

RESOLUTION No. 55-2019

**A RESOLUTION OF THE OMAK CITY COUNCIL, APPROVING AN
INTERAGENCY AGREEMENT BETWEEN THE CITY OF OMAK AND THE
WASHINGTON STATE DEPARTMENT OF NATURAL RESOURCES FOR
AIRPORT WATER INFRASTRUCTURE.**

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

WHEREAS, the Department of Natural Resource has selected the Omak Airport as a potential site to construct a permanent facility; and

WHEREAS, the State Legislature has approved funding to the Department of Natural Resources to construct water infrastructure that will be required for future development at the Omak Airport; and

WHEREAS, the City of Omak has the resources and expertise to assist the Department of Natural Resources in the completion of this project; and

WHEREAS, this project is mutually beneficial to the City of Omak and the Department of Natural resources; and

WHEREAS, an Interagency agreement has been prepared that adequately defines the roles and the responsibilities of the City of Omak and the Department of Resources.

NOW, THEREFORE, BE IT RESOLVED by the Omak City Council, that the Interagency Agreement, between the City of Omak and Washington State Department of Natural Resources, a copy of which is 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, and the City Clerk is authorized and directed to attest her signature.

INTRODUCED AND APPROVED by the City Council of the City of Omak this 5th day of August, 2019.

APPROVED:

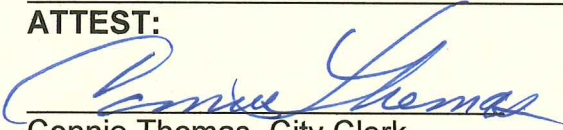
Cindy Gagné
Cindy Gagné, Mayor

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ATTEST:

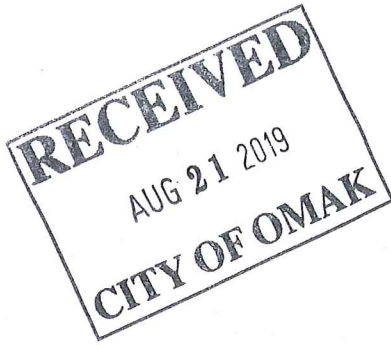


Connie Thomas, City Clerk

APPROVED AS TO FORM:



Michael D. Howe, City Attorney



INTERAGENCY AGREEMENT
DEPARTMENT OF NATURAL RESOURCES (DNR)
NO. 93-099589

PI: 977

Funding Source: State of Washington

This Agreement is made and entered into between the Washington State Department of Natural Resources, hereinafter referred to as DNR, and the below named firm, hereinafter referred to as the CITY.

DNR and the CITY enter into this agreement under Chapter 39.34, Interlocal Cooperation Act.

City of Omak

PO Box 72

Omak, WA 98841

Phone: 509-826-6531

Email: admin@omakcity.com

IT IS MUTUALLY AGREED THAT:

WHEREAS, the CITY entered upon a five-year agreement on or after December 7, 2015 with JUB Engineering of Spokane, WA (a third-party engineering consulting firm pursuant to Chapter 18.43 RCW), hereafter referred to as "A/E", "CITY's A/E, or "Subcontractor", for purposes of providing airport master planning and other engineering services in connection with proposed land-use changes and planned improvements at or near the Omak Municipal Airport, including new airport-related buildings, taxiways, landing pads, access roads, parking, utility extensions, stormwater, etc.

WHEREAS, the selection process used by the CITY for the solicitation and procurement of the CITY's A/E met the provisions of the Federal Aviation Administration, Advisory Circular 150/5100-14E, which complies with the provisions of RCW 39.80 for the procurement of architectural and engineering services.

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WHEREAS, planned improvements within or immediately adjacent to the Omak Municipal Airport must be compliant with the airport master plan and other related Federal Aviation Administration (FAA) and Washington State Department of Transportation (WSDOT) Aviation regulations and guidelines.

WHEREAS, the planned DNR facility must be consistent with FAA-approved airport master planning documents, and further, must comply with all applicable FAA and WSDOT regulations, standards, and guidelines in relation to the Omak Municipal Airport.

WHEREAS, the CITY and DNR together agree that the A/E is the most-highly qualified engineering firm to represent both parties in the development of preliminary studies and reports, and the preparation of preliminary engineering plans, technical specifications, and construction estimates relating to the planned DNR facility and necessary improvements to the CITY's airport infrastructure (i.e. airport planning, water, roads, stormwater, etc.) given the A/E's incomparable knowledge, skills and understandings of the applicable FAA requirements and familiarity with the Omak Municipal Airport master planning efforts and airport infrastructure.

