



ORIGINAL

AGENDA
OMAK CITY COUNCIL MEETING
ZOOM Meeting
Monday, December 20, 2021 – 7:00 PM

A. CALL TO ORDER

B. FLAG SALUTE

C. CITIZEN COMMENTS

D. CORRESPONDENCE AND MAYOR'S REPORT








E. CONSENT AGENDA:

1. Approval of minutes from December 6, 2021
2. Approval of Claims & Manual Checks

F. OLD BUSINESS

1. Ord. 1909 - 2nd Read - Amending 2021 Budget – Cemetery 

G. NEW BUSINESS:

1. Res. 63-2021 – Approve Grant Agreement with TIB for 2022 Seal Coat Project 
2. Res. 64-2021 – Accept Bid and Approve Contract with Whitley Fuel, LLC 
3. Res. 65-2021 – Confirming Appointment & Authorize the Judicial Services Agr. 
4. Res. 66-2021 - Approve Sup. Agr. No. 5 with Gray & Osborne-Engl Road Project 
5. Res. 67-2021 - Approve Agr. - Okanogan County Community Action Council 
6. Executive Session – RCW 42.30.110(1)(g) To Review Performance of a Public Employee 
7. Res. 68-2021 – Approval of Amended General Release Agreement 

H. OTHER BUSINESS:

1. Council Committee Reports
2. Staff Reports



Action by City Council

In accordance with the order from Governor Inslee, our Council Meeting will be conducted using a Hybrid Model incorporating 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
Monday, December 20th, 2021 @ 7:00pm**

Join Zoom Meeting

<https://uso2web.zoom.us/j/87109019476?pwd=MHRJRGFPM2RoRllnVExNWHluYW9sdz09>

Meeting ID: 871 0901 9476

Passcode: 640198

One tap mobile

+12532158782,,87109019476#,,,,*640198# US (Tacoma)

+13462487799,,87109019476#,,,,*640198# US (Houston)

Dial by your location

+1 253 215 8782 US (Tacoma)

+1 346 248 7799 US (Houston)

+1 669 900 6833 US (San Jose)

+1 929 205 6099 US (New York)

+1 301 715 8592 US (Washington DC)

+1 312 626 6799 US (Chicago)

Meeting ID: 871 0901 9476

Passcode: 640198

Find your local number: <https://uso2web.zoom.us/j/87109019476?pwd=MHRJRGFPM2RoRllnVExNWHluYW9sdz09>

MEMORANDUM

To: Omak City Council
Cindy Gagnè, Mayor

From: Todd McDaniel

Date: December 6, 2021

Subject: Ordinance 1909 Amending Budget- Cemetery

The Attached Ordinance 1908- Amending the 2021 Budget for the City of Omak Appropriating Additional Expenditure in the Cemetery Fund, is forwarded for your consideration.

The Cemetery experienced a failure of the irrigation pump just prior to Memorial Day. This \$4,550.00 repair far exceeded the budget amount of \$550.00. We were unable to offset this cost with reductions in other discretionary lines. I fear this fund will be overspent by the end of the year with out this amendment.

I approve this Ordinance and urge it Adoption

ORDINANCE NO. 1909

**AN ORDINANCE AMENDING THE 2021 BUDGET FOR THE CITY OF OMAK
APPROPRIATING ADDITIONAL EXPENDITURES IN THE CEMETERY FUND**

WHEREAS, the City of Omak adopted the 2021 Budget by passage of Ordinance No. 1889 on December 7, 2020; and

WHEREAS, the Cemetery Well pump failed and was repaired during the 2021 irrigation season; and

WHEREAS, an appropriation is needed to support the additional costs for the pump repair; 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. 1889 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 Gagné, 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. 1909.

DATED this ____ day of _____ 2021

Connie Thomas, City Clerk

2021 BUDGET AMENDMENT ORDINANCE NO. 1909 ATTACHMENT "A"

Description	2021 Budget	Revenue	Expenditure	Revised Budget
<u>Cemetery Fund 103</u>				
<u>Ending Fund balance</u>				
103.508.51.00.00	\$ 40,358.32		\$ 4,550.00	\$ 35,808.32
<u>Repairs & Maintenance</u>				
103.556.20.48.00	\$ 550.00		\$ 4,550.00	\$ 5,100.00
104 Expenditure Total	\$ 68,589.53		\$ 4,550.00	\$ 73,139.53
104 Fund Total	\$ 108,947.85			\$ 108,947.85

Cemetery Fund

This Ordinance Appropriates an additional \$4,550.00 to cover the unanticipated costs for the repair of an irrigation pump. The Ending Fund balance is reduced by a like amount.

MEMORANDUM

To: Omak City Council
Cindy Gagné, Mayor

From: Ken Mears, Public Works Director

Date: December 20th, 2021

Subject: **Resolution No. 63-2021**, TIB Seal Coat Project.

The attached: **63-2021 A RESOLUTION OF THE OMAK CITY COUNCIL APPROVING THE GRANT AGREEMENT BETWEEN THE CITY OF OMAK AND THE WASHINGTON STATE TRANSPORTATION IMPROVEMENT BOARD FOR FY 2022 SEAL COAT PROJECT. TIB PROJECT NUMBER 2-E-987(006)-1**; is forwarded for your consideration.

The Transportation Improvement Board has awarded a grant for Seal Coating “Chip Seal” Project. This project will allow the city to have northern areas from Koala Street South to West Dewberry. As stated in the resolution, TIB funds for this project are \$167,483.00. Work to be done with City and County workforces.

I approve of this resolution and urge adoption.

RESOLUTION NO. 63-2021

A RESOLUTION OF THE OMAK CITY COUNCIL APPROVING THE GRANT AGREEMENT BETWEEN THE CITY OF OMAK AND THE WASHINGTON STATE TRANSPORTATION IMPROVEMENT BOARD FOR FY 2022 SEAL COAT PROJECT. TIB PROJECT NUMBER 2-E-987(006)-1

WHEREAS, the City of Omak has been awarded funding from the Washington State Transportation Improvement Board (TIB) for FY 2022 Seal Coat Project; and

WHEREAS, the total Seal Coat project is estimated at \$176,298.00, of which the Transportation Improvement Board will pay a maximum grant of \$167,483.00, and the City will provide the required match of \$8,815.00.

NOW THEREFORE BE IT RESOLVED that the City Council of the City of Omak, Washington accepts the grant agreement between the City of Omak and the Transportation Improvement Board, a copy of which is attached hereto as Exhibit "A". The Mayor is authorized to execute the Grant Agreement on behalf of the city.

INTRODUCED and passed this _____ day of _____, 2021.

APPROVED:

Cindy Gagné, Mayor

ATTEST:

Connie Thomas, City Clerk

APPROVED AS TO FORM:

Michael D. Howe, City Attorney



EXHIBIT A

Washington State Transportation Improvement Board

TIB Members

Chair
Councilmember Sam Low
Snohomish County

Vice Chair
Mayor Glenn Johnson
City of Pullman

Amy Asher
Mason Transit Authority

Aaron Butters, P.E.
HW Lochner Inc.

Susan Carter
Hopelink

Barbara Chamberlain
WSDOT

Elizabeth Chamberlain
City of Walla Walla

Chad Coles, P.E.
Spokane County

Mike Dahlern, P.E.
City of Sumner

Commissioner Al French
Spokane County

Commissioner Scott Hutsell
Lincoln County

John Klekotka, P.E.
Port of Everett

David Ramsay
Feet First

Les Reardanz
Whatcom Transportation Authority

Steve Roark, P.E.
WSDOT

Ruth Robertson
Budget Assistant of the Governor

Peter Rogalsky, P.E.
City of Richland

Councilmember Jan Schuette
City of Arlington

Jennifer Walker
Thurston County

Jane Wall
County Road Administration Board

November 23, 2021

The Honorable Cindy Gagne'
Mayor
City of Omak
Post Office Box 72
Omak, WA 98841-0072

Dear Mayor Gagne':

Congratulations! We are happy to announce the selection of your project, 2021 Seal Coat, Multiple Locations, TIB project number 2-E-987(006)-1. TIB is awarding 94.9999% of eligible project costs with a maximum grant of \$167,483.

