

## SERVICES AGREEMENT

<b>Contractor</b>	<b>Summit Excavation LLC</b>
<b>Consideration</b>	<b><u>NTE \$3,260.00</u></b>
<b>Effective Date</b>	May 7, 2024
<b>Completion Date</b>	June 30, 2024
<b>Project/Services</b>	Installation of Two Tree Wells and Structures at 315 Federal Street

This SERVICES AGREEMENT (**Agreement**) is entered by the City of The Dalles, an Oregon municipal corporation (**City**) and Summit Excavation LLC, a Washington State Limited Liability Company (**Contractor**), for Contractor's provision of the installation of two tree wells and structures at 315 Federal Street in The Dalles, Oregon, to the City.

**WHEREAS**, the City requires performance of certain routine services; and

**WHEREAS**, Contractor desires to perform those certain services pursuant to the compensation and conditions set forth herein.

**NOW, THEREFORE**, in consideration of both the provisions set forth herein and other good and valuable consideration, the receipt and sufficiency of which is here acknowledged, the Parties agree:

### A. Contractor's Duties

1. Scope of Services. Contractor agrees, at its expense, to furnish all labor, equipment, materials, expertise, tools, supplies, insurance, licenses, reference and background data and information, including subconsultants approved under this Agreement, and provide any equipment necessary to perform all tasks described in Contractor's April 5, 2024, proposal, attached to and made part of this Agreement as **Exhibit A (Work)**. For purposes of this agreement, equipment, materials, and supplies do not include the furnishing of any tree grates or structures. The Parties agree the Work shall be interpreted broadly to the City's benefit: Contractor agrees to perform all subordinate tasks not explicitly referenced in **Exhibit A** but necessary to fully and effectively perform those specifically listed tasks. The approximate location of work has been provided for general reference, attached to and made part of this Agreement as **Exhibit B**. Exact location to be confirmed by City of The Dalles Community Development Director and/or Development Inspector.
2. Schedule. Contractor agrees to provide services, between May 1, 2024 and June 30, 2024.
3. Insurance and Indemnity.
  - a. Insurance. Contractor agrees, at its expense, to carry and maintain in effect throughout the Contract Term, at least, (1) statutory **Workers' Compensation** coverage, (2) **Comprehensive General Liability** insurance in the amount of \$1,000,000 (per occurrence) and \$2,000,000 (in aggregate), and (3) either **Commercial Automobile Liability** insurance (including coverage for all owned,



hired, and non-owned vehicles) with a combined single limit per occurrence of \$1,000,000 or **Personal Automobile Liability** insurance (with a business endorsement or with a policy that does not exclude business operations) with a minimum liability limit of \$300,000.

- b. Certificates. Except for Workers' Compensation coverage, Contractor agrees to provide the City with certificates of insurance naming the *City of The Dalles* as an additional insured prior to commencement of the Work performed under this Agreement and to further provide the City 30 days' notice before modifying, reducing, or cancelling any insurance policy contemplated by this Agreement.
  - c. Workers' Compensation. Contractor agrees it is solely responsible for maintaining proper and adequate Workers' Compensation coverage. If Contractor's insurance does not cover each and every subconsultant, certificates of insurance issued on policies covering each and every subconsultant shall be filed with the City prior to commencement of the Work, including any subcontract operations. Contractor shall provide the City with evidence it is either a *self-insured employer* or a *carrier-insured employer* for Workers' Compensation pursuant to ORS Chapter 656 prior to commencing any Work.
  - d. Indemnity. Contractor agrees to indemnify, defend, and hold harmless the City, its officers, agents, and employees against all liability, loss, and costs arising from actions, suits, claims, or demands for Contractor's (including Contractor's officers, agents, employees, and subconsultants) acts or omissions in the performance of this Agreement.
4. Payments.
- a. Prompt Payment. Contractor agrees to promptly pay as due all persons supplying labor or materials for the prosecution of services or Work arising from this Agreement: if Contractor fails, neglects, or refuses to make prompt payment of any claim for labor or services furnished to Contractor (including subconsultants), the City may pay such a claim and charge the amount of its payment against funds actually or expectedly due from Contractor. The Parties agree payment of any claim in this manner shall not relieve Contractor or its surety from any obligations with respect to any unpaid claims.
  - b. Industrial Accident Fund. Contractor agrees to pay all contributions or amounts due the Industrial Accident Fund from the Contractor or subcontractors incurred in the performance of this Agreement.
  - c. Labor Hours. Contractor agrees to pay all employees at least time and half pay for all overtime worked in excess of 40 hours in any one work week, except for excluded individuals pursuant to ORS 653.010 to 653.261 or 29 U.S.C. 201 to 209.
  - d. Medical Care. Contractor agrees to promptly pay as due all persons, co-partnerships, associations, or corporations furnishing medical, surgical, hospital care, or other needed care and attention incident to sickness or injury to



Contractor's employees, or all sums which Contractor agrees to pay for such services, and all moneys and sums which Contractor collected or deducted from the wages of its employees pursuant to any law or contract for the purpose of providing or paying for such service.

