



AGENDA
OMAK CITY COUNCIL MEETING
Monday, December 5, 2022 – 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 November 21, 2022
2. Approval of 2022 Claims & November Payroll

F. PUBLIC HEARING

1. Final Project Performance–Asotin St. & Railroad Ave.-Storm System Imprv.

G. OLD BUSINESS

1. Ord. 1920 – 2ND Read – Adopting the Final 2023 Budget

H. NEW BUSINESS

1. Res. 73-2022 - Accept Closeout of the Asotin Storm Drain Project
2. Res. 74-2022 - Approve the Purchase of a Backhoe
3. Res. 75-2022 - Approve Change Order No. 1 – Sewer/Water Project
4. Res. 76-2022 – Approve 2023 Fuel Bid

I. OTHER BUSINESS

1. Council Committee Reports
2. Staff Reports



Action by City Council

MEMORANDUM

To: Omak City Council
Cindy Gagné, Mayor

From: Todd McDaniel

Date: November 21, 2022

Subject: Ordinance 1920 Adopting the 2023 Budget

The Attached Ordinance 1920 - Adopting the Budget for the City of Omak, Washington, for the Fiscal Year Ending December 31, 2023, is forwarded for your consideration.

This a “Two Read” Ordinance to adopt the budget for fiscal year 2023. The 2023 Budget document fairly estimates all revenues and expenditures, necessary to perform essential government services.

Two budget workshops were held, one on November 1st and the other, November 14th. The Public Hearing was held during this November 21st meeting.

There are some subtle changes to the budget document since the last Budget Workshop. The CIAW insurance premium is now known and populated. Public Works labor lines errors were corrected. ER cost allocation spreads were recalculated and populated to capture higher fuel and insurance costs.

This document is a fair representation of the year to come.

I approve this Ordinance and urge its adoption

ORDINANCE NO. 1920

**AN ORDINANCE ADOPTING THE BUDGET FOR THE
CITY OF OMAK, WASHINGTON, FOR THE
FISCAL YEAR ENDING DECEMBER 31, 2023**

WHEREAS, the Mayor of the **CITY OF OMAK**, Washington completed and placed on file with the City Clerk, a proposed budget and estimate of the amount of the moneys required to meet the public expenses, bond retirement and interest, reserve funds and expenses of government of said **CITY** for the fiscal year ending December 31, 2023, and notices were published that the Council of the said **CITY** would meet on the 21st day of November, 2022, at the hour of 7:00 P.M. for the final 2023 Budget Public Hearing in the Council Chambers at the City Hall of said **CITY**, for the purpose of making a budget for said fiscal year and giving taxpayers within the limits of Omak an opportunity to be heard upon said budget; and

WHEREAS, the City Council did meet at said time and place and did then consider the matter of said proposed budget; and

WHEREAS, the said proposed budget does not exceed the lawful limit of taxation allowed by law to be levied on the property within the **CITY OF OMAK** for the purposes set forth in said budget; and

WHEREAS, the estimated expenditures set forth in said budget being all necessary to carry on the government of said **CITY** for said year and being sufficient to meet the various needs of said **CITY** during said period.

NOW, THEREFORE, the City Council of the **CITY OF OMAK** do ordain as follows:

Section 1. The budget for the **CITY OF OMAK**, Washington for the Year 2023 is hereby adopted at the fund level in its final form and content as set forth in the document entitled **City of Omak Final 2023 Budget**, copies of which are on file in the Office of the City Clerk.

Section 2. Estimated resources for each separate fund for the City of Omak, and aggregate expenditures for all such funds for the year 2023 are set forth in summary form, as shown in Exhibit "A", and are hereby appropriated for expenditure at the fund level during the Year 2023 as set forth in the **City of Omak Final 2023 Budget**.

Section 3. The City Clerk is directed to transmit a certified copy of the budget hereby adopted to the Division of Municipal Corporations in the Office of the State Auditor and to the Association of Washington Cities.

Section 4. The ordinance shall be in force and take effect five (5) days after its publication according to law.

PASSED BY THE CITY COUNCIL AND APPROVED BY THE MAYOR this 5th day of December 2022.

APPROVED:

Cindy Gagné, Mayor

ATTEST:

Connie Thomas, City Clerk

APPROVED AS TO FORM

Michael Howe, City Attorney

1ST Reading: _____
2nd Reading: _____
Filed with City Clerk: _____
Passed by City Council: _____
Date Published: _____
Date Effective: 1/1/2023

On the _____ day of _____, 2022, the City Council of the City of Omak passed Ordinance No. 1920, which was published in full text on the date stated above.

Dated this _____ day of _____, 2022.

Connie Thomas, City Clerk

Ordinance 1920 Exhibit "A"

2023 City of Omak Final Budget

Summary of Fund Balance, Revenues & Expenditures

Fund#	Fund Name	Estimated 2023 Begin Fund Balance	Estimated 2023 Revenue	Estimated 2023 Expenditure	Estimated 2023 Ending Bal
General Fund					
001	Current Expense	\$2,768,039.75	\$5,265,451.36	\$6,754,800.87	\$1,278,690.25
Special Revenue Funds					
102	City Streets Fund	\$382,718.77	\$2,773,777.00	\$3,111,191.73	\$45,304.04
103	Cemetery Fund	\$60,290.75	\$71,860.00	\$80,019.16	\$52,131.60
104	Library Fund	\$48,679.93	\$146,962.00	\$164,727.17	\$30,914.76
105	Hotel-Motel Tax Fund	\$210,074.49	\$181,427.00	\$263,640.00	\$127,861.49
106	Affordable Housing	\$26,271.88	\$18,025.00	\$0.00	\$44,296.88
109	Block Grant Fund	\$20,000.00	\$0.00	\$20,000.00	\$0.00
110	Stampede Arena Redev. Fnd	\$272,835.54	\$74,645.00	\$63,963.00	\$283,517.54
111	Drug Enforcment Fund	\$10,462.59	\$6,005.00	\$5,500.00	\$10,967.59
	TTL	\$1,031,333.95	\$3,272,701.00	\$3,709,041.05	\$594,993.89
Capital Improvement Fund					
301	Capital Improvement Fund	\$278,889.85	\$60,100.00	\$0.00	\$338,989.85
Proprietary Funds					
401	Water Fund	\$2,549,994.44	\$7,839,046.00	\$10,074,630.28	\$314,410.16
402	Sewer Fund	\$500,422.48	\$2,952,454.00	\$2,781,781.93	\$671,094.55
403	Garbage Fund	\$282,513.05	\$1,446,575.20	\$1,587,858.01	\$141,230.23
405	Storm Drain Utility	\$79,731.92	\$169,081.00	\$159,842.32	\$88,970.60
406	Airport	\$431,728.30	\$373,435.00	\$698,897.53	\$106,265.77
411	Water Reserve Fund	\$495,515.69	\$3,605.00	\$0.00	\$499,120.69
412	Sewer Reserve Fund	\$1,048,275.02	\$7,622.00	\$0.00	\$1,055,897.02
	TTL	\$5,388,180.89	\$12,791,818.20	\$15,303,010.08	\$2,876,989.01
Internal Service Funds					
501	Equipment Rental Operations	\$8,815.62	\$965,321.00	\$957,853.62	\$16,282.99
508	EQ Rental Capital Purchases	\$954,887.33	\$495,286.00	\$1,234,180.00	\$215,993.33
	TTL	\$963,702.95	\$1,460,607.00	\$2,192,033.62	\$232,276.32
Fiduciary Funds					
631	State Bldng Permit Fees	\$102.00	\$773.00	\$875.00	\$0.00
632	State Agency Deposits	\$1,249.87	\$0.00	\$1,249.87	\$0.00
	TTL	\$1,351.87	\$773.00	\$2,124.87	\$0.00
633	Revolving Advanced Travel	\$2,000.00	\$0.00	\$0.00	\$2,000.00
700	Cemetery Endowment	\$170,948.98	\$0.00	\$0.00	\$170,948.98
Total of Funds		\$10,604,448.24	\$22,851,450.56	\$27,961,010.49	\$5,494,888.31

