

AGREEMENT

THIS AGREEMENT is by and between City of The Dalles, Oregon(Owner) and K&E Excavating, Inc.
(Contractor).

Owner and Contractor, in consideration of the mutual covenants set forth herein, agree as follows:

1. WORK

1.1. Contractor shall complete the Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

1.1.1. The completed Work will provide Owner with a replacement of an existing pipeline and includes: 20,300 feet of new 30-inch Ductile Iron Pipe Size high density polyethylene pipe, air releases and vents, new culvert at Brooks Meadow Creek, pipeline stream crossing at Brooks Meadow Creek, removal of existing fill where existing pipeline crosses through a depression, and new outfall energy dissipation facilities. Certain piping materials are Owner-furnished. Work includes resurfacing certain existing dirt and gravel roads and construction of stormwater and erosion control facilities. All construction is located on lands owned by the United States Forest Service (USFS), and the City operates under a Special Use Permit. Work will be constrained to comply with conditions of multiple permits including those issued by USFS, US Army Corps of Engineers, Oregon Division of State Lands, Oregon Department of Fish and Wildlife, and Oregon Department of Environmental Quality.

2. THE PROJECT

2.1. The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

2.1.1. Dog River Pipeline Replacement.

3. ENGINEER

3.1. The Project has been designed by Jacobs Engineering Group Inc. (Engineer), who is to act as Owner's representative, assume duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in

connection with the completion of the Work in accordance with the Contract Documents.

4. CONTRACT TIMES

4.1. Time of the Essence: Time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

4.2. Dates for Substantial Completion and Final Payment:

4.2.1. The Work shall be substantially completed on or before October 31, 2023, and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions on or before November 30, 2023.

4.3. Liquidated Damages:

4.3.1. Contractor and Owner recognize that time is of the essence of this Agreement and that Owner will suffer financial loss if the Work is not completed within the times specified in Paragraph Contract Times above, plus any extensions thereof allowed in accordance with Article 11 of the General Conditions. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty) Contractor shall pay Owner \$3,300 for each day that expires after the time specified herein for Substantial Completion until the Work is substantially complete.

4.3.2. After Substantial Completion, if Contractor neglects, refuses, or fails to complete remaining Work within the Contract Time or any proper extension thereof granted by Owner, Contractor shall pay Owner \$3,300 for each day that expires after the time specified herein for completion and readiness for final payment until the Work is completed and ready for final payment. Substantial completion and final completion liquidated damages shall not be additive, and therefore shall not exceed total of \$3,300 per day.

5. CONTRACT PRICE

5.1. Owner will pay Contractor for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts determined pursuant to the following:

5.1.1. Lump Sum: For Work other than Unit Price Work, a lump sum of
\$ 5,563,925.00

plus:

5.1.2. Unit Prices:

5.1.2.1. As provided in Paragraph 13.03 of the General Conditions, estimated quantities are not guaranteed, and determinations of actual quantities and classifications are to be made by Engineer as provided in Paragraph 10.06 of the General Conditions. Unit prices have been computed as provided in Paragraph 13.03 of the General Conditions.

5.1.2.2. For Unit Price Work, an amount equal to the sum of established unit price for each separately identified item of Unit Price Work times the estimated quantity of that item as indicated in this paragraph:

Item No.	Description	Estimated Quantity	Unit	Unit Price	Estimated Price
1.	Foundation Stabilization Material (Section 31 23 23.15, Trench Backfill)	100	CY	\$110.00	\$11,000 ⁰⁰
2.	Hazard Tree Removal (Section 31 10 00, Site Clearing)	20	EA	\$500.00	\$10,000 ⁰⁰
3.	Rock Excavation (Section 31 23 16, Excavation)	4,075	CY	\$75.00	\$305,625 ⁰⁰

TOTAL OF ESTIMATED UNIT PRICES: \$ 326,625⁰⁰

6. PAYMENT PROCEDURES

6.1. Submittal and Processing of Payments: Contractor shall submit Applications for Payment in accordance with Article 15 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

6.2. Progress Payments and Retainage: Owner will make progress payments on account of the Contract Price on the basis of Contractor's Application for Payment on or about the 25th day of each month during performance of the Work as provided herein. All such payments will be measured by the Schedule of Values established as provided in Paragraph 2.05 of the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no Schedule of Values, as provided in the General Requirements.

6.2.1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Engineer may determine or Owner may withhold, including but not limited to liquidated damages, in accordance with Paragraph 15.01 of the General Conditions:

6.2.1.1. Ninety five percent of Work completed (with the balance being retainage). If the Work has been 50 percent completed as determined by Engineer, and if the character and progress of the Work have been satisfactory to Owner and Engineer, Owner, on recommendation of Engineer, may determine that as long as the character and progress of the Work remain satisfactory to them, there will be no additional retainage; and

6.2.1.2. Ninety five percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).

6.2.2. In lieu of retainage, and at the Contractor's option, provisions may be made as provided in ORS 279C.560 for either depositing with Owner or in a bank or trust company, bonds or securities for all or any portion of the retainage in a form acceptable to Owner. Interest on such bonds or securities shall accrue to Contractor. Costs incurred by Owner as a result of this option will be deducted from Contractor's final payment.