- e. No Liens. Contractor shall not permit any lien or claim to be filed or prosecuted against the City on account of any Work (including labor or materials) furnished under this Agreement.
- f. Employee Withholdings. Contractor agrees to pay to the Oregon Department of Revenue all sums withheld from its employees pursuant to ORS 316.167.

## B. City's Duties

### 1. Compensation.

- a. Total. The City agrees to compensate Contractor for the Work in an amount not to exceed **\$3,260.00**, payable by check upon completion. Contractor to provide the City with a completed Form W-9 within fourteen (14) days of this Agreement's execution and further expressly agrees the City's payment obligations under this Agreement are a condition subsequent to Contractor's provision to the City of a completed Form W-9.
- b. Payments. The City agrees to make payment upon Contractor's completion of the Work and delivery of an invoice detailing the Work, subject to the City's approval and no more frequently than monthly. Payment shall be made only for Work actually completed as of the invoice date; provided, however, if Contractor requires an up-front partial payment to commence performance under this Agreement, the City may elect to provide Contractor up to one-half of this Agreement's authorized funding before Contractor's performance obligations are triggered.
- c. Satisfaction. Contractor agrees the City's payment of an invoice releases the City from any further obligation to compensate Contractor for the Work (including expenses) incurred as of the invoice date. The Parties agree payment shall not be considered acceptance or approval of the Work or waiver of any defects therein.
- d. Public Budgeting. The City certifies sufficient funds are available and authorized for expenditure to finance the costs of this Agreement during the current fiscal year. The Parties agree appropriations for future fiscal years are subject to budget approval by the City Council.

## C. General Conditions

- 1. Time. The Parties agree time is of the essence to this Agreement's performance: Contractor's prosecution of the Work shall begin without undue delay on or after the Effective Date and shall be completed before or on the Completion Date.



2. Term and Termination. This Agreement's term expires naturally upon the Parties' full performance or on the Completion Date (whichever first) unless sooner modified pursuant to this Agreement. The Parties agree the City may terminate this Agreement with seven (7) days' notice and Contractor may terminate this Agreement with thirty (30) days' notice, both without penalty. The City agrees to compensate Contractor for all approved services rendered prorated to the date the City notices its intent to terminate.
3. Tax Currency. Contractor agrees (and by executing this Agreement, certifies under penalty of perjury) it is, to the best of its knowledge, not in violation of any tax laws described in ORS 305.380.
4. Full Integration/Modification. This Agreement contains the Parties' entire understanding and intent and supersedes all prior negotiations, representations, or other written or oral agreements on this matter. The Parties agree this Agreement may only be modified by a written instrument duly executed by the Parties.
5. Independent Contractor. The Parties agree Contractor is an *independent contractor* as defined by ORS 670.600(2) and as interpreted by regulations promulgated by the Oregon Bureau of Labor and Industries. Neither the terms of this Agreement nor the course of its performance by the Parties shall be construed as implicating an employer-employee relationship. Contractor expressly warrants its exclusive agency free from City direction and control over the means and manner of completing the Work.
6. Assignment/Delegation. The Parties agree no Party shall assign or transfer an interest or duty under this Agreement without the other Party's written consent and any attempted assignment or delegation without written consent shall be invalid.
7. Subconsultants. Contractor agrees to provide the City with a list of proposed subconsultants before awarding any subcontract connected with the Work or this Agreement and shall not retain any subconsultant the City reasonably objects to as incompetent or unfit. Contractor agrees it is as fully responsible to the City for its subconsultants' and employees' (whether directly or indirectly employed) negligent acts and omissions as it is for its employees' negligent acts and omissions. The Parties agree nothing in this Agreement is intended to or shall create any contractual privity between the City and any subconsultant.
8. Enforceability. The Parties agree all disputes connected with this Agreement or its performance shall be heard in the Circuit Court of the State of Oregon for the County of Wasco and any resolutions shall be construed under the laws of the State of Oregon. If any provision of this Agreement is held invalid and unenforceable, the remaining provisions shall be valid and binding upon the Parties.
9. Waiver. The Parties agree a Party's failure to insist upon strict adherence to a provision of this Agreement on any occasion shall not be considered a waiver of the Party's rights or deprive the Party of the right to thereafter insist upon strict adherence to the provision or any other provision of this Agreement.