This year, we received requests to fund 284 different projects, totaling more than \$232 million. We are pleased to provide \$99 million in transportation investments to cities and counties like yours throughout the state.

If you have questions, please contact Jonathan Heusman, TIB Project Engineer, at (360) 586-1143 or e-mail JonathanH@TIB.wa.gov.

Sincerely,

Ashley Probart
Executive Director

RECEIVED
DEC 06 2021
CITY OF OMAK

Ashley Probart
Executive Director

P.O. Box 40901
Olympia, WA 98504-0901
Phone: 360-586-1140

City of Omak
2-E-987(006)-1
2021 Seal Coat
Multiple Locations

STATE OF WASHINGTON
TRANSPORTATION IMPROVEMENT BOARD
AND
City of Omak
AGREEMENT

THIS GRANT AGREEMENT (hereinafter "Agreement") for the 2021 Seal Coat, Multiple Locations (hereinafter "Project") is entered into by the WASHINGTON STATE TRANSPORTATION IMPROVEMENT BOARD (hereinafter "TIB") and City of Omak, a political subdivision of the State of Washington (hereinafter "RECIPIENT").

1.0 PURPOSE

For the project specified above, TIB shall pay 94.9999 percent of approved eligible project costs up to the amount of \$167,483, pursuant to terms contained in the RECIPIENT'S Grant Application, supporting documentation, chapter 47.26 RCW, title 479 WAC, and the terms and conditions listed below.

2.0 SCOPE AND BUDGET

The Project Scope and Budget are initially described in RECIPIENT'S Grant Application and incorporated by reference into this Agreement. Scope and Budget will be further developed and refined, but not substantially altered during the Design, Bid Authorization and Construction Phases. Any material alterations to the original Project Scope or Budget as initially described in the Grant Application must be authorized by TIB in advance by written amendment.

3.0 PROJECT DOCUMENTATION

TIB requires RECIPIENT to make reasonable progress and submit timely Project documentation as applicable throughout the Project. Upon RECIPIENT'S submission of each Project document to TIB, the terms contained in the document will be incorporated by reference into the Agreement. Required documents include, but are not limited to the following:

- a) Project Funding Status Form
- b) Bid Authorization Form with plans and engineers estimate
- c) Award Updated Cost Estimate
- d) Bid Tabulations
- e) Contract Completion Updated Cost Estimate with final summary of quantities
- f) Project Accounting History

4.0 BILLING AND PAYMENT

The local agency shall submit progress billings as project costs are incurred to enable TIB to maintain accurate budgeting and fund management. Payment requests may be submitted as

often as the RECIPIENT deems necessary, but shall be submitted at least quarterly if billable amounts are greater than \$50,000. If progress billings are not submitted, large payments may be delayed or scheduled in a payment plan.

5.0 TERM OF AGREEMENT

This Agreement shall be effective upon execution by TIB and shall continue through closeout of the grant or until terminated as provided herein, but shall not exceed 10 years unless amended by the Parties.

6.0 AMENDMENTS

This Agreement may be amended by mutual agreement of the Parties. Such amendments shall not be binding unless they are in writing and signed by persons authorized to bind each of the Parties.

7.0 ASSIGNMENT

The RECIPIENT shall not assign or transfer its rights, benefits, or obligations under this Agreement without the prior written consent of TIB. The RECIPIENT is deemed to consent to assignment of this Agreement by TIB to a successor entity. Such consent shall not constitute a waiver of the RECIPIENT's other rights under this Agreement.

8.0 GOVERNANCE & VENUE

This Agreement shall be construed and interpreted in accordance with the laws of the state of Washington and venue of any action brought hereunder shall be in the Superior Court for Thurston County.

9.0 DEFAULT AND TERMINATION

9.1 NON-COMPLIANCE

- a) In the event TIB determines, in its sole discretion, the RECIPIENT has failed to comply with the terms and conditions of this Agreement, TIB shall notify the RECIPIENT, in writing, of the non-compliance.
- b) In response to the notice, RECIPIENT shall provide a written response within 10 business days of receipt of TIB's notice of non-compliance, which should include either a detailed plan to correct the non-compliance, a request to amend the Project, or a denial accompanied by supporting details.
- c) TIB will provide 30 days for RECIPIENT to make reasonable progress toward compliance pursuant to its plan to correct or implement its amendment to the Project.
- d) Should RECIPIENT dispute non-compliance, TIB will investigate the dispute and may withhold further payments or prohibit the RECIPIENT from incurring additional reimbursable costs during the investigation.

9.2 DEFAULT

RECIPIENT may be considered in default if TIB determines, in its sole discretion, that:

- a) RECIPIENT is not making reasonable progress toward correction and compliance.
- b) TIB denies the RECIPIENT's request to amend the Project.
- c) After investigation TIB confirms RECIPIENT'S non-compliance.

TIB reserves the right to order RECIPIENT to immediately stop work on the Project and TIB may stop Project payments until the requested corrections have been made or the Agreement has been terminated.

9.3 TERMINATION

- a) In the event of default by the RECIPIENT as determined pursuant to Section 9.2, TIB shall serve RECIPIENT with a written notice of termination of this Agreement, which shall be served in person, by email or by certified letter. Upon service of notice of termination, the RECIPIENT shall immediately stop work and/or take such action as may be directed by TIB.
- b) In the event of default and/or termination by either PARTY, the RECIPIENT may be liable for damages as authorized by law including, but not limited to, repayment of grant funds.
- c) The rights and remedies of TIB provided in the AGREEMENT are not exclusive and are in addition to any other rights and remedies provided by law.

9.4 TERMINATION FOR NECESSITY

TIB may, with ten (10) days written notice, terminate this Agreement, in whole or in part, because funds are no longer available for the purpose of meeting TIB's obligations. If this Agreement is so terminated, TIB shall be liable only for payment required under this Agreement for performance rendered or costs incurred prior to the effective date of termination.

10.0 USE OF TIB GRANT FUNDS

TIB grant funds come from Motor Vehicle Fuel Tax revenue. Any use of these funds for anything other than highway or roadway system improvements is prohibited and shall subject the RECIPIENT to the terms, conditions and remedies set forth in Section 9. If Right of Way is purchased using TIB funds, and some or all of the Right of Way is subsequently sold, proceeds from the sale must be deposited into the RECIPIENT's motor vehicle fund and used for a motor vehicle purpose.

11.0 INCREASE OR DECREASE IN TIB GRANT FUNDS

At Bid Award and Contract Completion, RECIPIENT may request an increase in the maximum payable TIB funds for the specific project. Requests must be made in writing and will be considered by TIB and awarded at the sole discretion of TIB. All increase requests must be made pursuant to WAC 479-05-202 and/or WAC 479-01-060. If an increase is denied, the recipient shall be liable for all costs incurred in excess of the maximum amount payable by TIB. In the event that final costs related to the specific project are less than the initial grant award, TIB funds will be decreased and/or refunded to TIB in a manner that maintains the intended ratio between TIB funds and total project costs, as described in Section 1.0 of this Agreement.

12.0 INDEPENDENT CAPACITY

The RECIPIENT shall be deemed an independent contractor for all purposes and the employees of the RECIPIENT or any of its contractors, subcontractors, and employees thereof shall not in any manner be deemed employees of TIB.