MEMORANDUM

To: Omak City Council
Cindy Gagné, Mayor

From: Wayne Beetchenow
Public Works Director

Date: December 5, 2022

Subject: Resolution No. 73-2022 Accepting the Asotin Street and Railroad Avenue Stormwater System Improvement Project as complete.

The attached Resolution 73-2022, **A RESOLUTION OF THE OMAK CITY COUNCIL ACCEPTING THE CONTRACT FOR THE ASOTIN STREET AND RAILROAD AVENUE STORMWATER SYSTEM IMPROVEMENT PROJECT G&O#19049 AS COMPLETE**, is forwarded for your consideration.

The Asotin Street and Railroad Avenue Stormwater System Improvement Project was awarded October 19, 2020, by Resolution 70-2020

Burley Products d.b.a. JR Construction has finished the project and it has been functioning as designed.

Gray & Osborne, Inc. has reviewed and recommends the city accept the project as complete and finalize closeout of the project.

I support this Resolution and recommend its approval.

RESOLUTION NO. 73-2022

A RESOLUTION OF THE OMAK CITY COUNCIL ACCEPTING THE CONTRACT FOR THE ASOTIN STREET AND RAILROAD AVENUE STORMWATER SYSTEM IMPROVEMENT PROJECT G&O#19049 AS COMPLETE

WHEREAS, the City of Omak awarded a contract for the construction of the Asotin Street and Railroad Avenue Stormwater System Improvement Project to Burlly Products d.b.a. JR Construction by the passage of Resolution No. 70-2020; and

WHEREAS, the project was determined to be physically complete on August 31, 2022; and

WHEREAS, the project has been completed satisfactorily in accordance with the contract, plans, specifications; and

WHEREAS, the City's consultant Gray & Osborne, Inc., and the Public Works Director have reviewed all work, all required tests, and certifications and recommend that the City accept the project as complete.

NOW, THEREFORE BE IT RESOLVED by the City Council of the City of Omak that the Asotin Street and Railroad Avenue Stormwater System Improvement Project with Burlly Products d.b.a. JR Construction is hereby accepted as complete, and the Mayor is authorized and directed to take all necessary actions to close out the project.

PASSED AND APPROVED this ____ day of _____, 2022.

SIGNED:

Cindy Gagné, Mayor

ATTEST:

Connie Thomas, City Clerk

APPROVED AS TO FORM:

Michael Howe, City Attorney



August 31, 2022

Mr. Todd McDaniel
City Administrator
City of Omak
2 North Ash Street
Omak, Washington 98841

**SUBJECT: FINAL PROGRESS ESTIMATE 6, PROJECT ACCEPTANCE, AND
RELEASE OF RETAINAGE; ASOTIN STREET AND RAILROAD
AVENUE STORMWATER SYSTEM IMPROVEMENTS
CITY OF OMAK, OKANOGAN COUNTY, WASHINGTON
G&O #19049.00**

Dear Mr. McDaniel:

This letter provides the City with guidance regarding the final progress estimate, accepting the project as complete, and release of the retainage.

1. FINAL PROGRESS ESTIMATE

We have enclosed the signed Final Contract Voucher and two copies of Progress Estimate 6, which is the final progress estimate for this project. One progress estimate is for the City's files and the other copy should be forwarded to the contractor with the payment. The amount due the contractor and the amount to be deposited in the retainage account are as follows:

<u>Payment to Contractor</u>	<u>Amount to be Deposited in Retainage Account</u>	<u>Total Amount Earned this Period</u>
\$19,201.38	\$928.50	\$20,129.88

2. PROJECT COMPLETION ACCEPTANCE

The project has been completed in compliance with the Contract, with the exception of the contractor submitting Affidavits of Wages Paid for all subcontractors on the project. After the contractor has submitted documentation that all required Affidavits of Wages Paid forms have been submitted to the Department of Labor and Industries, we recommend the City accept the project as complete and submit the "Notice of Completion of Public Works Contract" form online via the Awarding Agency Portal

Mr. McDaniel
 August 31, 2022
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(<https://lni.wa.gov/licensing-permits/public-works-projects/awarding-agencies/awarding-agency-portal>).

Note that the form will not be available if the prime contractor has not filed their affidavit or if it is still pending approval by the Department of Labor and Industries. The following data is provided to assist with the form submittal:

		Date Work Completed July 21, 2022	Date Work Accepted Click to enter date.
Is this a Federally Funded Transportation Project?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	If yes, attach the Contract Bond Statement	
Have Subcontractors been used?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	If yes, complete Addendum A	
<input type="checkbox"/> Contract/Payment Bond Waived?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Retainage Bond Waived?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Detailed Description of Work Completed Installation of approximately 1,300 feet of 12” and 15” storm sewer pipe, 10 catch basins, two new pumps and electrical control panel at storm lift station, and surface restoration.			
DOR Tax Information			
Contract Amount	483,130.00	Liquidated Damages	0.00
Additions (+)	0.00	Amount Disbursed	483,837.56
Reductions (-)	15,201.99	Amount Retained	23,396.40
Subtotal	467,928.01	Other	0.00
Sales Tax Amount	39,305.95	Sales Tax Rate	8.40
Total	507,233.96	Total	507,233.96
Both totals must be equal – If multiple sales tax rates, attach a list			

After the City has accepted the project, please sign the enclosed “Final Contract Voucher” and forward a copy to the contractor and Gray & Osborne, Inc.