1.0 Purpose. The purpose of this Agreement is to provide architectural and engineering services in connection with a planned DNR facility, which is to be located adjacent to the Omak Municipal Airport and on land currently owned or managed by the City of Omak.

2.0 Scope of Work. The CITY shall retain the A/E together with its lower tier subcontractors necessary to develop preliminary studies and reports, and prepare architectural and engineering plans, technical specifications, and construction estimates relating to a planned DNR facility.

The architectural and engineering services shall be performed in a phased approach satisfactory to DNR. The CITY together with the A/E shall develop scopes of work and related fee estimates for each phase of work.

Exhibit A, affixed hereto, shall serve as a preliminary listing of the anticipated phases of work, related architectural and engineering services to be rendered, and projected fee estimates in connection with the planned DNR Facility. Both the CITY and DNR acknowledge that the anticipated phases and services may be amended over the course of the project to reflect actual phases and services needed based on specific direction provided by DNR in relation to the design and construction of the planned facility.

Nearing completion of each phase of the work, the CITY shall present a scope of work, relative fee proposal, and deliverable schedule for the subsequent phase of work to be performed by the A/E to DNR for review and comment. DNR will review and provide comments on services or relative fees directly to the A/E and the CITY, and reserves the right to request add, delete, modify, amend, or otherwise define the proposed architectural and engineering services based on DNR's actual needs.

Upon completion of DNR's review, revision of scope or fees (if necessary) and acceptance in writing of the final scope of work, related fee proposal, delivery schedule for each subsequent

phase of work to be performed, the CITY shall authorize the A/E to proceed with said phase of work.

All services rendered along with work products and deliverables developed under this Agreement shall conform to applicable codes and standards, which include, but are not limited to, the following:

- All applicable State and Local Land-Use and other codes, standards, and guidelines as may be applicable to the proposed work.
- Applicable federal, state, and local land-use and environmental rules, including terms and conditions of any permits or approvals issued, or as may be applicable, to the planned work.
- Safety and Health Standards, Codes, Rules and Regulations as may be applicable to the planned work.
- 2015 International Building Code (IBC), 2015 International Mechanical Code, 2015 Fire Code, and Washington State Energy Code, including the current Washington State code amendments (as applicable).
- WADOH Water System Design Manual, December 2009 (or current edition).
- Okanogan County Public Health, On-Site Sewage Disposal Regulations, March 2008 (or current edition).
- 2010 ADA Standards for Accessible Design, or most current edition (as necessary).
- Manual on Uniform Traffic Control Devices (MUTCD), 2009 Edition and any amendments thereto (as necessary).
- Other applicable federal, state, or local laws, codes, or standards in relation to the planned work.

DNR at its sole discretion reserves all rights to include or otherwise accept the use of other design and/or construction standards and guidelines for use in planning, designing, or constructing the planned facility improvements, when it is deemed to be in the best interests of the State to do so.

All professional services furnished by the CITY through its A/E (or any of its low tier subcontractors) shall be performed by or under the direct supervision of persons licensed to practice their respective discipline, including architecture, engineering, surveying or other professions (as applicable), by the State of Washington, and by personnel who are careful, skilled, experienced and competent in their respective trades or professions, and who are professionally qualified to perform the Work, and further, who shall assume professional responsibility for the accuracy and completeness of the services performed, including all work products and deliverables prepared or reviewed under their direct supervision.

During the period of performance of this Agreement, the CITY agrees not to terminate for convenience, or allow any substitutions or withdrawals of the A/E, its key personnel assigned, or any of its lower tier subcontractors, without DNR's expressed written consent. DNR recognizes extenuating circumstances may occur which may be cause for early termination by the CITY during the period of performance of this Agreement that are beyond the CITY's control (i.e. company dissolution, employee promotions, layoffs or terminations, etc.). In such circumstances, the CITY shall agree to notify DNR immediately in writing. Such notification shall include: (i) an explanation of the circumstances necessitating termination, substitution, or withdrawal; (ii) a complete statement of qualifications (including professional resumes) of any proposed substitute;

and (iii) any other information requested by DNR to allow for evaluation the substitution request. All proposed substitutes shall have qualifications equal to or better than the qualifications of the person or entity to be replaced. DNR is under no obligation to honor any such request, and may approve or disapprove a portion of the request or the entire request at its sole discretion.