6.2.3. Upon Substantial Completion, Owner will pay an amount sufficient to increase total payments to Contractor to 100 percent of the Work completed, less such amounts as Engineer will determine in accordance with Paragraph 15.01.C.6 of the General Conditions and less 100 percent of Engineer's estimate of the value of Work to be completed or corrected as shown on the tentative list of items to be completed or corrected attached to the certificate of Substantial Completion.

6.3. Final Payment:

6.3.1. Upon final completion and acceptance of the Work in accordance with Paragraph 15.06 of the General Conditions, Owner will pay the remainder of the Contract Price as recommended by Engineer as provided in Paragraph 15.06.

7. INTEREST

7.1. Monies not paid when due as provided in Article 15 of the General Conditions shall bear interest at the rate of 1 percent per month.

8. CONTRACTOR'S REPRESENTATIONS

8.1. In order to induce Owner to enter into this Agreement, Contractor makes the following representations:

8.1.1. Contractor has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.

8.1.2. Contractor has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.

8.1.3. Contractor is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.

8.1.4. Contractor has carefully studied: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and drawings of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities) if any, which have been identified in Paragraph 5.03 of the Supplementary Conditions as containing reliable "technical data", and (2) reports and drawings of Hazardous Environmental Conditions, if any, at the Site which have been identified in Paragraph 5.06 of the Supplementary Conditions as containing reliable "technical data."

8.1.5. Contractor has considered the information known to Contractor; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on 1) the cost, progress, and performance of the Work; 2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Contract Documents; and 3) Contractor's safety precautions and programs.

8.1.6. Based on the information and observations referred to above, Contractor does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.

8.1.7. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.

8.1.8. Contractor has given Engineer written notice of conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.

8.1.9. The Contract Documents are generally sufficient to indicate and convey understanding of terms and conditions for performance and furnishing of the Work.

9. CONTRACT DOCUMENTS

9.1. Contents:

9.1.1. The Contract Documents that are attached to this Agreement (except as expressly noted otherwise) consist of the following:

9.1.1.1. This Agreement (pages 1 to 9, inclusive).

9.1.1.2. Performance bond (pages 1 to 4, inclusive).

9.1.1.3. Payment bond (pages 1 to 4, inclusive).

9.1.1.4. General Conditions (pages 1 to 52, inclusive).

9.1.1.5. Supplementary Conditions (pages 1 to 21, inclusive).

9.1.1.6. Specifications as listed in the table of contents of the Project Manual.

9.1.1.7. Drawings consisting of 76 sheets with each sheet bearing the following general title: Dog River Pipeline Replacement.

9.1.1.8. Addenda (numbers 1 to 3, inclusive).

9.1.1.9. Safe Drinking Water Requirements.

9.1.1.10. Prevailing Wage Rate Determination.

9.1.2. Exhibits to this Agreement (enumerated as follows):

9.1.2.1. None.

9.1.3. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:

9.1.3.1. Notice to Proceed (pages 1 to 1 , inclusive).

9.1.3.2. Work Change Directives.

9.1.3.3. Change Order(s).

9.2. There are no Contract Documents other than those listed above in this article.

9.3. The Contract Documents may only be amended, modified, or supplemented as provided in Paragraph 11.01 of the General Conditions.

10. MISCELLANEOUS

10.1. Terms used in this Agreement will have the meanings stated in the General Conditions and the Supplementary Conditions.

10.2. Successors and Assigns: Owner and Contractor each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

10.3. Severability: Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

10.4. Assignment of Contract:

10.4.1. No assignment by a party hereto of any rights under or interests in the Contract shall be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, monies that may become due and monies that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment shall release or discharge the assignor from any duty or responsibility under the Contract Documents.

10.5. Contractor's Certifications:

10.5.1. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this paragraph:

10.5.1.1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process or in Contract execution;

10.5.1.2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract Price at artificial noncompetitive levels, or (c) to deprive Owner of the benefits of free and open competition;

10.5.1.3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, noncompetitive levels; and

10.5.1.4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

10.6. Other Provisions:

10.6.1. Federally Funded Project: Oregon Revised Statute 279A.030 states that if federal rules or regulations conflict with certain ORS provisions, the applicable federal laws, rules, and regulations shall govern.

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement in triplicate. One counterpart each has been delivered to Owner, Contractor, and Engineer. All portions of the Contract Documents have been signed or identified by Owner and Contractor or on their behalf.

This Agreement will be effective on June, 2022 (which is the Effective Date of the Agreement).

OWNER: City of The Dalles
Matthew B. Klebes

Title: City Manager

By: [Signature]

[CORPORATE SEAL]

CITY OF THE DALLES

DOG RIVER PIPELINE REPLACEMENT
(CONTRACT NO. 2022-001)

Attest: Debra Grossman, MC
Title: City Clerk

Address for giving notices:

1215 W. 1st

The Dalles, OR 97058

(If Owner is a corporation, attach evidence of authority to sign. If Owner is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of this Agreement.)

CONTRACTOR: K&E EXCAVATING, INC.

Kerry D. Kuenzi

By: Kerry D. Kuenzi

Title: President

[CORPORATE SEAL]

Attest: Chad M. W. H.

Title: Chief Estimator

Address for giving notices:

3871 Langley Street SE

Salem, OR 97317

License No. 128542

(Where applicable)

Agent for service or process: _____

None

(If Contractor is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)

DUNS number: 054773895

System for Award Management (SAM)

Number: Z23HBESPFUAY

END OF SECTION