3. RELEASE OF RETAINAGE

We have also enclosed two copies of the release of retainage progress estimate for this project. One progress estimate is for the City’s files and the other copy should be forwarded to the contractor with the payment. The retainage should be released to the contractor contingent upon the following requirements being fulfilled:

1. Sixty days have elapsed since the Contract Completion Date.
2. The City receives the Washington State Department of Revenue “Certificate of Payment of State Excise Taxes by Public Works Contractor” (RCW 60.28).
3. The City receives the “Certificate of Payment of Contribution Penalties and Interest on Public Works Contract” from the Washington State Employment Security Department.

Mr. McDaniel
August 31, 2022
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4. There are no claims or liens filed for labor and materials furnished on this Contract.
5. The City receives notification from the Washington State Department of Labor and Industries that the contractor and their subcontractors are current with payments of industrial insurance and medical aid premiums.

Please contact me if you have any questions or concerns regarding these matters.

Sincerely,

GRAY & OSBORNE, INC.



David G. Ellis, P.E.

DE/cah
Encl.
By email

cc: Mr. Ross Schlotthauer, Burly Products dba JR Construction
Mr. Wayne Beetchenow, Public Works Director, City of Omak

MEMORANDUM

To: Omak City Council
Cindy Gagné, Mayor

From: Wayne Beetchenow
Assistant Public Works Director

Date: December 5, 2022

Subject: **Resolution 74-2022** Approving the purchase of a Caterpillar 416
Backhoe.

The attached Resolution 74-2022, **A RESOLUTION OF THE OMAK CITY COUNCIL APPROVING THE PURCHASE OF A BACKHOE**, is forwarded for your consideration.

This will replace #119 (1997 416 Caterpillar Backhoe)

This purchase was previously approved by Resolution No. 04-2022 in the amount of \$149,763.69. In May, we were notified of contract price increases which was discussed with committee members. We received a quote in June with a total price of 157,645.04. The attached purchase order includes the trade in of our current backhoe and totals \$135,423.04

I support this Resolution and recommend its approval.

RESOLUTION NO. 74-2022

**A RESOLUTION OF THE OMAK CITY COUNCIL APPROVING THE PURCHASE OF
A BACKHOE**

WHEREAS, Resolution 04-2022 approved the purchase of 416 Caterpillar Backhoe from NC Machinery; and

WHEREAS, NC Machinery was unable to fulfill the order as quoted, due to factory supply; and

WHEREAS, NC Machinery has now secured a backhoe that is available for delivery; and

WHEREAS, Sourcewell, a cooperative purchasing agency of the State of Minnesota, has a current contract with Caterpillar, Inc. for the purchase of the desired equipment; and

WHEREAS, the Revised Code of Washington, Chapter 39.34 encourages the use of cooperative agreements to increase the efficiencies of local governments; and

WHEREAS, necessary funds for the purchase of this equipment has been appropriated in the City of Omak's 2022 Budget; and

WHEREAS, the regional dealer for Caterpillar equipment, NC Machinery, has provided pricing and purchase information in accordance with Sourcewell contract No. 032019.

NOW, THEREFORE, BE IT RESOLVED BY THE OMAK CITY COUNCIL, that the purchase of a 416 Caterpillar Backhoe from NC Machinery, a copy of the quote attached hereto as Exhibit "A" is hereby approved, and the mayor is authorized to affect all necessary action for the purchase of this equipment.

DATED this _____ day of _____, 2022.

APPROVED:

Cindy Gagné, Mayor

ATTEST:

Connie Thomas, City Clerk

APPROVED AS TO FORM:

Michael D. Howe, City Attorney



PURCHASER: <u>CITY OF OMAK</u> STREET ADDRESS: <u>PO BOX 72</u> CITY/STATE: <u>OMAK, WA</u> COUNTY: <u>OKANOGAN</u> POSTAL CODE: <u>98841-0072</u> PHONE NO.: <u>509 826 1170</u> CUSTOMER CONTACT: <u>EQUIPMENT CHAD</u> <u>PRODUCT SUPPORT CHAD</u> INDUSTRY CODE: <u>GAS & ELECTRIC UTILITY SERVICES (CS49)</u> PRINCIPAL WORK CODE: <u>BUILDING, RESIDENTIAL (240)</u>	CITY OF OMAK 220 COLUMBIA ST., OMAK WASHINGTON, OKANOGAN 98841 F.O.B. AT: <u>Omak</u>
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CUSTOMER NUMBER: <u>5442000</u>	Sales Tax Exemption # (if applicable): <u>N/A</u>	CUSTOMER PO NUMBER:
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PAYMENT TERMS: (All terms and payments are subject to Finance Company - OAC approval)					
NET PAYMENT ON RECEIPT OF INVOICE	<input checked="" type="checkbox"/>	NET ON DELIVERY	<input type="checkbox"/>	FINANCIAL SERVICES	<input type="checkbox"/>
CASH WITH ORDER	\$0.00	BALANCE TO FINANCE		INTEREST RATE	
PAYMENT PERIOD		PAYMENT AMOUNT		NUMBER OF PAYMENTS	OPTIONAL BUY-OUT

DESCRIPTION OF EQUIPMENT ORDERED / PURCHASED					
MAKE: CATERPILLAR	MODEL: 416	YEAR: 2022			
STOCK NUMBER: 22A0096	SERIAL NUMBER: OH8P	SMU: TBA			
416 07A BACKHOE LOADER CFG2	543-3339	BUCKET-GP, 1.3 YD3, PO	337-7385	MIRRORS, EXTERNAL, BOTH SIDES	382-2499
LANE 3 ORDER	0P-9003	LOADER BUCKET PINS	545-8548	COUPLING, QD, THREADED WITH CAPS	456-3390
STICK, EXTENDABLE, 14FT, PILOT	543-4282	CUTTING EDGE, TWO PIECE	9R-5321	LINES, HYD CPLR 14FT EXT PILOT	555-2396
PT, 4WD/2WS STD SHIFT, PILOT	543-4900	BUCKET-HD, 24", 6.2 FT3	219-3387	PINS, SPARE	318-9902
ENGINE, 70KW, C3.6 DITA, T4F	542-7779	COUPLER, PG, HYD.D.LOCK, BHL	485-5303	THUMB, HYDRAULIC, NO TINE, BHL	282-5409
HYDRAULICS GP, 6FCN/8BNK, PT	542-7762	INSTRUCTIONS, ANSI	559-0872	THUMB, TINE, A 3	221-4283
CAB, STANDARD	557-4932	SERIALIZED TECHNICAL MEDIA KIT	421-8926	36" BLUE STAR CLEAN OUT BUCKET	0P-0210
DISPLAY, STANDARD	545-5047	RIDE CONTROL	551-6453		
AIR CONDITIONER, T4F	542-7810	LINES, COMBINED AUX, E-STICK	548-1231		
WORKLIGHTS (8) HALOGEN LAMPS	491-6734	BEACON, MAGNETIC MOUNT, STROBE	433-0154		
SEAT, FABRIC	573-4523	STANDARD RADIO (12V)	540-2298		
BELT, SEAT, 2" SUSPENSION	206-1747	PRODUCT LINK, CELLULAR, PLE643	560-6797		
COUNTERWEIGHT, 1015 LBS	337-9696	COLD WEATHER PACKAGE, 120V	551-6940		
TIRES, 12.5 80/19.5L-24, GY	379-2161	GUARD, STABILIZER	353-1389		
STABILIZER PADS, FLIP-OVER	9R-6007	PLATE GROUP - BOOM WEAR	423-7607		