In the event, the CITY takes action necessary to terminate the A/E for cause or requires the dismissal of any of the A/E's lower tier subcontractors assigned to the DNR facility project, the CITY will provide DNR with a 20 calendar day advanced written notice stating the specific conditions or circumstances leading to termination and the date on which services by the A/E or any of its lower tier subcontractors will terminate.

3.0 Period of Performance. The period of performance of this Agreement shall begin upon date of final signature by both parties, and end on June 30, 2021, unless terminated sooner as provided herein, or extended in writing by both parties.

4.0 Payment. The parties estimate that the cost of accomplishing the work will not exceed Three Hundred Thirteen Thousand Eight Hundred Forty-One Dollars and Fifty-Eight Cents (\$313,841.58) for all phases of work to be performed by the A/E. Payment for satisfactory performance of work shall not exceed this amount unless the parties mutually agree to a higher amount before beginning any work that could cause the maximum payment to be exceeded.

Payment for services rendered by the CITY and A/E shall be based on the fees, rates, charges and other terms and conditions as outlined in the CITY's Agreement with the A/E, which is attached hereto as Exhibit A. Exhibit A is comprised of the J-U-B Engineering, Inc.

5.0 Billing Procedures. The CITY shall submit invoices monthly. Payment for approved goods and/or services will be made by check, warrant or account transfer within 30 days of receipt of the invoice. Upon expiration of the Agreement, invoices shall be paid, if received within 30 days after the expiration date. However, invoices for all work done within a fiscal year must be submitted within 30 days after the end of the fiscal year.

Each invoice submitted to DNR shall include information needed by DNR to determine the exact nature of all expenditures and completed work. At a minimum, each invoice shall specify the following:

- A. Agreement number 93-099589
- B. The (e.g., monthly fixed cost, etc.) for each (month billed, deliverable, etc.
- C. The total number of hours worked for each employee
- D. The total amount of taxes (if any)
- E. Any other relevant information.
- F. The total invoice charge.

6.0 Records Maintenance. The CITY shall maintain books, records, documents and other evidence, to sufficiently document all direct and indirect costs incurred by the CITY, A/E or any lower tier subcontractors used in providing the services and determining the fees described here. These records shall be available for inspection, review, or audit by personnel of the DNR, other personnel authorized by the DNR, the Office of the State Auditor, and federal officials as authorized by law. The CITY shall keep all books, records, documents, and other material

relevant to this Agreement for six years after agreement expiration. The Office of the State Auditor, federal auditors, and any persons authorized by the parties shall have full access to and the right to examine any of these materials during this period.

Records and other documents in any medium furnished by one party to this agreement to the other party, will remain the property of the furnishing party, unless otherwise agreed. The receiving party will not disclose this material to any third parties without first notifying the furnishing party and giving it a reasonable opportunity to respond. Each party will use reasonable security procedures and protections to assure that records and documents provided by the other party are not erroneously disclosed to third parties.

7.0 Rights to Data. Unless otherwise agreed, data originating from this Agreement shall be 'works for hire' as defined by as defined by Title 17 U.S.C., Section 101 and shall be owned by DNR. Data shall include, but not be limited to, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. Ownership includes the right to use, copyright, patent, register and the ability to transfer these rights.

8.0 Independent Capacity. The employees or agents of each party who are engaged in performing this Agreement shall continue to be employees or agents of that party and shall not be considered for any purpose to be employees or agents of the other party.

9.0 Amendments. This Agreement may be amended by mutual agreement of the parties. Amendments shall be in writing and signed by personnel authorized to bind each of the parties.

10.0 Termination for Convenience. Either party may terminate this Agreement upon 30 calendar days' prior written notice to the other party. If this Agreement is terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.

11.0 Termination for Cause. If for any cause either party does not fulfill in a timely and proper manner its obligations under this Agreement, or if either party violates any of the terms and conditions, the aggrieved party will give the other party written notice of the failure or violation. The aggrieved party will give the other party 15 working days to correct the violation or failure. If the failure or violation is not corrected within 15 days, the aggrieved party may immediately terminate this Agreement by notifying the other party in writing.

12.0 Disputes. If a dispute arises, each party will make a good faith effort to resolve issues at the lowest possible level in their respective agencies. If they cannot resolve an issue, they will elevate the issue within their respective chains of command to resolve it.

