

RESOLUTION No. 69-2023

**A RESOLUTION OF THE OMAK CITY COUNCIL, APPROVING
INTERAGENCY AGREEMENT 93-105931 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 assist in the construction of water infrastructure that will be required for future development at the Omak Airport; 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.

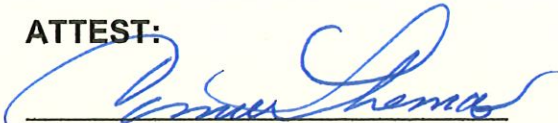
NOW, THEREFORE, BE IT RESOLVED by the Omak City Council, that Interagency Agreement 93-105931, between the City of Omak and Washington State Department of Natural Resources, a copy of which is attached hereto as "Exhibit A", is approved. The Mayor is hereby authorized to execute the same for and on behalf of the City.

INTRODUCED AND APPROVED by the City Council of the City of Omak this 21st day of August, 2023.

APPROVED:

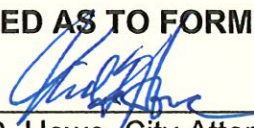
Cindy Gagné
Cindy Gagné, Mayor

ATTEST:



Connie Thomas, City Clerk

APPROVED AS TO FORM:



Michael D. Howe, City Attorney

MEMORANDUM

To: Omak City Council
Cindy Gagné, Mayor

From: Todd McDaniel, Administrator

Date: August 21, 2023

Subject: Resolution 69-2023 Interagency Agreement with the DNR

The Attached Resolution 69-2023, of the Omak City Council, Approving Interagency Agreement 95-105931 Between the Washington State Department of Natural Resources for Airport Water Infrastructure, is forwarded for your consideration.

This agreement allows for the reimbursement of costs for the airport water improvements. It will include completion of the reservoir project not funded by the initial Capital grant, additional water rights from the Duck Lake Aquifer, and other system improvements TBD for the benefit of the DNR.

I approve this resolution and, urge its adoption.



INTERAGENCY AGREEMENT
DEPARTMENT OF NATURAL RESOURCES (DNR)
NO. 93-105931

PI: 976
Funding Source: State
Grant Funded: ☒ No
OMWBE: Not Applicable
Procurement method: ☒ Exempt

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 City of Omak 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@omalccity.com

IT IS MUTUALLY AGREED THAT:

1.0 Purpose. The purpose of this Agreement is to construct a water tower to supply a connection with proposed land-use changes and planned improvements for 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. This will provide DNR with the opportunity to construct a Regional Fire Response Center. The water tower is a prerequisite to any construction by the Department of Natural Resources because the water tower is necessary to provide sufficient flow to supply water pressure and volume to building fire suppression systems required by building code for any permitted construction at the site. 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. 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.

2.0 Scope of Work. The CITY will construct a water tower reservoir with sufficient flow to enable DNR to construct its Regional Fire Response Center. 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.
- 2021 International Building Code (IBC), 2021 International Mechanical Code, 2021 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.

3.0 Period of Performance. The period of performance under this contract will be from July 1, 2023 to June 30 2025, or date of execution, whichever is later, through June 30, 2025.

4.0 Payment. The parties estimate that the cost of accomplishing the work will not exceed One Million Five Hundred Thousand Dollars (\$1,500,000.00).

5.0 Billing Procedures. 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 93-105931
- 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 CITY in providing the services. These records shall be available for inspection, review, or audit by personnel of the CITY, 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 the 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 (including email) 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 (including email).

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 by 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 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 Harassment. Per RCW 43.01.135, Sexual harassment in the workplace, Agency Contractors hereby have access to DNR Policy PO01-052 Sexual Harassment:
https://www.dnr.wa.gov/publications/em_harassment_prevention_policy.pdf

17.0 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.

18.0 Responsibilities of the Parties/Indemnification.

To the fullest extent permitted by law, 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 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.

19.0 Insurance. The State of Washington, including all its agencies and departments, is self-insured for all exposures to tort liability, general liability, property damage liability and vehicle liability, as provided in statute, but only as respects the negligence of State.

OR

Before using any of said rights granted herein and its own expense, the CITY shall purchase and maintain, [**optional:** or require its agent(s)/subcontractor 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 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

Agreement No. 93-105931

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.

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.

20.0 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.

21.0 Contract Management.

CONTRACTOR Information	Contract Manager	DNR Contract Manager Information
Todd McDaniel CITY P.O. Box 72 Omak, WA 98841 <i>Phone : 509-826-1170</i> <i>Email address: admin@omakcity.com.</i>		Brian Eko Department of Natural Resources 1111 Washington St SE MS 47030 Olympia, WA 98504-7030 <i>Phone: 360-918-2598</i> <i>Email address: brian.eko@dnr.wa.gov</i>
CONTRACTOR Project Manager Information		DNR Project Manager Information
Todd McDaniel CITY P.O. Box 72 Omak, WA 98841 <i>Phone : 509-826-1170</i> <i>Email address: admin@omakcity.com.</i>		Brian Eko Department of Natural Resources 1111 Washington St SE MS 47030 Olympia, WA 98504-7030 <i>Phone: 360-918-2598</i> <i>Email address: brian.eko@dnr.wa.gov</i>

22.0 Subcontracts. Subcontractor means not in the employment of the Agency, who is performing all or part of the activities related to this Agreement under a separate contract with the Agency responsible for the scope of work as identified within. If utilizing subcontractors to perform the scope of work, the Agency is required to obtain subcontractors in compliance with RCW 39.26. Agency must provide both proof of competitive solicitation and that the solicitation was posted in WEBS, sole source filing and DES approval, or a documented exemption per DES policy, whichever the case may be.

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

**STATE OF WASHINGTON
DEPARTMENT OF NATURAL
RESOURCES**

Cindy Gagne 8.21.23
Signature **Date**
Cindy Gagne
Name
Mayor
Title

PO Box 72
Omak WA 98441

Address

509-826-1170

Telephone

BRULE BURKHART 8/14/23

Signature **Date**
Brule Burkhart
Name
Director of Enterprise Services
Title

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

Address

360-902-1251

Telephone