13.0 INDEMNIFICATION AND HOLD HARMLESS

The PARTIES agree to the following:

Each of the PARTIES, shall 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, judgment, and/or awards of damages, arising out of, or in any way resulting from, that PARTY's own negligent acts or omissions which may arise in connection with its performance under this Agreement. No PARTY will be required to indemnify, defend, or save harmless the other PARTY if the claim, suit, or action for injuries, death, or damages is caused by the sole negligence of the other PARTY. Where such claims, suits, or actions result from the concurrent negligence of the PARTIES, the indemnity provisions provided herein shall be valid and enforceable only to the extent of a PARTY's own negligence. Each of the PARTIES agrees that its obligations under this subparagraph extend to any claim, demand and/or cause of action brought by, or on behalf of, any of its employees or agents. For this purpose, each of the PARTIES, by mutual negotiation, hereby waives, with respect to the other PARTY only, any immunity that would otherwise be available to it against such claims under the Industrial Insurance provision of Title 51 RCW. In any action to enforce the provisions of the Section, the prevailing PARTY shall be entitled to recover its reasonable attorney's fees and costs incurred from the other PARTY. The obligations of this Section shall survive termination of this Agreement.

14.0 DISPUTE RESOLUTION

- a) The PARTIES shall make good faith efforts to quickly and collaboratively resolve any dispute arising under or in connection with this AGREEMENT. The dispute resolution process outlined in this Section applies to disputes arising under or in connection with the terms of this AGREEMENT.
- b) Informal Resolution. The PARTIES shall use their best efforts to resolve disputes promptly and at the lowest organizational level.
- c) In the event that the PARTIES are unable to resolve the dispute, the PARTIES shall submit the matter to non-binding mediation facilitated by a mutually agreed upon mediator. The PARTIES shall share equally in the cost of the mediator.
- d) Each PARTY agrees to compromise to the fullest extent possible in resolving the dispute in order to avoid delays or additional incurred cost to the Project.
- e) The PARTIES agree that they shall have no right to seek relief in a court of law until and unless the Dispute Resolution process has been exhausted.

15.0 ENTIRE AGREEMENT

This Agreement, together with the RECIPIENT'S Grant Application, the provisions of chapter 47.26 Revised Code of Washington, the provisions of title 49 Washington Administrative Code, and TIB Policies, constitutes the entire agreement between the PARTIES and supersedes all previous written or oral agreements between the PARTIES.

16.0 RECORDS MAINTENANCE

The RECIPIENT shall maintain books, records, documents, data and other evidence relating to this Agreement and performance of the services described herein, including but not limited to accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Agreement. RECIPIENT shall retain such records for a period of six years following the date of final payment. At no additional cost, these records, including materials generated under the Agreement shall be subject at all reasonable times to inspection, review or audit by TIB personnel duly authorized by TIB, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or agreement.

If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

Approved as to Form
Attorney General

By:

Signature on file

Guy Bowman
Assistant Attorney General

Lead Agency

Transportation Improvement Board

Chief Executive Officer Date

Executive Director Date

Print Name

Print Name

Small City Preservation Program (SCPP)
Approved Segment Listing

OMAK

FY 2023 Seal Coat Program

Street	Termini	Pavement Length	Pavement Width
E Cherry Avenue	SR 215 to End	690 feet	35 feet
E Dewberry Avenue	SR 97 to Juniper St	3,425 feet	35 feet
Elberta Avenue	W End to Ironwood	995 feet	23 feet
Juniper Street	S End to SR 215	1,090 feet	59 feet
Koala Drive	Quince to C/L	6,075 feet	39 feet
Locust Street	S of Dewberry Ave to C/L	2,500 feet	28 feet
Oak Street	Dewberry Ave to C/L	2,290 feet	37 feet
Omache Drive	SR 215 to Koala Dr	1,535 feet	39 feet
Quince Street	SR 215 to Koala Dr	1,250 feet	39 feet
Shumway Road	Koala to C/L	1,920 feet	39 feet
W Cherry Avenue	SR 215 to C/L	1,590 feet	35 feet
W Dewberry Avenue	W End to SR 215	1,175 feet	38 feet



Transportation Improvement Board

Project Funding Status Form

Agency Name: **OMAK**
Project Name: **2021 Seal Coat
Multiple Locations**

TIB Project Number: **2-E-987(006)-1**

Verify the information below and revise if necessary.

Return to: Transportation Improvement Board • PO Box 40901 • Olympia, WA 98504-0901

PROJECT SCHEDULE

Target Dates		
Construction Approval	Contract Bid Award	Contract Completion

PROJECT FUNDING PARTNERS

List additional funding partners and amount.

Funding Partners	Amount	Revised Funding
OMAK	8,815	
WSDOT	0	
TOTAL LOCAL FUNDS	8,815	

Signatures are required from two different agency officials. Return the originally signed form to the TIB office.

Mayor or Public Works Director

Signature

Date

Printed or Typed Name

Title

Financial Officer

Signature

Date

Printed or Typed Name

Title

MEMORANDUM

To: Omak City Council
Cindy Gagné, Mayor

From: Todd McDaniel
City Administrator

Date: December 20, 2021

Subject: Resolution 64-2021 Approving 2022 Fuel Bid

The attached Resolution No. 64-2021, Acceptance of Bid and Approval of Contract Between Whitley Fuel, LLC and the City of Omak for 2022 Petroleum Product Needs, is forwarded for your consideration.

The City advertised for 2022 fuel bids on November 10, 2021 in the Omak Chronicle. Only one bid was received from Whitley Fuel.

The attached Resolution will award the contract to Whitley fuel for 2022 fuel purchased.

I support this Resolution and Urge its Adoption.

RESOLUTION NO. 64-2021

**ACCEPTANCE OF BID AND APPROVAL OF CONTRACT
BETWEEN WHITLEY FUEL LLC AND THE CITY OF OMAK
FOR 2022 PETROLEUM PRODUCT NEEDS**

THE CITY COUNCIL OF THE CITY OF OMAK, Washington do hereby resolve that the bid received from Whitley Fuel LLC for 2022 petroleum products, is hereby accepted. The bid tabulation sheet attached hereto as Exhibit "A", and the contract agreement, attached hereto as Exhibit "B", between the **CITY OF OMAK**, a municipal corporation, and **WHITLEY FUEL LLC** a private corporation, are hereby approved. The Mayor is hereby authorized and directed to execute the contract for and on behalf of the CITY; and the City Clerk is authorized and 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:

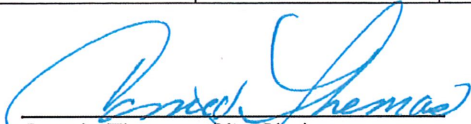
Michael Howe, City Attorney

EXHIBIT A

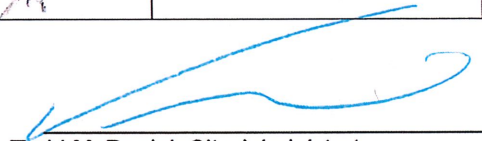
BID TABULATION

PROJECT TITLE: 2022 Fuel Bids
DEPARTMENT: Public Works
DATE: November 30, 2021
TIME: 3:00 PM

	Whitley Fuel	Coleman Oil	
Contractors:			
Premium Unleaded	3.2859	N/A	
Mid-Level Unleaded	2.7900	N/A	
Regular Unleaded	2.6144	N/A	
Diesel #2:	2.8638	N/A	



Connie Thomas, City Clerk



Todd McDaniel, City Administrator

Date: 11.30.2021

Date: 11/30/2021

One Bid Received

INVITATION TO BID
CITY OF OMAK
PETROLEUM BID FOR 2022

The City of Omak is seeking bids for supplying the 2022 FUEL REQUIREMENTS for the City.

Sealed bids will be received by the City Clerk of the City of Omak, P. O. Box 72, 2 North Ash, Omak, WA 98841, until 3:00 p.m., November 30, 2021.

Bid specifications and bid forms can be obtained from the City Clerk's Office, at the above address or by calling (509) 826-1170.