TRADE-IN EQUIPMENT		SELL PRICE	
MODEL: <u>416C - CATERPILLAR (AA)</u>	YEAR: <u>1997</u> SN: <u>1WR00664</u>		\$145,429.00
PAYOUT TO:	AMOUNT: \$ PAID BY: <u>Dealer</u>	LESS GROSS TRADE ALLOWANCE	(\$20,500.00)
MODEL:	YEAR: SN:	NET BALANCE DUE	\$124,929.00
PAYOUT TO:	AMOUNT: PAID BY:	OMAK (8.4%)	\$10,494.04
MODEL:	YEAR: SN:	BALANCE	\$135,423.04
PAYOUT TO:	AMOUNT: PAID BY:		

ALL TRADE-INS ARE SUBJECT TO EQUIPMENT BEING IN "AS INSPECTED CONDITION" BY VENDOR AT TIME OF DELIVERY OF REPLACEMENT MACHINE PURCHASE ABOVE.

PURCHASER HEREBY SELLS THE TRADE-IN EQUIPMENT DESCRIBED ABOVE TO THE VENDOR AND WARRANTS IT TO BE FREE AND CLEAR OF ALL CLAIMS, LIENS, MORTGAGES AND SECURITY INTEREST EXCEPT AS SHOWN ABOVE.

<input checked="" type="checkbox"/> CATERPILLAR EQUIPMENT WARRANTY INITIAL: The customer acknowledges that he has received a copy of the Caterpillar Warranty and has read and understood said warranty. Scheduled oil sampling (S.O.S.) is mandatory with this warranty. The customer is responsible for taking oil samples at designated intervals from all power train components and failure to do so may result in voiding the warranty. Warranty applicable including expiration date where necessary: <u>12 MONTH STANDARD PREMIER</u> <u>3 year or 3,000 hour EPTW Plus Hydraulics and tech</u>	<input type="checkbox"/> USED EQUIPMENT WARRANTY INITIAL: All used equipment is sold as is where is and no warranty is offered or implied except as specified here: Warranty applicable:
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CSA: _____

NOTES: _____

THIS AGREEMENT IS SUBJECT TO THE TERMS AND CONDITIONS ON THE REVERSE

ORDER RECEIVED BY Davick, Tony REPRESENTATIVE APPROVED AND ACCEPTED ON _____ PURCHASER
 CITY OF OMAK

PURCHASER

BY _____ SIGNATURE

PRINT NAME AND TITLE

ADDITIONAL TERMS AND CONDITIONS

1. Terms of Payment: Purchaser agrees to pay the balance shown together with any applicable sales, use and similar taxes and governmental charges that are not included within the balance and that are payable by reason of the sale of the Equipment.

All payments shall be made to such address as Seller from time to time provides to Purchaser. If any amount of the Unpaid Balance is not paid when due, Purchaser agrees to pay Seller a charge calculated thereon at the rate of 1.25% per month from the date when the delinquent amount was due, or, at Seller's option, a charge equal to 5% of the delinquent amount, provided that the charge shall not exceed the amount the Purchaser can legally obligate itself to pay and Seller can legally collect.

2. Additional Terms and Conditions : This Order is subject to ADDITIONAL TERMS and CONDITIONS including but not limited to DISCLAIMER AND RELEASE AND EXCLUSION OF CONSEQUENTIAL AND OTHER DAMAGES, all of which Purchaser has read and understands and agrees to. The terms and conditions on all pages of this Order, together with any agreements entered into pursuant to Paragraph 4, constitute the entire agreement of Seller and Purchaser with respect to the subject matter of this Order. Purchaser acknowledges that all of such terms and conditions, including but not limited to such LIMITED WARRANTY AND DISCLAIMER and EXCLUSION OF CONSEQUENTIAL AND OTHER DAMAGES, were freely negotiated and bargained for with Seller and that Purchaser has agreed to purchase the Equipment subject to these terms and conditions. SELLER'S ACCEPTANCE OF THIS ORDER IS EXPRESSLY CONDITIONED ON PURCHASER'S ASSENT TO ALL OF SUCH TERMS AND CONDITIONS. ANY ADDITIONAL OR DIFFERENT TERMS OF CONDITIONS WHICH MAY APPEAR IN ANY COMMUNICATION FROM PURCHASER, INCLUDING BUT NOT LIMITED TO ANY SEPARATE DOCUMENT SUBMITTED BY PURCHASER IN CONNECTION WITH THE PURCHASE OF THE EQUIPMENT, ARE HEREBY OBJECTED TO AND SHALL NOT BE EFFECTIVE OR BINDING UNLESS SPECIFICALLY ACCEPTED IN WRITING BY SELLER'S SALES/BRANCH MANAGER AND APPROVED IN WRITING BY SELLER'S CREDIT DEPARTMENT.

3. LKE/RENTAL SALE: YES or NO: (circle one)

4. ADDITIONAL DOCUMENTS: If any portion of the Unpaid Balance is to be paid following delivery of the Equipment. Purchaser agrees to execute and deliver to Seller such security agreements, financing statements, and other documents as Seller may request from time to time in order to permit Seller to obtain and maintain a perfected security interest in the Equipment on Terms and Conditions acceptable to Seller.

5. ACCEPTANCE; MODIFICATION: This Order shall be binding on Seller only when it has been both accepted in writing on behalf of Seller by Seller's Sales / Branch Manager and if the Seller is extending credit to the Purchaser or arranging for credit for the Purchaser, approved in writing by Seller's Credit Department. No modifications of the Terms and Conditions of this Order shall be effective or binding upon Seller unless it is in writing and executed by both Seller's Sales / Branch Manager and by Seller's Credit Department. The Terms and Conditions of this Order shall not be modified or otherwise affected by statements and actions of sales people or others unless and until there is such a written modification.

