

**AGREEMENT**  
**Contract No. 2021-005**

This Agreement made and entered this 12 day of May, 2022, by and between the City of The Dalles, an Oregon municipal corporation, hereinafter called "City", WyEast Timber Services, LLC., an Oregon corporation, hereinafter called "WyEast", and Bounds Excavation, hereinafter called "Contractor".

**WITNESSETH**

**WHEREAS**, WyEast has entered into a certain agreement with City, whereby WyEast has agreed to serve as City's agent to manage the Dog River Pipeline Replacement Timber Removal Project on US Forest Service lands along the corridor for a future pipeline construction project and identified in the maps attached hereto and incorporated herein by this reference; and

**WHEREAS**, pursuant thereto, WyEast is the exclusive agent for the City in the management of said project; and

**WHEREAS**, Contractor desires to contract to cut and deck the timber and dispose of resulting slash and woody debris as designated; and

**WHEREAS**, the Advertisement, Proposer's Checklist, Non-Collusion Guidelines and Affidavit, Information for Proposers, Scope of Work Narrative, DBE Six Good Faith Efforts and Form, Federal Davis-Bacon Wage schedule, Oregon Prevailing Wage "Prevailing Wage Rate for Public Works Contracts in Oregon" booklet, Contractor's Proposal, and Agreement for this Contract No 2021-005 shall, taken together, constitute the Contract Documents:

**NOW, THEREFORE**, in consideration of the mutual promises and covenants contained herein, the parties hereto agree as follows:

1. City has hired the above named Contractor and hereby agrees that Contractor shall cut and remove timber from the designated corridor, deck the logs at designated landings, dispose of slash, and provide designated maintenance to road systems, at a price and upon the terms, covenants, and conditions hereinafter set forth, all of the timber and woody material designated for that purpose by WyEast, located, standing, and being upon those certain lands in Hood River County, State of Oregon, owned by the US Forest Service, and as more particularly described in Exhibit A (Timber Removal Scope of Work) attached hereto and incorporated herein by this reference.

2. Payment for Services

A. City covenants and agrees to pay Contractor for work under this contract as provided in attached Schedule A.

Contractor acknowledges that WyEast has been designated the exclusive agent of

City in connection with timber removal as described in the contract documents. As the agent for City, WyEast shall prepare and lay out plans for timber removal and related work from the area in a manner consistent with the contract documents. Contractor agrees to remove the designated trees and woody material in a manner consistent with the contract documents and under direction of WyEast.

B. All payments shall be based upon a time-and-materials basis for work completed.

C. Retainage: Contractor shall invoice City monthly for work completed. City shall retain an amount equal to five percent (5%) of all payments to Contractor for work completed until such time as Contractor has, to the satisfaction of WyEast, complied with the terms of this contract respecting damage to US Forest Service property, including, but not limited to, any damage to roads, fences, bridges, streams and disposal of slash has been completed.

3. Road Construction. Contractor has the right to construct skid trails and access corridors as designated by WyEast. Such work will be incidental to the project.

4. Merchantability. All trees shall be utilized to as low a diameter in the tops as is practical, and in compliance with the provided specifications when merchantable. The log lengths shall be varied as directed by WyEast so as to comply with the specifications provided herein. All merchantable logs shall be decked at designated landings. The stumps shall be cut as low as is practical, but shall not be higher than twelve (12) inches above the ground on the high side.

5. Time. Within thirty (30) days from the date of this contract, as allowed by environmental conditions and administrative guidance, Contractor shall, in good faith and in a substantial way, begin timber removal operations. Thereafter, Contractor shall continue timber removal operations and the removal of said timber diligently and without intermission, except as hereinafter specifically provided, until all of said timber has been removed. Timber removal shall be completed by Contractor on or before July 31, 2022, but this day may be extended by City at City's option. The fixing of this date does not excuse the Contractor from the primary duty of proceeding diligently and without intermission as set forth above. If City shall deem that Contractor has failed in this regard, Contractor shall have five (5) days within which to commence timber removal after written notice thereof from the City. After three (3) instances of this written notice being given, Contractor shall not thereafter be entitled to this notice, and City can declare default, upon failure of Contractor to perform hereunder without prior notice. In the event of Contractor failing to comply with the terms of this agreement, with or without notice from City, as required above, City may, at its option, declare this contract terminated and all accumulated retainage shall be forfeited to the City. In the event Contractor shall be prevented at any time from continuing its timber removal development or operations and its removal of said timber because of strikes, fires whose origins or spread are not contributed to by any act or omission of Contractor, floods,