City of Omak

Connie Thomas
City Clerk

INFORMATION TO BIDDERS

Estimated requirements for the petroleum products for 2022 are as follows:

UNLEADED FUEL	9,000 GALLONS
MID-GRADE UNLEADED FUEL	7,500 GALLONS
SUPER UNLEADED – Ethanol Free	5000 GALLONS
DIESEL FUEL	6,000 GALLONS

All bids shall be on the first grade petroleum products of major companies such as Chevron, Shell, Arco, Texaco, Mobile, Exxon, or equal, and shall be named in the "Oil Price Information Service." The successful bidder will be required to document his monthly statements and invoices to the satisfaction of the City of Omak with the OPIS prices used in calculating his invoice prices. All bids shall contain:

- 1) Provision for a secure single card system with a monthly computer printout of products purchased during the past month; and
- 2) Ability to purchase petroleum products at other locations outside of the Omak area.

All bids shall be in conformance with bidding specifications, which are available at the office of the Omak City Clerk.

The contract shall be let under the terms of RCW 35A.40.210, to the lowest responsible bidder; taking into consideration, in addition to the price, the ability, capacity and skill to perform the contract; the character, integrity, experience and efficiency of the bidder; previous and existing compliance with laws relating; and such other information as may be secured having a bearing on the decision to award the contract.

The City of Omak reserves the right to accept any portions of the items bid excluding others, whenever such is in the best interest of the city, to accept or reject any or all bids, and to waive minor informalities.

CITY OF OMAK PETROLEUM CONTRACT - TERMS AND CONDITIONS

CONTRACT PERIOD - Initial contract shall commence on the 1st day of January 2022 and be terminated on the 31st day of December, 2022.

SCOPE - This bid is for the purchase of fuels utilizing a self-service fuel dispensing system. The following shall be included in this bid as mandatory items:

- 1) Regular Unleaded gasoline
- 2) Mid-Grade Unleaded gasoline
- 3) Premium Unleaded Ethanol Free gasoline
- 4) Diesel Fuel No. 2

BID PRICES - Bidders shall bid their fuel prices on Attachment A. **BID PRICES ARE TO BE EXCLUSIVE OF ALL SALES TAX AND EXCISE TAXES THAT ARE THE RESPONSIBILITY OF THE BIDDER. BID PRICES ARE TO BE BASED ON THE OPIS PRICES THAT ARE PUBLISHED IN THE WEEKLY OPIS PRICE PUBLICATION WITH CONFIRMED MOVES THROUGH NOVEMBER 11, 2021 AND DATED NOVEMBER 15, 2021.**

PRICE ESCALATION - Contract prices will be allowed to increase or decrease after bid opening and during the terms of the contract. All contract price adjustments shall be based solely on the change in the Vendor's certified supplier's listed price for ONE of the following cities: Seattle, Spokane or Pasco, as reported in the weekly publication, Oil Price Information Service (OPIS). No other price changes method (such as referencing your own posted price list or your supplier's price list) or other publication shall be considered. Bidder refusal to accept OPIS for contract price adjustments as specified may be reason to find their bid non-responsive.

Bidder shall specify his certified supplier and the price adjustment reference city (Seattle, Spokane, or Pasco) to be used for contract price adjustment on Attachment A. One supplier and one reference city may be specified by each bidder for each product bid. If OPIS does not list the supplier, or one or more supplier product prices for a reference city, the listed average price for that city shall be issued.

Any upward or downward change in the certified supplier's prices from one OPIS publication to the next will be added to or subtracted from the previous contract price. The effective date of the price change will be on the Monday of the date of the OPIS publication which reflects the price change.

The first price adjustment shall be based on the difference in the prices from the OPIS prices established on **December 18, 2021**. Any upward or downward change in the comparison of prices will be added to or subtracted from bid prices with the effective date of such change to be January 1, 2022. The successful bidder will be required to document his monthly invoices from the OPIS statements used in calculating said invoices, to the satisfaction of the City of Omak. If it appears that an error has occurred on any OPIS issue, the publisher shall be contacted for clarification.

Approved price changes or other amendments to the contract shall be documented using a "Contract Change Notice."

All contract fuel price changes shall be on a cents per gallon basis.

Requests for price increases to compensate for other increases in the cost of doing business, other than OPIS price changes will not be considered.

Notwithstanding the above, should the price structure become unworkable, detrimental, or injurious to the city or result in prices, which are not truly reflective of current market conditions, and no adjustment in price is mutually agreeable, the cities reserve the sole right to cancel this

contract upon giving the Vendor ten (10) days notice. The City shall not be responsible for any costs or lost profits resulting from such contract cancellation.

QUALIFICATIONS OF THE BIDDER: At the time of the bid opening, bidder must be an established refiner, distributor or dealer with facilities, personnel and equipment to perform all requirements herein.

CERTIFICATION OF SUPPLIER: Bidders, other than refiners of the products bid, shall submit with their bid a letter from their supplier or copy of current supply contract certifying that the volumes and products offered are available to the bidder.

NON-EXCLUSIVE CONTRACT: This is a non-exclusive contract whereby Omak may, in case of emergency or special circumstances purchase from any service station.

KEY CARD OR OTHER SELF-DELIVERY METHODS: Bidders shall select to bid as a self delivery system. Bidders shall provide for a secure single card system with a monthly computer printout of products purchased during the past month; and ability to provide petroleum products at other locations outside of the Omak area.

DEVIATIONS: Deviations from any part of the "Invitation to Bid" must be clearly noted and explained in compliance detail on bidder's return bid documents.

METHOD OF AWARD: Bidders are to bid a single per gallon price for each category listed. Bid prices shall be evaluated as being in effect on the date of bid opening.

CONTRACTOR:

Whitley Fuel LLC
Company Name

R. G. H., manager
Signed

11/30/21
Date

CITY OF OMAK, a municipal corporation

Cindy Gagne, Mayor

Date

ATTACHMENT "A"

Bidders are to specify on the Bid Price Schedule one Oil price Information Service (OPIS) reference city for each product, OPIS is a published by United Communications Group, 9737 Washington BLVD. Suite 200 Gaithersburg, MD 208778. Bidders are to specify a firm fixed price also referred to as per Gallon Markup for each fuel listed. Per Gallon Markup shall include all costs for Overhead, profit, delivery.

Bids evaluation will consider total price, contractor's qualifications, ability to deliver, capacity to deliver, proximity of fueling sites, and all other pertinent information that ensure safe reliable fueling operations.

**CITY OF OMAK
2022 PETROLEUM PRODUCTS**

	EST. Vol	Rack City	Branded or non-branded	OPIS Price as Published 11/15/2021	Mark up	Price
Premium Ethanol Free	500	Pasco	branded	2.7318	.5541	3.2859
Regular Unleaded	9000	Pasco	branded	2.3803	.2341	2.6144
Mid Range Unleaded	7500	Spokane	branded	2.5808	.2092	2.7900
Diesel No. 2	6000	Seattle	unbranded	2.5699	.2989	2.8688

VOLUMES ARE IN GALLONS AND PRICES IN DOLLARS PER GALLON.

ALL BIDS SHALL BE FOR A SELF SERVICE DELIVERY SYSTEM

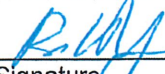
THE FOLLOWING DEVIATIONS FROM BID SPECIFICATIONS ARE INCLUDED IN MY BID:

FIRM NAME: Whitley Fuel LLC

MAILING ADDRESS: PO Box 907, Okanogan WA 98840

PHONE NUMBER: 509 422 3120

RESPONSIBLE OFFICER: Brian Whitley
(Please print)

Signature:  Date: 11/30/21

Title: Manager

1) SUPPLIER QUESTIONNAIRE:

The following information is to be furnished and may be used in reviewing bidder's delivery and service capabilities and overall qualifications.

Indicate which one of the following best defines your company's activity and the number of years you have been in this business under the present name.

CHECK ONE: Refiner _____ Brand Jobber No. of Years 30+
Distributor _____ No. of Years _____
Other _____ No. of Years _____

2) Primary fueling location:

Omak Area Pacific Pride
Network POS Pacific Pride

MEMORANDUM

To: Omak City Council
Cindy Gagné, Mayor

From: Todd, McDaniel
Administrator

Date: December 20, 2021

Subject: Resolution 65-2021 Appointing Judge & Authorizing Agreement

The Attached Resolution 65-2021, Confirming the Mayors appointment of David Ebenger as Municipal Court Judge and Authorizing the Mayor to Execute a Judicial Service Agreement, is forwarded for your consideration.