6. SECURITY INTEREST: In order to secure the payment of the Unpaid Balance. Purchaser grants to Seller a purchase money security interest in the Equipment. This security interest shall be superseded if Purchaser and Seller enter into a separate security agreement covering the Equipment.

7. DELIVERY, INSPECTION, and ACCEPTANCE: The Equipment is sold F.O.B., the F.O.B. location shown on (Page 1) of this Order. Any delivery or shipping dates indicated on (Page 1) are estimated and approximate, and Seller shall not be liable for any delay in delivery, however occasioned. Seller may deliver the Equipment in installments as the equipment becomes available. Title and risk of loss shall pass to Purchaser upon delivery. Delivery of the Equipment to Purchaser shall take place when physical possession of the Equipment is given to Purchaser or to a carrier, or when the Seller receives directions from Purchaser to place the Equipment in storage, whichever first occurs. The securing of the Equipment on board a carrier shall be deemed to occur subsequent to delivery. If the Equipment is to be shipped, Seller's authorized to execute in Purchaser's name and carrier's standard bill of lading for the Equipment. Without being required to do so, Seller may, on behalf of Purchaser, advance the cost of shipping and/or insurance for the Equipment. To the extent not separately included in calculating the Unpaid Balance, Purchaser agrees to immediately reimburse Seller on demand for such cost. Purchaser agrees to inspect each item of Equipment, at its sole expense, promptly following receipt and will be deemed to have accepted the item unless it notifies Seller within (10) days following receipt, of any claimed discrepancy between the item as described on (Page 1) and the item as received by Purchaser. Any claim for shortages, delays, or damages occurring after Seller has delivered the Equipment to a carrier shall be made directly to the carrier, and Seller shall have no liability with respect thereto.

8. PERFORMANCE EXCUSED: Seller shall not be liable for Seller's inability to perform any or all of its obligations hereunder due to causes beyond Seller's control, including but not limited to acts of God, acts of omissions of Purchaser, acts of civil or military authorities, fire, weather, strikes or other labor disturbances, civil commotion, war, delays in transportation, late delivery by Seller's suppliers, fuel or other energy shortages, or the inability to obtain necessary labor, materials, supplies, equipment, or manufacturing facilities. If any such cause results in a delay in performance by Seller, the dates of the performance shall be extended for a period equal to the time lost by reason of the delay, and such extension shall be purchaser's exclusive remedy.

9. NEW and USED EQUIPMENT: The term "New Equipment" means any items of Equipment that are registered or registerable as new equipment for the purposes of the warranty provided by the manufacturer thereof. All other items of Equipment are "Used Equipment". Seller does not represent or warrant that items of New Equipment are unused or newly manufactured or that they are the most current models available from the manufacturer thereof.

10. LIMITED WARRANTY and DISCLAIMER: Each item of New Equipment is entitled to the benefits of such warranties as are made in writing by the manufacturer thereof, as set forth on the manufacturer's warranty form in effect at the time this order is accepted by Seller. If it is expressly noted on (Page 1) of this Order that there is a separate warranty of Seller that applies to one or more specified item or items of New or Used Equipment, such item or items are entitled to the benefits of such warranty as set forth on Seller's warranty form for such warranty in effect at the time this Order is accepted by Seller, subject to any disclaimers of warranties and limitations of remedies set forth in such form, as well as to the disclaimers of warranties and limitations of remedies set forth below. Purchaser acknowledges receipt of the manufacturers' and, if applicable, Seller's current warranty forms for the items of Equipment purchased under this Order. EXCEPT FOR A WARRANTY OF TITLE BY SELLER, SELLER MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO ITEMS OF USED EQUIPMENT, AND PURCHASER AGREES THAT IT HAS PURCHASED ALL SUCH ITEMS "AS IS" WITH ALL FAULTS AND DEFECTS.

11. WARRANTY PROCEDURES: Purchaser shall promptly notify Seller of any claim under any special warranty (such notice to be in addition to compliance with the procedural requirements of the warranty) and to make the affected item of Equipment available for inspection by Seller. Any replacements or repairs to be made by Seller as a warranty representative of the manufacturer shall be made at a repair and service facility of Seller or its designee during regular business hours, the cost of the transportation of the Equipment to and from the service facility of Seller or its designee and the cost of the Seller's personnel traveling to and from the location of the Equipment and related cost shall be borne solely by Purchaser. The failure of any item of Equipment purchased hereunder to fulfill any applicable warranties shall not affect the liability of Purchaser to Seller for the purchase price of that item or any other obligation of Purchaser to Seller.

12. DISCLAIMER and RELEASE: THE SOLE AND EXCLUSIVE REMEDY OF PURCHASER FOR DEFECTIVE ITEMS OF NEW EQUIPMENT SHALL BE AS PROVIDED IN THE MANUFACTURER'S WARRANTY, ANY OTHER RIGHTS PROVIDED BY LAW AGAINST THE MANUFACTURER, AND ANY APPLICABLE SELLER'S WARRANTY REFERRED TO IN PARAGRAPH 10 EXCEPT FOR ITS OBLIGATION TO DELIVER THE EQUIPMENT IN ACCORDANCE WITH THE EXPRESS TERMS AND CONDITIONS OF THIS ORDER, SELLER SHALL HAVE NO OTHER WARRANTIES, OBLIGATIONS OR LIABILITIES, EXPRESS OR IMPLIED, ARISING BY LAW OR OTHERWISE, WITH RESPECT TO ANY NONCONFORMANCE OR DEFECT IN ANY ITEM PURCHASED HEREUNDER, INCLUDING BUT NOT LIMITED TO; (A) ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. (B) ANY IMPLIED WARRANTY ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, USAGE, OR TRADE. (C) ANY OBLIGATION, LIABILITY, RIGHT, CLAIM, OR REMEDY FOR LOSS OF OR DAMAGE TO ANY EQUIPMENT.

13. EXCLUSION of CONSEQUENTIAL and OTHER DAMAGES: SELLER SHALL HAVE NO OBLIGATION OR LIABILITY, WHETHER ARISING IN CONTRACT (INCLUDING WARRANTY), TORT (INCLUDING ACTIVE, PASSIVE, OR IMPUTED NEGLIGENCE) OR OTHERWISE, FOR LOSS OF USE, REVENUE OR PROFIT, COST OF CAPITAL, COST OF SUBSTITUTE EQUIPMENT, ADDITIONAL COST INCURRED BY PURCHASER AT ITS PLANT OR IN THE FIELD (WHETHER BY WAY OF CORRECTION OR OTHERWISE), CLAIMS BY PURCHASER, PURCHASER'S CUSTOMERS, OR OTHER THIRD PARTIES FOR DAMAGES RESULTING FROM PERSONAL INJURY OR PROPERTY DAMAGE OR ANY OTHER INCIDENTAL OR CONSEQUENTIAL DAMAGE WITH RESPECT TO ANY NONCONFORMANCE OR DEFECT IN ANY ITEMS PROVIDED HEREUNDER.