heavy rains, muddy roads, or acts of God, or the public enemy, the period during which Contractor's operations shall be necessarily be suspended as a result of such causes shall not be deemed a breach of this section.

6. Title. Title to all merchantable forest products designated for removal under this contract, and to all logs now or hereafter being or remaining on US Forest Service land, shall be and remain in US Forest Service.

8. Timber Removal Practices. Contractor shall conduct operations in an efficient, workmanlike manner, and in accordance with good standard selective timber removal practices, where applicable, as the same prevail in the West Coast timber industry. Contractor agrees that timber removal shall be conducted in a manner consistent with the Timber Removal Scope of Work outlined in Exhibit A attached hereto and the Treatment Specifications set forth in Exhibit B attached hereto, both of which are incorporated herein by this reference. In addition, Contractor agrees to comply with all State, Federal, and local laws and regulations. This contract shall be performed by Contractor in such a manner as to prevent damage to the existing wooden pipeline and keep damage to remaining timber stands to a minimum.

9. Slash Disposal. The trees designated for selective harvesting shall be whole-tree logged. The Contractor agrees to and with the City that it will process slash resulting from this timber removal in such a manner as to keep the fire hazard to a minimum.

Contractor shall whole-tree yard to landings. In timber removal units designated by City and WyEast, Contractor shall perform all timber processing (long butting, bucking the rot from the log, etc.) on the landing sites rather than in the woods. Large-diameter downed wood shall be removed from the pipeline corridor to the landing and sorted appropriately.

10. Erosion Control by Contractor. Erosion prevention and control work in compliance with the Treatment Specifications, including stream course protection, shall be completed within five (5) calendar days after skidding operations related to each landing are substantially completed, or after WyEast designates on-the-ground work where such designation is required. Said time limit shall be exclusive of full days lost in Contractor's operations due to causes beyond Contractor's control, as set forth in Section 5 above. Such on-the-ground designation shall be performed as promptly as is feasible, unless it is agreed in advance, in writing, that the location of such work can be established without physically identifying and marking the area requiring such work on-the-ground. Damage resulting from Contractor's operations due to failure to perform required work shall be repaired by Contractor.

11. Preservation of Markings and Monuments. Contractor shall not remove, alter, damage, or destroy any signs, posters, land survey corners, witness trees, or corner reference tags pertaining to the timber harvest or land surveys. If the Contractor disturbs, damages, or destroys any land survey corner, Contractor shall re-establish such corner at Contractor's own expense.



12. Snags and downed wood. All dead trees or snags and downed wood greater than 20-inches in diameter shall be retained in-place to the extent practicable.

13. Fire Precaution. Contractor shall conduct its timber removal operations upon said lands in compliance with all laws and regulations of the state of Oregon and of the United States, and of any agency or enforcement officer of the County of Hood River, or the State of Oregon or of the United States. During the time this agreement remains in force, Contractor shall make every reasonable effort to prevent and suppress forest fires on US Forest Service lands described in this agreement and in its vicinity, and shall require its employees likewise. Unless otherwise required hereby or prevented by circumstances over which Contractor has no control, Contractor shall place its equipment and employees at the disposal of any authorized forest officer for the purpose of fighting forest fires on or near said lands.

14. Truck Roads. Contractor shall have the right to use existing truck roads located on US Forest Service property and shall be permitted to construct skid trails from those truck roads for the purpose of loading logs on trucks or skidding logs to landings. Contractor shall secure the approval of WyEast before building or constructing any trails or devices on US Forest Service's land. All roads and skid trails shall be left in a condition satisfactory to the US Forest Service and WyEast upon completion of timber removal activities.