Judge Ebenger is the presiding Omak Municipal Court Judge. The appointment of the Judge is four-year term expiring December 31, 2021.

In the past the Judge has provided service as a salaried employee. For the 2022-2025 term, I have drafted and negotiated an agreement for contracted services. The court is an independent branch of the government. Recent guidance from the Administrative Office of the Court (GR 29) is requiring specific language in the agreement to ensure this separation is understood. New mandatory language is included in section 8 of the agreement. Judge Ebenger and I drafted the agreement, and the city attorney has had satisfactory review.

The four-year agreement compensates the Judge at \$1500.00 per month for services. Currently Omak Court is held once a month. We estimated the compensation on 10 hours of service.

I support this Resolution and urge its Adoption

RESOLUTION NO.65-2021

**A RESOLUTION OF OMAK CITY COUNCIL, CONFIRMING
THE MAYOR'S APPOINTMENT OF DAVID EBENGER AS
MUNICIPAL COURT JUDGE AND AUTHORIZING THE
MAYOR TO EXECUTE A JUDICIAL SERVICES
AGREEMENT**

WHEREAS, municipal court judges are appointed by the Mayor, subject to City Council confirmation, for four-year terms commencing on January 1 of the year; and

WHEREAS, the municipal court judge appointment expires on December 31, 2021; and

WHEREAS, the Mayor is seeking Council confirmation of her appointment of David Ebenger as the City's Municipal Court Judge; and

WHEREAS, the Council supports the Mayor's appointment of David Ebenger and finds the proposed agreement to be fair and reasonable.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OMAK, WASHINGTON, DOES RESOLVE AS FOLLOWS:

Section 1. The City Council of the City of Omak, Washington, does hereby confirm the Mayor's appointment of David Ebenger as Municipal Court Judge through December 31, 2025.

Section 2. The City Council authorizes the Mayor, on behalf of the City, to execute the Judicial Services Agreement, attached hereto as Exhibit "A".

INTRODUCED AND PASSED BY THE CITY COUNCIL OF THE CITY OF OMAK, WASHINGTON, this _____ day of _____, 2021

APPROVED:

Cindy Gagné, Mayor

ATTEST:

APPROVED AS TO FORM:

Connie Thomas, City Clerk

Michael D. Howe, City Attorney

MUNICIPAL COURT JUDICIAL SERVICES AGREEMENT

This agreement (the "Agreement") is by and between the City of Omak, a municipal corporation operating as a non-charter code city under the laws of the state of Washington (the "City") and David Ebenger ("Contractor") and is dated _____ 2021.

RECITALS

- A. The city operates a Municipal Court pursuant to OMC Chapter 2.64 and RCW 3.50.*
- B. The Contractor meets the judicial qualifications set forth in RCW 3.50.040.*
- C. The Contractor is willing and able to serve as the City's Municipal Court Judge for the four-year term ending December 31, 2025.*
- D. The City and Contractor desire to enter into an agreement setting forth the relative rights, duties and obligation of the parties;*

Now, therefore, in consideration of the mutual promises and covenants set forth below, the sufficiency of which is acknowledged by the parties, it is agreed as follows:

- 1. Appointment - Effective January 1, 2022, and subject to confirmation by the Omak City Council, Contractor is appointed to be the judge of the Omak Municipal Court. Said term shall commence on January 1, 2022, and terminate on December 31, 2025, unless sooner terminated as may be provided by law.*
- 2. Term - The term of this agreement shall be from January 1, 2022, through December 31, 2025.*
- 3. Duties - Contractor agrees to serve as the Municipal Court Judge for the City of Omak with all the powers, duties, privileges and obligations which said office confers and in accordance with this Agreement and as required by the City's ordinances, the constitutions and laws of the state of Washington and*

the United States, and all other applicable laws and treaties. Contractor shall abide by the Rules of Judicial Conduct as promulgated by the Washington Supreme Court. Contractor shall at all times maintain his status as a licensed attorney in the state of Washington in the status of either active or judicial. The services to be provided will include regularly scheduled court sessions and any administrative work, out of court work done, and all time expended for judicial education by the Municipal Judge. In addition to regularly scheduled sessions of the Omak Municipal Court, the Judge shall conduct other court hearings as may be necessary, and shall otherwise be available, as needed, to provide the Municipal Court services in accordance with OMC 2.64 and state statutes. Contractor shall also use his best efforts to improve the City's Court by advancing the causes of justice, impartiality, fairness and efficiency in all of the Court's business.

- 4. Compensation - The parties acknowledge that compensation is based upon the assumption that the Contractor will attend one regularly scheduled court appearance calendar per month, provide office hours required to perform administrative duties of the Court, in addition to phone calls with court and other city staff. Based upon the foregoing, the City shall compensate Contractor at the flat base rate of \$1,500.00 per month for all his time, both judicial and administrative. The rate of compensation may be adjusted by the mutual agreement of the parties, in writing.*

- 5. Judges' Pro-tem - In the event the Contractor is unable to serve due to disability, illness and/or absence, an actual conflict, or an affidavit of prejudice, it shall be his responsibility to so notify the Court Administrator who shall make arrangements for the presence of a Judge pro-tem. All Judges pro-tem shall be qualified to hold the position of Judge of the Municipal Court, as provided herein. Judges' pro-tem shall be paid by the City. The City will be responsible for compensating the pro tempore judge; provided that, when a judge pro tempore serves when Contractor is unable to serve due to disability, illness and/or absence, the City shall deduct pro-tem costs dollar-per-dollar from the flat base rate of compensation per month paid to the judge.*

- 6. **Status** - Contractor will be an independent contractor and shall pay all his*

own withholding taxes, social security taxes, and any other payroll taxes.

7. *Termination - This agreement shall be in effect during the term specified in paragraph two unless terminated by mutual agreement or according to law. The City shall release Contractor from his obligations under this contract if Contractor accepts a full-time judicial appointment, in which case Contractor will release the City from its obligations.*

8. *General Rule 29 - The parties agree that the provisions of Washington State Rules of Court General Rule 29, which governs the election, term, vacancies, removal, selection, responsibilities and authorities of presiding judges in courts of limited jurisdiction, shall be applicable to all court operations and personnel.*

A. *Terms of Office and salary.* *The judge's term of office shall be four years, as provided in RCW 3.50.050. The judge's salary shall be fixed by ordinance in accordance with RCW 3.50.080, and the salary shall not be diminished during the term in office.*

B. *Judicial Duties.* *The judge shall preform all duties legally prescribed for a judicial officer according to the state law, the requirements of the Code of judicial Conduct, and the Washington State court rules.*

C. *Judicial Independence and Administration of the Court.* *The Court is an independent branch of government. The judge shall supervise the daily operations of the court and all personnel assigned to preform court functions in accordance with the provisions of GR 29 (e) and (f), and RCW 3.50.080. Under no circumstances should the judicial retention decisions be made on the basis of a judges, or a court performance related to generating revenue from the imposition of the legal financial obligations.*

D. *Termination and Discipline.* *The judge may only be admonished, reprimanded, censured, suspended, removed, or retired during the judge's term of office upon action of the Washington State Supreme Court, as provided in article IV, section 31 of the Washington State Constitution.*

9. *Qualification - Contractor declares that he is and shall at all times during the term of this Agreement be, qualified to serve as a Municipal Court Judge in that he is a citizen of the Unites States and of the State of Washington and is an attorney admitted to practice law before the courts of record of the State of Washington.*

10. *Indemnity Agreement - The City shall defend, indemnify and hold Contractor and/or pro-tem judges that may serve in his absence, harmless from any and all claims arising out of the good faith performance of his duties and functions as the Omak Municipal Court Judge.*

CONTRACTOR:

David Ebenger

Date

CITY:

Cindy Gagné, Mayor

Date

MEMORANDUM

To: Omak City Council
Cindy Gagné, Mayor

From: Ken Mears, Public Works Director

Date: December 20th,2021

Subject: **Resolution No.66-2021** Supplemental Agreement No.5 Engh Road-SR
215/US 97 Intersection Improvements.