14. PURCHASER'S RESPONSIBILITIES: Except to the extent provided in the express warranties under paragraph 10, Purchaser agrees that, even though it may receive technical information, drawings, or advice from Seller, Purchaser will have sole responsibility (a) for the safety, operation, and performance of the Equipment, (b) for its suitability for Purchaser's intended use, and (c) where the Equipment is to be used as part of a power, propulsion, or other system, for the installation of the Equipment, the design and performance of such systems, and the adequacy of such system for the particular needs of the Purchaser or any customer of Purchaser.

15. PURCHASER'S INDEMNITY: PURCHASER SHALL INDEMNIFY, DEFEND, AND SAVE SELLER AND ITS AGENTS AND EMPLOYEES HARMLESS FROM AND AGAINST ALL CLAIMS, LIABILITIES, AND CIVIL PENALTIES, INCLUDING COSTS AND EXPENSES (INCLUDING ATTORNEYS' FEES) INCIDENT THERETO OR INCIDENT TO SUCCESSFULLY ESTABLISHING THE RIGHT TO INDEMNIFICATION, FOR INJURY TO OR DEATH OF ANY PERSON OR PERSONS, INCLUDING EMPLOYEES OF PURCHASER, OR FOR LOSS OF, OR DAMAGE TO ANY PROPERTY, INCLUDING EQUIPMENT, OR FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN ANY WAY RELATED TO THE POSSESSION, USE, MAINTENANCE, OR OPERATION OF THIS EQUIPMENT, WHETHER OR NOT ARISING IN TORT OR CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OF SELLER, WHETHER ACTIVE, PASSIVE, OR IMPUTED. TO THE EXTENT OF THIS INDEMNITY, PURCHASER HEREBY WAIVES ANY IMMUNITY PROVIDED BY TITLE 51 REVISED CODE OF WASHINGTON OR ANY OTHER INDUSTRIAL INSURANCE LAW OR WORKERS COMPENSATION STATUTE. IF THIS INDEMNITY IS LIMITED IN SCOPE BY OPERATION OF LAW THEN IT SHALL EXTEND TO THE FULL EXTENT ALLOWED BY SUCH LAW.

16. INSURANCE: Purchaser is solely responsible for any loss or damage that occurs to any item or items of Equipment after delivery to Purchaser, and to such loss or damage shall diminish any obligation of Purchaser to Seller hereunder. At all times following delivery, Purchaser agrees to maintain one or more policies insuring the Equipment, in an amount not less than the full amount of the Unpaid Balance from time to time remaining unpaid against all hazards generally covered by extended coverage hazard insurance and against any other hazards required by Seller. Each such policy shall name Seller as an additional insured and loss payee and shall provide that no cancellation or material changes to the policy will be effective as to Seller unless Seller has been given written notice at least thirty (30) days prior to the effective date thereof. Purchaser agrees, if Seller request, to deliver to Seller copies of all such policies or certificates of the insurers evidencing such coverage.

17. DEFAULT: If Purchaser fails to pay when due any amount owing to Seller, or to perform any other obligation to Seller hereunder or otherwise, or if Purchaser becomes insolvent or makes an assignment for the benefit of creditors, or if there shall be instituted by or against Purchaser any proceeding under any bankruptcy, insolvency, or similar law of any jurisdiction, or for the appointment of a receiver or trustee in respect of any Purchaser's property, or if the Seller reasonably believes that Purchaser is unable to meet its debts as they mature, then, in addition to any other rights and remedies that Seller may have, Seller may, upon notice to Purchaser at any time, declare the entire Unpaid Balance immediately due and payable, require progress payments for the Equipment, require payment for the Equipment in cash upon delivery, apply amounts held for Purchaser's account hereunder or otherwise to the Unpaid Balance or to any other obligations of Purchaser to Seller, or terminate all of Seller's obligations under this Order.

18. NON-WAIVER: No term or condition of this Order shall be deemed waived and no breach excused, unless such waiver or excuse is in writing signed by the party claimed to have waived or excused. Any such waiver in a particular instance shall not constitute a waiver of future compliance with such term condition.

19. NOTICES: If Purchaser fails to pay when due any amount owing to Seller, or to perform any other obligation to Seller hereunder or otherwise, or if Purchaser becomes insolvent or makes an assignment for the benefit of creditors, or if there shall be instituted by or against Purchaser any proceeding under any bankruptcy, insolvency, or similar law of any jurisdiction, or for the appointment of a receiver or trustee in respect of any Purchaser's property, or if the Seller reasonably believes that Purchaser is unable to meet its debts as they mature, then, in addition to any other rights and remedies that Seller may have, Seller may, upon notice to Purchaser at any time, declare the entire Unpaid Balance immediately due and payable, require progress payments for the Equipment, require payment for the Equipment in cash upon delivery, apply amounts held for Purchaser's account hereunder or otherwise to the Unpaid Balance or to any other obligations of Purchaser to Seller, or terminate all of Seller's obligations under this Order.

20. ASSIGNMENT: This Order may not be assigned or otherwise transferred by Purchaser in whole or in part without Seller's prior written consent. Subject to this limitation on assignment and transfer, the terms and condition of this Order shall bind and benefit the parties and their respective successors and assigns.

21. SEVERABILITY: Should any provision of this Order be found by a court of competent jurisdiction to be invalid, illegal, or unenforceable the remaining provisions shall not be affected or impaired thereby except to the extent reasonably necessary to preserve the intent of the parties.

22. MERGER; NO CREDIT AGREEMENT: The terms and conditions of this Order merge and supersede all prior and contemporaneous agreements and negotiations regarding the subject matter hereof, except for any agreements entered into pursuant to Paragraph 4 above. ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY, EXTEND CREDIT, OR TO FORBEAR FROM ENFORCING REPAYMENT OF A DEBT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.

23. ATTORNEYS' FEES; APPLICABLE LAW: In any suit or action arising out of this Order, the losing party shall pay to the prevailing party its reasonable attorneys' fees and all other cost, fees, and expenses incurred by the prevailing party at trial and upon appeal. This Order shall be governed by and construed in accordance with the laws of the State of Washington..

24. INVALIDITY: Each provision of this shall be considered separable, and if for any reason any provision herein is determined to be invalid, such invalidity shall not impair or otherwise affect the validity of the other provisions of this agreement. If any provision is deemed to be invalid, it shall be modified, if possible to the extent necessary to remove such invalidity.