15. Indemnity and Insurance. Contractor agrees to indemnify City, WyEast and US Forest Service and to hold City, WyEast and US Forest Service harmless from and against any and all loss, expense, damage claims, demands, fines, charges, liens, liabilities, actions and causes of action, or proceedings of any kind whatsoever, whether or not arising on account of damage to or loss of, or trespass upon property, or injury to or death of persons, arising directly or indirectly, out of or in connection with, the performance by Contractor of any of its obligations hereunder, or arising out of, or in connection with, any operations or activities of Contractor, including any such claim, loss or liability which may be caused or contributed to in whole or in part by City's, WyEast's or US Forest Service's own negligence; neither City, WyEast or US Forest Service shall have any liability to Contractor for any loss or damage caused by third parties or by any condition of the property.

Before commencing the work, the Proposer shall furnish the City Attorney with an original certificate of insurance signed by an authorized representative. The certificate shall cover all areas set out in the Contract Documents, and be issued by a company licensed to do business in the State of Oregon and acceptable to the City Attorney. The insurance coverage shall be maintained in effect for the term of the proposed project. The certificate of insurance shall provide the City of The Dalles, WyEast Timber Services and US Forest Service are named as an additional insured, and shall provide for 30 days notice to all three parties of any cancellation of the insurance policy.

Insurance shall be in the minimum amounts of:

<u>Type of Insurance</u>	<u>Limits of Liability</u>
Worker's Compensation	Statutory Worker's Compensation
Commercial General Liability - Combined Single Limits	\$1,000,000 (each occurrence) \$2,000,000 (aggregate)
Loggers Broad Form	\$2,000,000
Policy must include coverage for products/completed operations.	
Auto Liability - Combined Single Limits	\$500,000 All vehicles covered. Hired and non-owned auto liability

16. Relationship of Contractor and City. It is agreed and understood that the relationship between City and Contractor is that of owner and independent contractor, and that no other relationship exists between them. Contractor is an independent contractor, and not an employee of City or WyEast.

17. Nondiscrimination. Contractor shall not discriminate against any person in hiring, promotion, termination, or in any manner related to this agreement by reason of that person's age, sex, race, color, creed, national origin, political affiliation, or handicap.

18. Obligation of Contractor to Employees. Contractor shall, as a condition of this contract:

A. Make payment promptly, as due, to all persons supplying labor and material to Contractor for the prosecution of work under this contract, including Contractor's employees.

B. Pay all contributions or amounts due by Contractor to the Industrial Accident Fund and/or other worker's compensation carriers

C. Not permit any lien or claim to be filed or prosecuted against City on account of any labor or material furnished by Contractor, its employees or subcontractors, pursuant to this agreement.

D. Pay to the Department of Revenue of the State of Oregon, to the Internal Revenue Service of the United States and to the Social Security Administration all sums due as employer contributions and employee withholding.

19. Compliance with Oregon Labor Laws. Contractor shall comply with all applicable provisions of ORS Chapter 279 related to hours of work, holidays, medical coverage and compensation of employees, and shall assure that the required provisions are included in any subcontract let for construction or labor pursuant to this service



contract.

20. Permits and Responsibilities. It is not expected that Contractor will need to obtain any permits necessary to carry out its responsibilities in connection with this agreement. Contractor shall comply with all Federal, State, and local statutes, ordinances and regulations, including, but not limited to, applicable laws and regulations dealing with safety and environmental concerns.

21. Termination For Convenience of City. In the event that this agreement is terminated by City prior to its normal expiration date, or prior to the completion of the designated work, the termination shall be accomplished in the following manner:

A. City shall send a notice of termination to WyEast by certified mail. WyEast shall in turn notify Contractor by certified mail of City's notice of termination. The notice given by City shall give the date of termination and shall state that the termination is for the convenience of the City.