The attached **Resolution 66-2021**, **A RESOLUTION APPROVING SUPPLEMENT NO. 5 TO THE CONSULTING AGREEMENT BETWEEN THE CITY OF OMAK AND GRAY AND OSBORNE INC. FOR THE ENGH ROAD/SR215/US 97 INTERSECTION IMPROVEMENTS** is forwarded for your consideration.

This Supplemental Agreement No. 5 is to amend the completion date from December 31st, 2021, to December 31st,2022.

Supplemental Agreement No. 4 was due to expire at the end of this month, therefore requiring this change.

I support this Resolution and request Council approval.

RESOLUTION NO. 66-2021

A RESOLUTION APPROVING SUPPLEMENT NO. 5 TO THE CONSULTING AGREEMENT BETWEEN THE CITY OF OMAK AND GRAY AND OSBORNE INC. FOR THE ENGH ROAD/SR215/US 97 INTERSECTION IMPROVEMENTS

WHEREAS, Resolution 29-2015 approved a Consulting Agreement with Gray & Osborne, Inc. for the Engh Road/SR215/US97 Intersection Improvements project; and

WHEREAS, the attached Supplemental Agreement Number 5, would amend the original executed agreement with Gray & Osborne, Inc. dated August 5th, 2015; and

WHEREAS, the amendment as detailed in Exhibit "A" changes the project completion date from December 31st, 2021, to December 31st, 2022.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Omak that Washington State Supplemental Agreement No. 5, attached hereto as Exhibit "A", is approved. The Mayor is authorized to execute the said agreement on behalf of the City.

INTRODUCED AND PASSED this _____ day of _____, 2021.

APPROVED:

Cindy Gagné, Mayor

ATTEST:

Connie Thomas, City Clerk

APPROVED AS TO FORM:

Michael D. Howe, City Attorney

EXHIBIT A



**Washington State
Department of Transportation**

Supplemental Agreement Number <u>5</u>		Organization and Address	
Original Agreement Number		Gray & Osborne, Inc. 1130 Rainier Avenue South, Suite 300 Seattle, WA 98144 Phone: (206) 284-0860	
Project Number STPUS-Z924 (003)	Execution Date	Completion Date December 31, 2022	
Project Title Engl Road-SR 215/US 97 Intersection Improvements	New Maximum Amount Payable \$109,662		
Description of Work No Change			

The Local Agency of City of Omak

desires to supplement the agreement entered in to with Gray & Osborne, Inc.

and executed on August 5, 2015 and identified as Agreement No. _____

All provisions in the basic agreement remain in effect except as expressly modified by this supplement.

The changes to the agreement are described as follows:

I

Section 1, SCOPE OF WORK, is hereby changed to read:

No change

II

Section IV, TIME FOR BEGINNING AND COMPLETION, is amended to change the number of calendar days for completion of the work to read: Revised Completion Date: December 31, 2022

III

Section V, PAYMENT, shall be amended as follows:

No change

as set forth in the attached Exhibit A, and by this reference made a part of this supplement.

If you concur with this supplement and agree to the changes as stated above, please sign in the Appropriate spaces below and return to this office for final action.

By: Michael Johnson, P.E.

By: Cindy Gagne

Consultant Signature

Approving Authority Signature

Date

EXHIBIT A

Summary of Payments

	Basic Agreement	Supplement No. 1	Supplement No. 2	Supplement No. 3	Supplement No. 4	Supplement No. 5	Total
Direct Salary Cost	\$25,082	\$0	\$0	\$0	(\$4,921)	\$0	\$20,161
Overhead (Including Payroll Additives)	\$44,144	\$0	\$0	\$0	(\$8,661)	\$0	\$35,483
Direct Non-Salary Costs	\$934	\$0	\$0	\$31,977	\$15,058	\$0	\$47,969
Fixed Fee	\$7,525	\$0	\$0	\$0	(\$1,476)	\$0	\$6,049
Total	\$77,685	\$0	\$0	\$31,977	\$0	\$0	\$109,662

MEMORANDUM

To: Omak City Council
Cindy Gagné, Mayor

From: Todd, McDaniel
Administrator

Date: December 20, 2021

Subject: Resolution 67-2021 Water Assistance Agreement

The Attached Resolution 67-2021, approving a Vendor Agreement with Okanogan County Community Action Council for Water Assistance Program.

Community Action is instrumental in seeking and distributing Federal funding to eligible Okanogan County residents. This is the first formal agreement that I am aware of with Community Action, but the city utilities and its customers have been benefitting from their programs for many years.

This agreement will run through September of 2022. I am working with the Coalition to devise a process to ensure the necessary documentations are populated and retained for compliance with the Federal Assurances.

I support this Resolution and urge its Adoption

RESOLUTION NO. 67-2021

A RESOLUTION OF THE OMAK CITY COUNCIL APPROVING A VENDOR AGREEMENT WITH OKANOGAN COUNTY COMMUNITY ACTION COUNCIL FOR WATER ASSISTANCE PROGRAM

WHEREAS, the Okanogan County Community Action Council has Federal funding available to assist eligible customers with their utility payments; and

WHEREAS, the City of Omak is the provider of water, sewer, storm, and garbage utilities within its defined service areas; and

WHEREAS, the agreement between the City of Omak and the Okanogan Community Action Council defines each agency's responsibility and assures accountability to the Federal funding program.

NOW, THEREFORE BE IT RESOLVED that the City Council of the City of Omak hereby approves the **Low-Income Water Assistance Program Vendor Agreement** between the City of Omak and the Okanogan County Community Action Council, for the period from October 1, 2021, to September 30, 2022, as shown on **Exhibit "A"**, attached hereto.

INTRODUCED and passed this _____ day of _____ 2021.

APPROVED:

Cindy Gagné, Mayor

ATTEST:

Connie Thomas, City Clerk

APPROVED AS TO FORM:

Michael Howe, City Attorney



EXHIBIT A

Low-Income Water Assistance Program Vendor Agreement

This agreement, dated as of **November 22nd, 2021**, is entered into by and between **Okanogan County Community Action Council**, and **City of Omak**, a supplier of home water/sewer services.

PURPOSE

Funding for Low-Income Water Assistance Program (LIHWAP) payments are governed by Federal Law 42 U.S.C. 8624: Low-Income Home Energy Assistance Act of 1981, and subsequent amendments. This act requires that certain assurance be satisfied before utility assistance payments are made, on behalf of eligible individuals, to suppliers of home water/sewer services. This agreement defines the conditions that the Utility Vendor must agree to so that the Agency can make assistance payments to the Utility Vendor on behalf of eligible households.

AGENCY RESPONSIBILITIES

The Agency shall:

1. Accept and review client applications and determine eligibility of households for LIHWAP payments.
2. Follow procedures that minimize the time elapsing between the receipt of LIHWAP funds and their disbursement to the vendor.
3. Make payments in a timely manner to the Vendor on behalf of eligible households between **October 1st and September 30th** of the program year for the term of this agreement.
4. Follow sound fiscal management policies, including, but not limited to segregation of LIHWAP funds from other operating funds of the agency.
5. Notify vendor of customer's eligibility and the benefit amount available for vendor services.
6. Incorporate policies that assure the confidentiality of eligible household's water usage, balance, and payments.

Utility Vendor Responsibilities

The Utility Vendor shall:

1. Immediately apply the benefit payment to customer's current/past due bill, deposit/reconnect requirements
2. Notify the customer of the amount of benefit payment applied to the customer's billing.
3. Keep customer records confidential.
4. Maintain records for four years from the date of this agreement, or longer if the utility vendor is notified that a fiscal audit for a specific program year is unresolved.