25. LKE ASSIGNMENT: PURCHASER IS HEREBY NOTIFIED THAT SELLER HAS ASSIGNED TO "HGI EXCHANGE LLC" ACTING SOLELY IN IT'S CAPACITY AS SELLER'S QUALIFIED INTERMEDIARY, RIGHTS TO ACCEPT AND RECEIVE ALL CONSIDERATION PAYABLE BY PURCHASER (INCLUDING ALL MONEY AND ANY TRADE-IN), BUT NONE OF SELLER'S OBLIGATIONS IN THIS SALE WITH RESPECT TO THE PURCHASE OF QUALIFIED LKE/RENTAL EQUIPMENT FOR THE PURPOSES OF COMPLETING A LIKE-KIND EXCHANGE UNDER SECTION 1031 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED.

26. Telematics Disclaimer: In the event this machine is equipped with "Product Link" or other systems for the transfer of equipment health and diagnostic information ("Telematics Systems"), Purchaser understands that data concerning this machine, its condition, and its operation is being transmitted by "Product Link" or by other, similar Telematics Systems, to Caterpillar Inc. or the manufacturer of your equipment, and/or their affiliates, subsidiaries and dealers. The information transmitted may include: machine serial number, machine location, and operational data, including but not limited to: fault codes, emissions data, fuel usage, service meter hours, software and hardware version numbers, and installed attachments. For more information about the information collected in connection with "Product Link," and how this information is used and shared, please see the Caterpillar Telematics Data Privacy Statement, available at http://www.cat.com/en_US/support/operations/fleet-management-solutions/product-link/caterpillar-telematicsdataprivacystatement.html. For more information regarding the information collected in connection with Telematics Systems used on other manufacturers' equipment, and how this information is used and shared, please see the data privacy statement issued by the manufacturer. By using any machine equipped with "Product Link" or other Telematics Systems, you consent to the collection, use and disclosure of information as described in the applicable privacy statement and to the processing, transfer and storage of information in and to the United States and other countries, where you may not have the same rights and protections as you do under local law. PURCHASER RELEASES AND FOREVER DISCHARGES SELLER FOR ALL CLAIMS OR CAUSES OF ACTION ARISING FROM THE COLLECTION, USE AND DISCLOSURE OF TELEMATICS SYSTEMS' DATA VIA PRODUCT LINK OR OTHER TELEMATICS SYSTEM.

INITIAL HERE _____



DIGITAL AUTHORIZATION

CATERPILLAR TELEMATICS DATA AND CAT REMOTE SERVICES-SOFTWARE UPDATES PROCESS FOR SELECT PRODUCT LINK TELEMATICS AND CAT EQUIPMENT CONTROL MODULE SOFTWARE.

Customer equipment has installed devices that transmit data to Caterpillar Inc. ("Caterpillar").

Data transmitted to Caterpillar is used in accordance with Caterpillar's [Data Governance Statement](https://www.caterpillar.com/en/legal-notices/data-governance-statement.html) ("DGS"), which describes Caterpillar's practices for collecting, sharing and using data and information related to customer's machines, products, Devices or other Assets and their associated worksites. The DGS can be reviewed at <https://www.caterpillar.com/en/legal-notices/data-governance-statement.html>

Caterpillar's process for performing remote diagnostics and making available remote software and firmware updates and upgrades, such as configuration, patches, bug fixes, new or enhanced features, etc., for Assets and Devices is described in the [Cat® Remote Services – Software Update Process for select Product Link™ Telematics and Cat Equipment Control Module Software](https://www.cat.com/remoteservicesprocess?_ga=2.245276421.1412167159.1561985855-475983137.1559312215) document (the "RSP Document") The RSP Document can be reviewed at https://www.cat.com/remoteservicesprocess?_ga=2.245276421.1412167159.1561985855-475983137.1559312215.

Company acknowledges and agrees to data transmission to Caterpillar via devices installed on Company equipment or by other means as outlined and described in the DGS, and grants to Caterpillar the right to collect, use, and share such information, including to its Distribution Networks or other affiliates, in accordance with the [Caterpillar Data Governance Statement](#) . Company's authorization also applies to any data and information previously collected by Caterpillar.

AGREE

DECLINE

Company acknowledges and agrees to participate in Remote Services (including, remote diagnostics and remote updates and upgrades) and authorizes Caterpillar to remotely access, program, and install updates and upgrades for Company's Assets and Devices in accordance with the [Remote Services Process Document](#).

AGREE

DECLINE

The rights granted in this authorization survive the termination or expiration of the Company's subscriptions to any Digital Offerings. Except as set out in a written agreement between Company and Caterpillar expressly referencing the Data Governance Statement, this authorization supercedes and replaces any other authorizations with regard to the subject matter hereof.

Company

Company (Print)

Company Representative (Print)

Signature

Date

FOR DEALER USE ONLY
Company UCID
Company Representative CWS ID
Main Store Dealer Code
Dealer Representative Name
Dealer Representative CWS ID

MEMORANDUM

To: Cindy Gagné, Mayor

From: Wayne Beetchenow, Public Works Director

Date: December 5, 2022

Subject: **Resolution No. 75-2022** Approving change order No. 1 for the 2022 Sewer and Water System Improvement Project G&O #21832

The Attached Resolution: **75-2022, A RESOLUTION OF THE OMAK CITY COUNCIL, APPROVING CCHANGE ORDER NO. 1 OF THE CONTRACT FOR 2022 SEWER AND WATER SYSTEM IMPROVEMENTS PROJECT G&O #21832**

is forwarded for your consideration.

This project will upgrade our water and sewer lines in the area of Hemlock St and a water line on Dewberry Street.

While preparing to install one of the sections of sewer line we found out the existing pipe was constructed of reinforced concrete and would not be able to be bursted as scheduled in the plans. The contractor had done all the work and preparation for the installation, but the pipe was unable to be installed.

The public works department, engineers and the contractor have discussed and agreed on the amount of the change order.

We are requesting approval of this resolution.

RESOLUTION NO. 75-2022

**A RESOLUTION OF THE OMAK CITY COUNCIL APPROVING CHANGE ORDER
NO. 1 TO THE CONTRACT BETWEEN BURLY PRODUCTS D.B.A. JR
CONSTRUCTION AND THE CITY OF OMAK FOR 2022 SEWER AND WATER
SYSTEM IMPROVEMENTS PROJECT G&O #21832**

WHEREAS, the City of Omak awarded the contract for the 2022 Sewer and Water System Improvement Project G&O #21832 to Burly Products Inc. dba JR Construction. by Resolution 31-2022; and

WHEREAS, there was a unknown conditions resulting in the inability to install a section of sewer line; and

WHEREAS, representatives of the City of Omak, Burly Products Inc. dba JR Construction and the City's consultants, Gray & Osborne, Inc., have negotiated this Change Order to resolve the issue encountered reasonably.