10. Notices. All notices required or permitted to be given under this Agreement shall be deemed given and received two (2) days after deposit in the United States Mail, certified or registered form, postage prepaid, return receipt requested, and addressed:

*To the City:*                      Community Development Director  
City of The Dalles  
313 Court Street  
The Dalles, OR 97058

*To Contractor:*                  Jake F. Strain  
Summit Excavation LLC  
PO Box 530  
Dallesport, WA 98617

**IN WITNESS WHEREOF**, the Parties duly execute this **SERVICES AGREEMENT** this  
23rd day of May, 2024.

**CITY OF THE DALLES**

**CONTRACTOR**

  
\_\_\_\_\_  
Joshua Chandler  
Community Development Director

  
\_\_\_\_\_  
Jake F. Strain  
Partner/Member



Summit Excavation LLC  
 PO Box 530  
 Dallesport Wa  
 98617

# Estimate

Date 4/5/2024  
 Estimate # 202

**Name / Address**

City of The Dalles  
 1215 W 1st St  
 The Dalles OR 97058

P.O. #  
 Terms

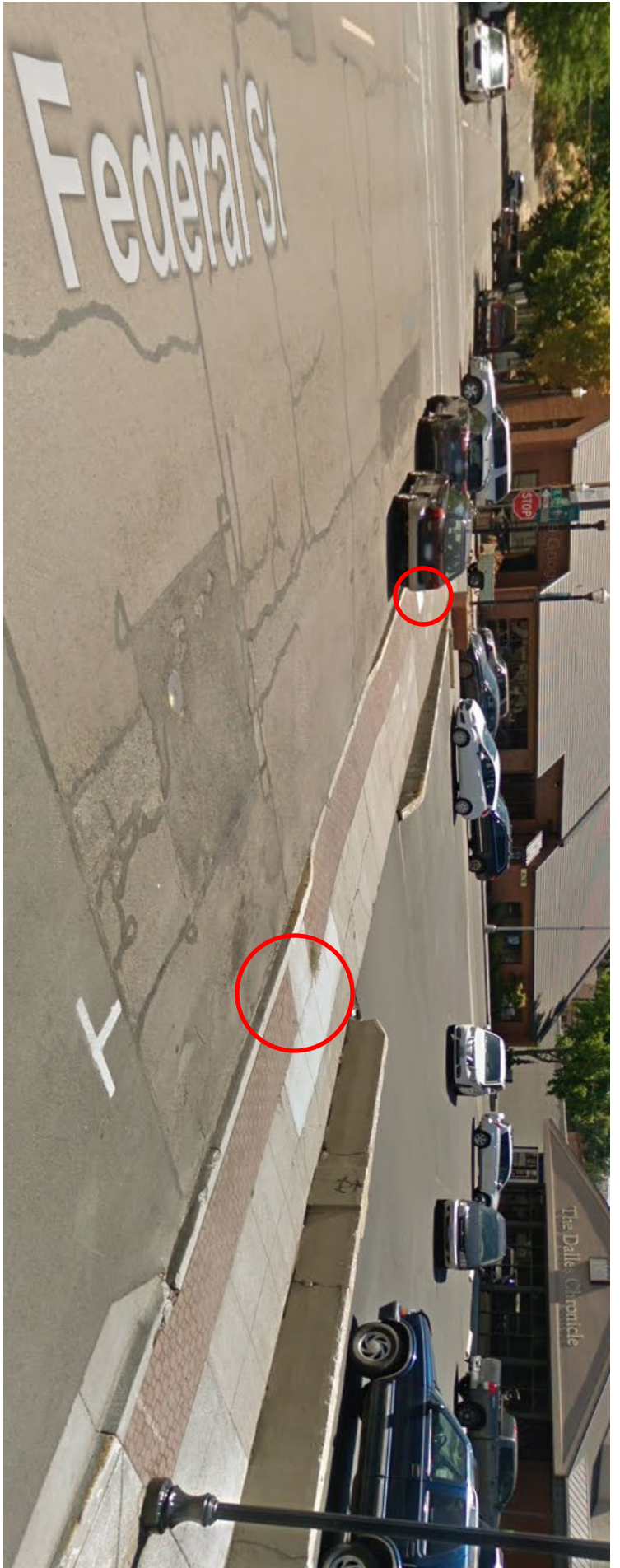
Due Date 4/5/2024  
 Other

Description	Qty	U/M	Rate	Total
Tree well and grate install with prevailing wage				
Cat 305 Excavator	2	hr	176.00	352.00T
Laborers (2 laborers @ 6 hours each)	12	hr	80.00	960.00T
Superintendent	3	hr	106.00	318.00T
Price per tree well. Includes digging the holes and installing the frames in the new concrete. Frames and grates provided by others.				
			Subtotal	\$1,630.00
			Sales Tax (0.0%)	\$0.00
			<b>Total</b>	<b>\$1,630.00</b>

**Summit Excavation LLC**  
 jake@summitexcavation.net

541-993-5253  
 509-767-0623

New Tree Wells (315 Federal Street)



- Approximate Tree Well locations

*Exact location to be confirmed by City of The Dalles Community Development Director and/or Development Inspector*