5. Not treat adversely, or discriminate against any household that receives LIHWAP payments, either in the cost of the goods supplied or the services provided.
6. Upon request of the Agency, provide eligible customer's utility bill or account information for the sole purpose of determining the customers benefit.
7. Make records available for review by authorized staff of the Agency and Washington State Department of Commerce and the U.S. Department of Health and Human Services.

Required records for audit purposes

The Vendor will keep records showing the following:

1. Name and address of households who received LIHWAP payments.
2. Amount of assistance accrued to each household.
3. Source of payment, (LIHWAP Assistance, ERAP, etc.)

Credit Balances

If a customer has a credit balance and no longer needs services from the utility Vendor, the Vendor shall:

1. Forward a check in the amount of any remaining credit balance directly to the customer, or, if directed by the customer, forward a two-party check for this balance to the customer in the customer's name and the name of the new home utility vendor.
2. If the customer dies leaving a credit balance resulting from a LIHWAP payment, the remaining credit becomes part of the customer's estate.
3. The utility Vendor shall dispose of all unclaimed credit balances according to customary procedures or applicable Washington State law.



Other Provisions:

Term of Agreement

This agreement is effective from the date of execution for the current program year which is defined as October 1st through September 30th and must be renewed on an annual basis.

Termination

This agreement may be terminated by either party with a thirty (30) day written notice to the other party. Termination shall not extinguish authorized obligations incurred during the term of this agreement. If LIHWAP funding is withdrawn, reduced, or eliminated by The Department of Commerce, the Agency has the right to terminate this agreement immediately.

Assignment of Agreement

Neither party may assign the agreement or any of the rights, benefits, and remedies conferred upon it by this agreement to a third party without the prior written consent of the other party, which consent shall not be unreasonably withheld.

The Vendor and the Agency do hereby agree to the conditions set forth in this agreement.

Agency

Vendor

Signature

Signature

Leeanne Montoya
Printed Name

Printed Name

LIHWAP Program Coordinator
Title

Title

Okanogan County Community Action Council
Name of Company

Name of Company

Date

Date

(509) 422-4041
Phone Number

Phone Number

MEMORANDUM

To: Omak City Council
Cindy Gagné, Mayor

From: Todd, McDaniel
Administrator

Date: December 20, 2021

Subject: **Resolution 68-2021** General Release Agreement

The Attached Resolution 68-2021, approval of Amended General Release Agreement between the City of Omak, Teamsters Local 760, and Jerod Gavin, is forwarded for your consideration.

In response to a recent personnel issue this agreement was negotiated among the identified parties. City Staff reached out to the firm of Rocky Jackson Beyers to help us with this sensitive matter. City Attorney Howe has been informed of our action.

This agreement will help mitigate staffing and potential litigations costs if this issue were to go through the arbitration process.

I support this Resolution and urge its Adoption

RESOLUTION NO. 68-2021

**APPROVAL OF AMENDED GENERAL REALEASE AGREEMENT
BEETWEEN THE CITY OF OMAK,
TEAMSTERS LOCAL 760, AND JEROD GAVIN**

THE CITY COUNCIL OF THE CITY OF OMAK, Washington do hereby resolve that the Amended Resignation in Lieu of Termination and General Release Agreement, between the CITY OF OMAK, a municipal corporation, Teamsters Local 760, and Jerod Gavin, attached hereto as Exhibit "A", is approved. The Mayor is hereby authorized and directed to execute the same for and on behalf of the CITY

INTRODUCED AND PASSED this _____ day of _____ 2021.

SIGNED:

Cindy Gagné, Mayor

ATTEST:

Connie Thomas, City Clerk

APPROVED AS TO FORM:

Michael Howe, City Attorney

AMENDED RESIGNATION IN LIEU OF TERMINATION AND GENERAL RELEASE AGREEMENT

This Resignation in Lieu of Termination and General Release Agreement ("Agreement") made this day of December, 2021, by and between Jerod Gavin (the "Employee"), an individual, the City of Omak (the "Employer"), a municipal corporation, and Teamsters Local 760 ("Union") is a resignation agreement which includes a general release of claims.

In consideration of the covenants undertaken and the releases contained in this Agreement, the Employee and the Employer agree as follows:

1. RESIGNATION IN LIEU OF TERMINATION NOTICE

The Employee was placed on paid administrative leave on December 3, 2021, so that the Employer could conduct a personnel investigation into his alleged employment related misconduct. In consideration for the Employer refraining from potentially imposing discipline, up to and including termination of the Employee's employment, at the conclusion of the Employer's investigation into his alleged misconduct, the Employee hereby irrevocably resigns from his position as a police officer with the Employer effective immediately upon execution of this Agreement by all parties hereto. To the extent the Employer's acceptance of the Employee's resignation may be required by law, the Employer's execution of this Agreement constitutes and demonstrates said acceptance. This Agreement shall constitute notice of the Employee's resignation in accordance herewith. The Employee's resignation shall occur automatically on the effective date set forth herein without any additional action or notice by the Employee and/or the Employer, unless the Employer executes this Agreement after the Employee, in which case the Employer will provide notice of said execution to the Employee.

In accordance with Washington law, this Agreement shall not alter, diminish, or affect the Employer's obligation to conduct and complete its investigation into the Employee's alleged misconduct and/or to notify the Washington State Criminal Justice Training Commission ("the Commission") regarding the separation of the Employee from the Employer. This Agreement shall not limit or prohibit the Employer's obligation or right to provide information to the Commission, or to participate and/or cooperate in any investigation commenced by the Commission or any law enforcement agency.

2. CONSIDERATION

As consideration for the resignation of the Employee, the Employer will pay employee all wages and benefits due and owing Employee through December 31, 2021, as well as for accrued sick leave and vacation, together totaling Fourteen Thousand Three Hundred Forty One Dollars and Ninety One Cents (\$14,341.91), which amount shall be reduced by deductions and withholdings required by law and/or previously authorized by the Employee.

The payment called for under this Agreement will be made in the next normal payroll cycle following execution and finalization of this Agreement. This amount represents full and complete payment of all wages or compensation owing Employee.

3. DENIAL OF ANY VIOLATION - AGREEMENT NOT EVIDENCE

The Employer expressly denies any violation of any of its policies, procedures, state or federal laws or regulations. Accordingly, while this Agreement resolves all issues between the Employer and the Employee arising out of the employment relationship, this Agreement does not constitute an adjudication or finding on the merits and it is not, and shall not be construed as, an admission by the Employer of any violation of its policies, procedures, state or federal laws or regulations. Moreover, neither this Agreement nor anything in this Agreement shall be construed to be or shall be admissible in any proceeding as evidence of or an admission by the Employer of any violation of its policies, procedures, state or federal laws or regulations. This Agreement may be introduced, however, in any proceeding to enforce the Agreement.

4. GENERAL RELEASE AND DISCHARGE

Except for those obligations created by or arising out of this Agreement for which receipt or satisfaction has not been acknowledged herein, the Employee on behalf of himself, as well as the employee's heirs, successors, and assigns hereby agrees, covenants, and promises not to sue and fully releases and discharges the Employer and its elected officials, officers, agents, attorneys, insurers, employees and representatives, the Union and its officers, agents and representatives, hereinafter collectively referred to as "Releasees," with respect to any and all claims, wages, demands, rights, suits, grievances, obligations, costs, attorneys' fees, damages, and liabilities, whether now known or unknown, which the Employee now owns or holds, arising out of or in any way connected with the Employee's employment relationship with the Employer, or the Employee's voluntary resignation from employment or any occurrences, acts or omissions on the part of said Releasees, or any of them, committed or omitted prior to the date of this Agreement, including but not limited to, claims for alleged violations of Title VII of the Civil Rights Act of 1964, or the Age Discrimination in Employment Act, RCW 49.60, Family Medical Leave Act, Americans with Disabilities Act or any other state or federal law, and claims for severance pay, sick leave, holiday pay, or vacation pay.