In the event that a dispute arises under this Agreement, it shall be determined by a Dispute Board in the following manner: Each party to this Agreement shall appoint one member to the Dispute Board. The members so appointed shall jointly appoint an additional member to the Dispute Board. The Dispute Board shall evaluate the facts, Agreement terms, applicable statutes and rules, and make a determination of the dispute. The determination of the Dispute Board shall be final and binding on both parties. The cost of resolution will be borne as allocated by the

Dispute Board. Alternatively, the parties may pursue a third party dispute resolution as the parties mutually agree to in writing.

13.0 Governance. This contract is entered into the authority granted by the laws of the State of Washington and any applicable federal laws. The provisions of this agreement shall be construed to conform to those laws.

If there is an inconsistency in the terms of this Agreement, or between its terms and any applicable statute or rule, the inconsistency shall be resolved by giving precedence in the following order:

- (1) Applicable state and federal statutes and rules;
- (2) Scope of Work; and
- (3) Any other provisions of the agreement, including materials incorporated by reference.

14.0 Assignment. The work to be provided under this Agreement and any claim arising from this Agreement cannot be assigned or delegated in whole or in part by either party, without the express prior written consent of the other party. Neither party shall unreasonably withhold consent.

15.0 Waiver. A party that fails to exercise its rights under this agreement is not precluded from subsequently exercising its rights. A party's rights may only be waived through a written amendment to this agreement.

16.0 Severability. The provisions of this agreement are severable. If any provision of this Agreement or any provision of any document incorporated by reference should be held invalid, the other provisions of this Agreement without the invalid provision remain valid.

17.0 Responsibilities of the Parties/Indemnification. To the fullest extent permitted by law, the CITY shall indemnify, defend (with counsel acceptable to DNR), and hold harmless DNR, its officials, agents, and employees, from and against all claims arising out of or resulting from the performance of the Agreement. "Claim" as used in this Agreement means any financial loss, claim, suit, action, damage, or expense, including but not limited to attorneys' fees, attributable for bodily injury, sickness, disease or death, or injury to or destruction of tangible property including loss of use resulting therefrom. The CITY's obligation to indemnify, defend, and hold harmless includes any claim by the CITY's agents, employees, representatives, any subcontractor or its employees, or any third party.

However, the CITY shall not indemnify, defend, or hold harmless DNR, its officials, agents, and employees for claims caused by or resulting from the sole negligence of DNR, its officials, agents, and employees and in the event of concurrent negligence by (1) the CITY, its agents, employees, representatives, any subcontractor or its employees, or any third party and (2) DNR, its officials, agents, and employees, then the CITY's obligation to indemnify, defend, and hold harmless DNR, its officials, agents, and employees shall be valid and enforceable only to the extent of the CITY, its agents, employees, representatives, any subcontractor or its employees, or any third party's share of any concurrent negligence.

The CITY waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend and hold harmless DNR and its officials, agents or employees.

18.0 Insurance. Before using any of said rights granted herein and its own expense, the CITY shall purchase and maintain, or require its agent(s)/subcontractor(s) to purchase and maintain, the insurance described below for the entire duration of this Agreement. Failure to purchase and maintain the required insurance may result in the termination of the Agreement at DNR's option.

All insurance provided in compliance with this Agreement shall be primary as to any other insurance or self-insurance programs afforded to, or maintained by, the State of Washington, Department of Natural Resources.

The CITY shall provide DNR with certificates of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements specified in this Agreement before using any of said rights granted herein. The description section of the certificate shall contain the Contract Number 93-099589 and the name of the DNR Project Manager. The CITY shall also provide renewal certificates as appropriate during the term of this Agreement.

The CITY shall include all subcontractors and agents as insured under all required insurance policies or shall provide separate certificates of insurance for each subcontractor or agent. Failure of the CITY to have its subcontractors and agents comply with the insurance requirements contained herein does not limit the CITY's liability or responsibility.

INSURANCE TYPES & LIMITS: The limits of insurance, which may be increased by State, as deemed necessary, shall not be less than as follows:

Commercial General Liability (CGL) Insurance: The CITY shall purchase and maintain commercial general liability insurance with a limit of not less than \$1,000,000 per each occurrence. If such CGL insurance contains aggregate limits, the general aggregate limits shall be at least twice the "each occurrence" limit, and the products-completed operations aggregate limit shall be at least twice the "each occurrence" limit. All insurance must cover liability arising out of premises, operations, independent contractors, products completed operations, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another party assumed in a business contract) and contain separation of insured (cross-liability) condition.

Employer's liability ("Stop Gap") Insurance: The CITY shall purchase and maintain employer's liability insurance and if necessary, commercial umbrella liability insurance with limits not less than \$1,000,000 each accident for bodily injury by accident and \$1,000,000 each employee for bodily injury by disease.

