyer, regardless whether or when the Buyer has submitted its purchase order or such terms. In addition implied terms and conditions from the Buyer's contracts with other entities are not valid or enforceable with respect this Contract. Fulfillment of the Buyer's order does not constitute acceptance of any of Buyer's terms and conditions and does not serve to modify or amend this Contract.

GOVERNING LAWS: Seller will comply with all laws applicable to Seller during sale of the products. Buyer will comply with all laws applicable to Buyer during operation or use of the products. The laws of the State of Washington shall govern the validity, interpretation and enforcement of any order of which these provisions are a part, without giving effect to any rules governing the conflict of laws. Assignment may be made only with written consent of both parties. Buyer shall be liable to the Seller for any attorney's fees and costs incurred by Seller in enforcing any of its rights hereunder. Unless otherwise specified, any reference to Buyer's order is for identification only.

JURISDICTION AND VENUE: Any legal suit, action or proceeding arising out of relating to this Contract shall be commenced in federal or state court located King County, Washington and Seller and Buyer (i) irrevocably submit to the exclusive jurisdiction and venue of any such court in any such suit, action or proceeding and (ii) irrevocably waive (to the extent permitted by applicable law) any objection which they now or hereafter may have to the laying of venue of any such action or proceeding brought in any of the foregoing courts in and of the State of Washington, and any objection on the ground that any such action or proceeding in any such court has been brought in an inconvenient forum.

ATTORNEYS FEES AND EXPERT COSTS: The prevailing party in any legal suit, action, or proceeding arising out of relating to the Contract shall be awarded its reasonable attorneys' fees and experts costs.

WARRANTY:

THE SELLER MAKES NO WARRANTIES ON ANY PRODUCTS OR SERVICES PROVIDED UNDER THIS CONTRACT, INCLUDING ANY (A) WARRANTY OF MERCHANTABILITY, (B) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, OR (C) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY, WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE. BUT THE BUYER SHALL RECEIVE WARRANTIES, IF ANY, PROVIDED BY THE MANUFACTURER OF THE PRODUCTS SOLD UNDER THIS CONTRACT. THE SELLER IS EXPRESSLY EXCLUDED FROM ANY WARRANTY AND ALL CHARGES, FOR LABOR, INSTALLATION, REMOVAL, REPAIR, REINSTALLATION, SHIPPING, UTILITIES, EQUIPMENT RENTAL, OTHER REQUIRED MATERIALS, OR ANY OTHER ITEMS. THE PARTIES AGREE THAT THE BUYER'S SOLE AND EXCLUSIVE REMEDIES SHALL BE AGAINST THE PRODUCT MANUFACTURER AS PROVIDED HEREIN. THE BUYER AGREES THAT NO OTHER REMEDY (INCLUDING, BUT NOT LIMITED TO, INCIDENTAL OR CONSEQUENTIAL DAMAGES FOR LOST PROFITS, LOST SALES, DOWN TIME, OPERATING OR MAINTENANCE COSTS, INJURY TO PERSONS OR PROPERTY, OR ANY OTHER SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL LOSS) SHALL BE AVAILABLE TO BUYER. BUYER SHALL FOLLOW ALL STORAGE, OPERATION, AND MAINTENANCE PROCEDURES SPECIFIED BY THE MANUFACTURER FOR WARRANTY COVERAGE, FAILURE TO FOLLOW THESE PROCEDURES INCLUDING DOCUMENTATION MAY RESULT IN LOSS OF WARRANTY COVERAGE.

TAXES: Seller does not include any Federal, State, City, County, or other sales, custom duties, or taxes such as sales, use, excise, retailer's, occupation or similar taxes and fees, in the Contract Price unless otherwise explicitly stated in writing. Any taxes not included in the Bid Quote will be added to the Contract Price. In lieu of paying such taxes to the Seller, the Buyer may furnish the Seller with a Tax Exemption Certificate or other legal and appropriate taxing authorities at any time.