The Union agrees, covenants, and promises to fully release and discharge the Employer and its elected officials, officers, agents, attorneys, insurers, employees and representatives from any all grievances, claims, and/or causes of action obligations, costs, attorneys' fees, damages, and liabilities, whether now known or unknown, which the Union now owns or holds, arising out of or in any way connected with the Employee's employment relationship with the Employer, or the Employee's voluntary resignation from employment or any occurrences, acts or omissions committed or omitted prior to the date of this Agreement relating to the Employee's employment with the Employer.

5. WAIVER OF RIGHTS AND CLAIMS UNDER THE ADEA

A. This specific release is required pursuant to the Age Discrimination in Employment Act ("ADEA") and Older Workers' Benefits Protection Act ("OWBPA") and corresponding regulations.

B. In consideration of the agreements by the Employer to the benefit of the Resignation In Lieu of Termination and General Release Agreement

Employee, Employee releases and discharges the Employer, as well as its elected officials, officers, agents, attorneys, insurers, employees, and representatives, and each of them, hereinafter referred to collectively as "Releasees" with respect to any and all claims that could be made under the ADEA, arising out of or connected in any way with the Employee's employment relationship with the Employer, for acts committed or omitted prior to the date of this Agreement, and waives all rights the Employee may have had under the ADEA. The waiver and release of claims agreed to in this Section shall not apply to any rights or claims the Employee may have under the ADEA that arise after the date this Agreement is executed.

- C. The Employee acknowledges and agrees that prior to executing this Agreement the Employee was advised by the Employer in writing to consult with an attorney regarding the waiver and release of claims under the ADEA as set forth in this Section. The Employee acknowledges and agrees that the Employee in fact was advised to consult and obtain advice from legal counsel regarding this Agreement, including, but not limited to, the waiver/release of claims and rights under the ADEA as set forth in this Section, prior to executing this Agreement.
- D. The Employee acknowledges and agrees that in exchange for the waiver and release of any and all rights and/or claims the Employee may have had against the Releasees under the ADEA, as set forth in this Section, that the Employee received consideration from the Employer in addition to anything of value to which the Employee may have already been entitled as specifically set forth and agreed to in Sections 1 and 2 of this Agreement.
- E. Employee shall have twenty-one (21) days within which to consider this Resignation and General Release Agreement. At the end of twenty-one (21) days, the Employee shall promptly either execute this Agreement or return it unsigned to the Employer. Furthermore, for a period of seven (7) days following the execution of this Agreement, Employee may revoke this Agreement by providing a written revocation to the Employer on or before the expiration of seven (7) days following the Employee's execution of the Agreement. This Agreement shall become effective and enforceable upon expiration of the seven (7) day revocation period, without notice of revocation having been given by Employee, and not otherwise. If this Agreement does not become effective or enforceable, the Employer shall not be obligated under any of the agreements contained in Section 2 above.
- F. If the Employee wishes to execute this Agreement prior to the end of the twenty-one (21) day period, the Employee may do so. If signed prior to the end of such period, the seven (7) day revocation period will commence at the date of execution of this Agreement. The Employee acknowledges that signing prior to the end of the twenty-one (21) day period has been done only after consultation with the Employee's attorney, and is done knowingly and voluntarily.

By the Employee's signature to this Agreement, the Employee acknowledges that Employee received a copy of this Agreement in substantially the same form on December 14, 2021.

THIS AGREEMENT INCLUDES A RELEASE OF ANY CAUSE OF ACTION OR CLAIM OF AGE DISCRIMINATION UNDER THE ADEA. BY SIGNING THIS DOCUMENT, YOU ARE AGREEING NOT TO SUE OR TO COMMENCE ANY LITIGATION AGAINST THE EMPLOYER BASED UPON A CLAIM THAT THE EMPLOYER HAS VIOLATED YOUR RIGHTS UNDER THE ADEA PRIOR TO THE DATE OF THIS AGREEMENT. UPON THE EFFECTIVE DATE OF THIS AGREEMENT, YOU WILL NOT BE ABLE TO COMMENCE ANY LITIGATION AGAINST THE EMPLOYER BASED UPON CLAIMS THAT YOU MAY HAVE UNDER THE ADEA FOR AGE DISCRIMINATION THAT AROSE PRIOR TO THE DATE OF THIS AGREEMENT.

6. TERMINATION OF CONTRACT/EMPLOYMENT

The Employee and the Employer acknowledge that any employment or contractual relationship between them will terminate immediately upon the Employee's irrevocable resignation, as set forth above in Section 1 of this Agreement, and that subsequent to that date the Employee and the Employer shall have no further contractual relationship, except as may arise out of this Agreement. The Employee waives any right or claim to reinstatement as an employee of the Employer and will not seek employment in the future with the Employer.

7. COMPLETE AGREEMENT

This instrument constitutes and contains the entire agreement and understanding concerning the Employee's employment, resignation from the same and the other subject matters addressed herein between the parties, and supersedes and replaces all prior negotiations and all agreements proposed or otherwise, whether written or oral, concerning the subject matters hereof. This is an integrated document.

8. SEVERABILITY OF INVALID PROVISIONS

If any provision of this Agreement or the application thereof is held invalid, the invalidity shall not affect other provisions or applications of the Agreement which can be given effect without the invalid provisions or applications and to this end the provisions of this Agreement are declared to be severable.

9. CHOICE OF LAW/VENUE

This Agreement shall be deemed to have been executed and delivered within the State of Washington, and the rights and obligations of the parties hereunder shall be construed and enforced in accordance with, and governed by, the laws of the State of Washington without regard to principles of conflict of laws. In case of litigation to enforce this Agreement is necessary, venue shall be in Okanogan County.

10. COUNTERPART EXECUTION--EFFECT--PHOTOCOPIES

This Agreement may be executed in counterparts, and each counterpart, when executed, shall have the efficacy of a signed original. Photographic or facsimile copies of such signed counterparts may be used in lieu of the originals for any purpose.

11. LITIGATION--COSTS AND EXPENSES

If any legal or equitable action, including appeal, is brought or undertaken, or an attorney retained, to enforce this agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any of the provisions of this agreement, then the successful or prevailing party shall be entitled to recover reasonable attorney and other professional fees, expert witness fees, court costs and other expenses incurred in such action, proceeding or discussions, in addition to any other relief to which such party may be entitled.

12. WAIVER OF BREACH--EFFECT

No waiver of any breach of any term or provision to this Agreement shall be construed to be, nor shall be, a waiver of any other breach of this Agreement. No waiver shall be binding unless in writing and signed by the party waiving the breach.

13. FURTHER EXECUTIONS

All parties agree to cooperate fully and to execute any and all supplementary documents and to take all additional actions that may be necessary or appropriate to give full force to the basic terms and intent of this Agreement and which are not inconsistent with its terms.

14. FULL UNDERSTANDING AND VOLUNTARY ACCEPTANCE

In entering this Agreement, the parties represent that they have been afforded a full opportunity to have this Agreement reviewed by independent counsel of their own choosing and that they have either waived that opportunity or that they have relied upon the advice of their attorneys, and that the terms of this Agreement have been completely read and that those terms are fully understood and voluntarily accepted by them.

15. HEADINGS NOT BINDING

The use of headings in this Agreement is only for ease of reference and the headings have no effect and are not to be considered part of a term of this Agreement.

THE UNDERSIGNED PARTIES WARRANT THAT THEY HAVE COMPLETELY READ THIS FINAL AGREEMENT AND FULLY UNDERSTAND AND VOLUNTARILY ACCEPT IT FOR THE PURPOSE OF FINAL RESOLUTION AND SETTLEMENT OF ANY AND ALL CLAIMS DISPUTED OR OTHERWISE.

CITY OF OMAK:

By: _____
Cindy Gagné, Mayor

Dated: _____

EMPLOYEE:

By: _____
Jerod Gavin

Dated: _____

UNION:

By: _____
David Simmons

Dated: _____