NOW, THEREFORE, BE IT RESOLVED by the Omak City Council, that Change Order No.1 to the contract for 2022 Sewer and Water System Improvement Project, a copy of which is attached hereto as Exhibit "A", is approved and the Mayor is authorized to execute said Change Order for and on behalf of the City.

PASSED BY THE CITY COUNCIL this ____ day of _____, 2022.

APPROVED:

Cindy Gagné, Mayor

ATTEST:

Connie Thomas, City Clerk

APPROVED AS TO FORM:

Michael D. Howe, City Attorney

CHANGE ORDER

Project Title	2022 Sewer and Water System Improvements		
Owner	City of Omak	Contractor Name	Burly Products dba JR Construction
Change Order No.	1	Contractor Address	3999 St. Joe Avenue
Change Order Date	November 30, 2022		Post Falls, Idaho 83854
G&O No.	21832.01		

The following changes are hereby made to the Contract Documents:

SCHEDULE A: SEWER SYSTEM IMPROVEMENTS

ITEM 1: Pipe Bursting Preparation Work (Manhole MH W-269 to MH W-263)

The work includes all costs for furnishing all material, labor, tools, equipment, and incidentals necessary to pipe burst the existing 12” pipeline between manhole MH W-269 and MH W-263. The work includes, but is not limited to, cleaning and television inspection of the existing sewer main pipe; pipe fusion and data logging; interior butt fusion weld debanding; shipping, storage, cutting, and delivery of HDPE pipe to the City; dewatering; excavation, backfill, and compaction of machine and insertion pits for HDPE sewer main pipe installation; removal and disposal of surplus excavated materials; pipeline repairs; waste hauling, and dealing with all other interferences to perform the work.

The lump sum cost for this work is:..... **\$34,850.00**

Justification: The additional work is the result of changed site conditions. After completion of the pipe bursting preparation work it was determined that the existing 12” concrete pipe is reinforced concrete pipe (RCP), which is incompatible with the Contractor’s designed pipe bursting replacement system.

Working Days: 3 working days are added to the Substantial and Physical Completion Contract Times.

CHANGE TO CONTRACT PRICE

Original Contract Amount (without tax):.....	\$2,170,380.00
Current Contract Amount, as adjusted by previous change orders:.....	\$2,170,380.00
The Contract Amount due to this Change Order will be increased by:.....	\$34,850.00
The new Contract Amount (without tax) due to this Change Order will be:	\$2,205,230.00

CHANGE TO CONTRACT TIME

The Substantial Completion Contract Time will be increased by 3 working days, for a total of 138 working days.

The Physical Completion Contract Time will be increased by 3 working days, for a total of 148 working days.

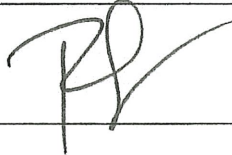
This document will become a supplement to the Contract and all provisions in the Contract will apply hereto. The Contractor acknowledges and agrees that by executing this change order he foregoes all rights and privileges of acquiring any additional compensation for any known or unknown claims of any type or nature, to include but not be limited to, any additional work, delays, extended office overhead, design omissions, changed site conditions, or any oral directions as of the date of the execution of this change order.

GRAY & OSBORNE, INC.
(RECOMMENDED)



Date 12-1-22

BURLEY PRODUCTS DBA
JR CONSTRUCTION
(ACCEPTED)



Date 12-1-22

CITY OF OMAH
(ACCEPTED)

Date _____

MEMORANDUM

To: Omak City Council
Cindy Gagné, Mayor

From: Todd McDaniel
City Administrator

Date: December 5, 2022

Subject: Resolution 76-2022 Approving 2023 Fuel Bid

The attached **Resolution No. 76-2022, Acceptance of Bid and Approval of Contract Between Whitley Fuel LLC and the City of Omak for 2023 Petroleum Product Needs**, is forwarded for your consideration.

The City advertised for 2023 fuel bids on November 16, 2022 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. 76-2022

**ACCEPTANCE OF BID AND APPROVAL OF CONTRACT
BETWEEN WHITLEY FUEL LLC AND THE CITY OF OMAK
FOR 2023 PETROLEUM PRODUCT NEEDS**

THE CITY COUNCIL OF THE CITY OF OMAK, Washington do hereby resolve that the bid received from Whitley Fuel LLC for 2023 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 _____, 2022.

SIGNED:

Cindy Gagné, Mayor

ATTEST:


Connie Thomas, City Clerk

APPROVED AS TO FORM:

Michael Howe, City Attorney

Bid Tabulation Sheet

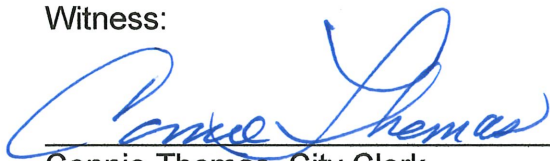
PROJECT TITLE: 2022 Fuel Bids
DEPARTMENT: Public Works, Fire, Police
DATE: December 1, 2022
TIME: 3:00 PM

Contractors:	Whitley Fuel (per gallon bid)	(per gallon bid)	
Premium Unleaded <i>Ethanol Free</i>	<i>3.3995</i>		
Regular Unleaded	<i>2.7752</i>		
Mid-Level Unleaded	<i>3.0057</i>		
Diesel #2	<i>4.4096</i>		

*Diesel #2
Red Eye 4.4096*

Bids were opened and read at 3:00 p.m. on December 1, 2022.

Witness:



Connie Thomas, City Clerk

EXHIBIT "B"

INFORMATION TO BIDDERS

Estimated requirements for the petroleum products for 2023 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, Chevron, 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 2023 and be terminated on the 31st day of December, 2023.

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 17, 2022.**

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 22, 2022**. 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, 2023. 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:

**CITY OF OMAK, a municipal
corporation**

Whitley Fuel LLC
Company Name

Cindy Gagne, Mayor

R. [Signature], manager
Signed

Date

12/1/22
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 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 11/17/2022	Mark up	Price
Premium Ethanol Free	500	Spokane	Unbranded	2.8593	.5402	3.3995
Regular Unleaded	9000	Spokane	Unbranded	2.5550	.2202	2.7752
Mid Range Unleaded	7500	Spokane	Unbranded	2.7855	.2202	3.0057
Diesel No. 2	6000	Spokane	Unbranded	4.0920	.3176	4.4096
Dyed Diesel No.2	500	Spokane	Unbranded	4.0920	.3176	4.4096

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 H. Whitley
(Please print)

B. Whitley 12/1/22
Signature Date
Manager
Title

- 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 _____