B. Upon receipt of the termination notice, Contractor shall cease all operations under this contract. Contractor shall prepare a summary of the status of the timber removal work as of the time operations were terminated, and shall forward such list to WyEast within five (5) days of receipt of termination notice.

C. City shall direct WyEast whether to complete or terminate the timber removal operations of the Contractor. Contractor will be paid for any work performed prior to termination.

D. All work under this contract shall cease on the termination date. Contractor shall be entitled to such compensation for the work in progress as may be reasonably determined by WyEast. It is understood that Contractor has factored into its bid to perform this work, the costs of moving equipment in and moving it out upon completion. In the event of termination under this paragraph 20, Contractor shall be entitled to a pro rata reimbursement for these costs depending upon the extent to which the contract has been completed, and as shall be reasonably determined by WyEast.

22. Termination for Default. In the event of any material breach of this contract by Contractor, City or WyEast may, at its option, and in addition to other remedies, terminate this contract for default. On notice of default termination, Contractor shall cease all work and forward all remittance directly to WyEast.

Termination shall be without prejudice to City's and WyEast's rights to recover damages caused by Contractor's default. Such damages may include, but are not limited to, contractual, accounting, forest management, and increased project costs necessary to fulfill the Contractor's obligations pursuant to the terms and provisions of this agreement. Following termination, Contractor shall be entitled to payment work completed less amounts reasonably deducted by City for such payments to cover damages caused by

Contractor's default. The remedies of termination and suspension shall be optional remedies and shall be available in addition to any other remedy available under applicable law for breach of contract.

23. Fees, Costs, Disputes. In the event of disputes between the parties leading to litigation or arbitration, each party shall bear its own fees, costs, and attorney's fees regardless of the outcome of the dispute. The parties hereto agree that in the event of any dispute between the parties arising directly or indirectly out of this agreement between the parties, or relationship between the parties created as a result of this agreement, the parties shall submit such dispute(s) to arbitration, pursuant to the rules of arbitration of the American Arbitration Association. A dispute may be submitted to arbitration by any party. Contractor and City shall each select an arbitrator and the two arbitrators will select a third. The parties hereto agree that the arbitrator shall be selected from a panel of arbitrators with experience in the area of forest management; the list of arbitrators to be provided by the American Arbitration Association.

24. Assignment. Contractor may not assign, subcontract, or otherwise transfer, voluntary or involuntary, any of its interest in this contract without the prior written consent of the City and WyEast. Consent by the City and WyEast to one transfer shall not constitute consent to other transfers or a waiver of this provision.

25. Notice. Any notices required to be sent from one party to the other shall be sent by mail to the address of the party listed in this clause.

A. Notices to City:  
Dave Anderson  
Public Works Director  
1215 W 1<sup>st</sup> Street  
The Dalles, OR 97058

B. Notices to WyEast:  
Paul Jones  
WyEast Timber Services, LLC  
3763 Neal Creek Road  
Hood River, OR 97031

C. Notices to Contractor:

Eric Bounds  
5523 High Lead Dr  
Parkdale OR 97041  
Bounds Excavation Inc

26. Designation and Acceptance of Agent. City has appointed WyEast as its exclusive agent and Contractor hereby accepts WyEast as City's exclusive agent for the purpose of:

- A. Designating trees to be cut and downed wood to be treated;
- B. Checking to determine whether all work has been done in



conformity with the terms of this contract;

- C. Inspection of road/trail construction and maintenance and bridges;
- G. Compliance with fire regulations and snag disposal;
- H. Overseeing the Contractor's compliance with the requirements of this contract.

IN WITNESS THEREOF, the agreement has been executed by the parties as of the day and year first written.

**CITY OF THE DALLES**

By:   
**Julie Krueger, City Manager**

Approved as to Form:   
**Jonathan Kara, City Attorney**

Attest:   
**Izetta Grossman, CMC, City Clerk**

**WYEAST TIMBER SERVICES, LLC**

By:   
**President**  
WyEast Timber Services, LLC

**CONTRACTOR**

Company: Baun's Excavation Inc.

By:  President  
**Name/Title**  
Erre Baun's