PAYMENT TERMS: All quotations or proposals are in US Dollars unless explicitly stated otherwise in writing. Seller shall submit invoices for payment to Buyer for percentages of the Contract Price as described in Bid Quote. Buyer must pay all invoices submitted by Seller no later than 30 days after the date of the invoice. If the shipment is delayed by the Buyer, date of readiness for shipment shall be deemed the date of shipment for payment purposes. The Seller may require advance payment or a certificate of deposit, or may otherwise modify credit terms, should the Buyer's credit standing not meet the Seller's requirements. A service charge of 2.5% per month on the unpaid balance will be charged on all overdue monies payable. Buyer shall not assign or transfer their contract or any interest in it, or monies payable under it, without the written consent of Seller and any assignment made without such consent shall be null and void. Buyer agrees to pay all collection costs and costs of suit, including reasonable attorney fees, in the event Seller institutes collection action for overdue account. Seller expressly reserves all available lien rights in connection with any transaction between the parties. Unless explicitly agreed upon in writing, retainage against the contract amount is not allowed. The Seller reserves the right to re-possess all equipment that is not paid for in full per this Contract's payment terms.

CREDIT CARD PAYMENTS: All credit card payments will require an additional 2% surcharge in addition to the Contract Price listed in the Contract. All credit card payments over \$5000.00 require written pre-approval by the Seller prior to processing; approval is not guaranteed.

CREDIT: Buyer is required to provide all necessary credit information to Seller with each order, including bank reference, bonding company, or other necessary information with complete names, addresses, phone numbers, personal references, and account and bond numbers. The Seller will determine, in its sole discretion, what is acceptable and what credit rating is required for the Seller to allow a purchase on credit.

PRICE: The prices specified are in U.S. currency, payable free of all expense to the Seller for collection charges.

STARTUP PAYMENTS: If startup services are included in this Contract, the pre-agreed upon payment amount shall be due when startup is complete. If startup is delayed more than 90 days after equipment delivery, payment for startup shall be due 90 days after equipment delivery prior to the startup occurring. Delaying in paying this portion of the contract is subject to the PAYMENT TERMS above.

SHIPMENTS AND DELIVERY: Delivery and shipping times are Seller's best estimate and do not include product approval time or order processing time. Seller is not liable for any damages, fees, costs, expenses or penalties arising from (1) loss of or damage to product in transit or (2) delays in shipping or delivery of the product, including all delays caused by an accident; riots; insurrections; national emergency; labor disputes of every kind however caused; embargoes; non-delivery by suppliers; delays of carriers or postal authorities; or governmental restrictions, prohibitions, or requirements. Seller may, in its sole discretion, without liability or penalty, make partial shipments of products to Buyer. Each shipment will constitute a separate sale, and Buyer shall pay for the units shipped whether such shipment is in whole or partial fulfillment of Buyer's order. Cost of handling and freight is only included when it is explicitly listed in this Contract.

BUYER DATA - Timely performance is contingent upon the Buyer supplying to the Seller, when needed, all required technical information, including drawing and submittal approval, and all required commercial documentation. The Buyer shall also supply and complete all shipping delivery information, pre-delivery checklists, and pre-startup checklists in a timely manner or the overall schedule of the project may be impacted at no cost to the Seller regardless of any potential agreed upon damages.

BUYER SUPPLIED COMPONENTS - Buyer acknowledges that the products purchased by Buyer under this Contract may contain products supplied by the Buyer or supplied by a third party at the Buyer's direction ("Buyer Supplied Components"). Buyer Supplied Components are not covered by any warranty or guarantee in this Contract. For the avoidance of doubt, Seller makes no representations or warranties with respect to any Buyer Supplied Components. Seller disclaims any liability arising from Buyer Supplied Components delivered late, damaged, defective, or nonconforming. In no event shall Seller be liable for consequential, indirect, incidental, special, exemplary, punitive damages, or lost profits, arising out of or relating to late delivery of or defective Buyer Supplied Components. Subject to the terms and conditions of this Contract, Buyer shall indemnify, defend and hold harmless Seller and its representatives/officers, directors, employees, agents, affiliates, successors and permitted assigns ("Indemnified Party") against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including attorney and expert fees, fees and costs of enforcing any right to indemnification under this Contract, and the cost of pursuing any insurance providers, incurred by Indemnified Party in a final judgment relating to any third-party claims arising from defective Buyer Supplied Components.