Business Auto Policy (BAP) Insurance: The CITY shall purchase and maintain business auto insurance and if necessary, commercial umbrella liability insurance with a limit of not less than \$1,000,000 per accident, with such insurance covering liability arising out of "Any Auto". The policy shall be endorsed to provide contractual liability coverage and cover a "covered pollution cost or expense." The CITY waives all rights of subrogation against State for the recovery of

damages to the extent they are covered by business auto liability or commercial umbrella liability insurance.

Industrial Insurance (Workers Compensation): The CITY shall comply with Title 51 RCW by maintaining workers compensation insurance for its employees. The CITY waives all rights of subrogation against State for recovery of damages to the extent they are covered by Industrial Insurance, employer's liability, general liability, excess, or umbrella insurance. The CITY waives its Title 51 RCW immunity to the extent it is required by its indemnity obligation under this Agreement.

Errors and Omissions (Professional Liability) Insurance: CITY shall purchase and maintain errors and omissions insurance including coverage for product failure, security failure, personal injury, and professional liability with limits of not less than \$1,000,000 per occurrence.

ADDITIONAL PROVISIONS:

Additional Insured: The State of Washington, Department of Natural Resources, its officials, agents, and employees shall be named as additional insured by endorsement on all general liability, excess, and umbrella insurance policies.

Cancellation: DNR shall be provided written notice before cancellation or non-renewal of any insurance referred to therein, in accord with the following specifications.

1. Insurers subject to Chapter 48.18 RCW (Admitted and Regulated by the Insurance Commissioner): The insurer shall give the State 45 days advance notice of cancellation or nonrenewal. If cancellation is due to non-payment of premium, the State shall be given 10 days advance notice of cancellation.
2. Insurers subject to Chapter 48.15 RCW (Surplus Lines): The State shall be given 20 days advance notice of cancellation. If cancellation is due to non-payment of premium, the State shall be given 10 days advance notice of cancellation.

Insurance Carrier Rating: All insurance shall be issued by companies admitted to do business in the State of Washington and have a rating of A-, Class VII, or better. Any exception must be reviewed and approved by the DNR Risk Manager or the DNR Contracts Manager, in the Risk Manager's absence. If an insurer is not admitted to do business in the State of Washington, all insurance policies and procedures for issuing the insurance policies must comply with Chapters 48.15 RCW and 284-15 WAC.

Self-Insurance: If the CITY is self-insured, evidence of its status as a self-insured entity shall be provided to State. The evidence should demonstrate that the CITY's self-insurance meets all of the required insurance coverage of this Agreement to the satisfaction of State including the description of the funding mechanism and its financial condition. If the funding mechanism or financial condition of the self-insurance program of the CITY is inadequate, then State may require the purchase of additional commercial insurance to comply with this Agreement.

Waiver: The CITY waives all rights of subrogation against State for recovery of damages to the extent these damages are covered by general liability, excess, or umbrella insurance maintained pursuant to this Agreement.

19.0 Complete Agreement in Writing. This Agreement contains all the terms and conditions agreed upon by the parties. No other understanding, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties.

20.0 Contract Management. The Project Coordinator for each of the parties shall be the contact person for this agreement. All communications and billings will be sent to the project coordinator.

21.0 Project Coordinators.

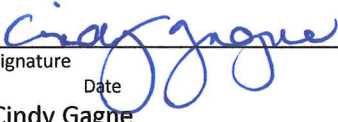
(1) The Project Coordinator for the CITY is Todd McDaniel, City Administrator, 509-826-1170, 509-846-9157 or admin@omakcity.com.

(2) The Project Manager for DNR is Dale Mix, Division Manager, Engineering and General Services Division, 360-902-1199, 360-790-5445 or dale.mix@dnr.wa.gov.

By signature below, the Parties certify that the individuals listed in this document, as representatives of the Parties, are authorized to act in their respective areas for matters related to this instrument.

IN WITNESS WHEREOF, the Parties have executed this Agreement.

CITY OF OMAK



Signature
Date
Cindy Gagne

Name
Mayor

Title

PO Box 72
Omak, WA 98441

Address
509-826-1170

Telephone

**STATE OF WASHINGTON
DEPARTMENT OF NATURAL
RESOURCES (DNR)**



Signature
Date 8-19-19
Dale Mix

Name
Division Manager

Title

1111 Washington Street SE, MS 47030
Olympia, WA 98504-7030

Address
360-902-1199

Telephone