

## PUBLIC WORKS AGREEMENT

<b>Contractor</b>	Crestline Construction Company, LLC
<b>Consideration</b>	\$1,933,455.00
<b>Effective Date</b>	November 26, 2024
<b>Completion Date</b>	October 31, 2025
<b>Project/Services</b>	<b><i>Project No. 2024-008 East 12<sup>th</sup> Street Storm and Sidewalk Improvements</i></b>

This PUBLIC WORKS AGREEMENT (**Agreement**) is entered by the City of The Dalles, an Oregon municipal corporation (**City**) and Crestline Construction Company, an LLC (**Contractor**), for Contractor's provision of construction services to the City.

**WHEREAS**, the City requires performance of certain public works described in the solicitation for Project No. 2024-008, attached to and made part of this Agreement as **Exhibit A**; and

**WHEREAS**, Contractor desires to perform those certain public works and 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 Work. Contractor agrees, at its expense, to furnish all labor, equipment, materials, expertise, tools, supplies, insurance, licenses, reference and background data and information, including subcontractors approved under this Agreement, and provide any equipment necessary to perform all tasks described in Contractor's scope of work, attached to and made part of this Agreement as **Exhibit B** (together with the services solicited through Exhibit A, **Work**). 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 **Exhibits A and B** but necessary to fully and effectively perform those specifically listed tasks.
2. Examination. Contractor agrees it examined the project site and the contract documents connected with the solicitation for this Work prior to its submittal of its bid. The Parties agree Contractor's submission of a bid for this Agreement's award is expressly considered prima facie evidence Contractor made such an examination and is satisfied as to the conditions to be encountered in its performance of the Work and as to the requirements of the contract documents. Contractor agrees to protect itself in the unit prices or the lump sum proposed on the Work. Contractor agrees its failure to visit or thoroughly familiarize itself with the labor, equipment, and material required, the difficulty of the conditions involved, or the scope of the project or the Work shall neither relieve Contractor of its obligation to complete the Work and perform under this Agreement for the price proposed nor entitle Contractor to a price adjustment.



3. Insurance and Indemnity.

a. Insurance. Contractor agrees, at its expense, to carry and maintain in effect throughout this Agreement's term (at least) the following coverage policies:

- (i) **Workers' Compensation** coverage in the amount of \$1,000,000;
- (ii) **Comprehensive General Liability** insurance covering property damage and bodily injury in the amount of \$1,000,000 (*per occurrence*) and \$3,000,000 (*in aggregate*);
- (iii) **Mobile Equipment Liability** insurance in the amount of \$500,000 (*per occurrence*) and \$2,000,000 (*in aggregate*);
- (iv) **Contractors Pollution Liability** insurance in the amount of \$1,000,000;
- (v) **Pollution Liability** insurance (including coverage for automobiles transporting hazardous materials) through a Commercial General Liability policy approved by the City as to terms, conditions, and form and is Pollution Specific with a minimum limit of \$2,000,000 (*per occurrence*) and \$3,000,000 (*in aggregate*) written on either (a) a full occurrence form, (b) a limited occurrence form with at least a three-year tail, or (c) a claims-made form with a three-year tail; and
- (vi) **Commercial Automobile Liability** insurance (including coverage for all owned, hired, and non-owned vehicles) with a *combined single limit per occurrence* of \$2,000,000.

b. Certificates. Contractor agrees to provide the City with certificates of insurance naming the **City of The Dalles, its employees, officials, and agents** as an additional insured prior to commencement of the Work performed under this Agreement and to further provide the City *thirty (30) days'* written notice before cancelling or reducing any insurance policy contemplated by this Agreement. Contractor agrees its failure to notice the City of cancellation of or reduction to any insurance policy contemplated by this Agreement is, at the City's sole discretion, grounds for immediate termination of this Agreement.

c. Subcontractor Insurance. Contractor agrees to require its subcontractors performing Work under this Agreement to carry and maintain in effect throughout this Agreement's term Workers' Compensation coverage, Commercial General Liability, Pollution Liability, and Commercial Automobile Liability with coverage's equivalent to those listed in Section A(3)(a) of this Agreement. Contractor further agrees to require those subcontractors to provide Contractor with certificates of insurance as evidence of coverage and (upon City's request) provide the City with certificates of insurance for any subcontractor performing Work under this Agreement. The Parties agree this subsection survives the expiration or sooner termination of this Agreement.



- d. 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 subcontractor, certificates of insurance issued on policies covering each and every subcontractor 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.
- e. 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 subcontractors) acts or omissions in the performance of this Agreement; provided, however, in no event does Contractor agree to such indemnification, defense, or holding harmless due to the City's sole negligence.
4. Payments and Retainage.
- 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 (including subcontractors) fails, neglects, or refuses to make prompt payment of any claim for labor or services furnished to Contractor (including subcontractors), the City may pay such a claim and charge the amount of its payment against funds actually or expectedly due from Contractor plus a non-waivable *nine (9%) percent* interest commencing at the end of the ten-day period within which payment is due under ORS 279C.580(4), unless payment is subject to a good faith dispute as defined in ORS 279C.580. 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. Any person supplying labor or materials in connection with this Agreement may file a complaint with the Construction Contractors Board against Contractor (including subcontractors) stemming from Contractor's (including subcontractors') failure, neglect, or refusal to promptly pay them as due, unless payment is subject to a good faith dispute as defined in ORS 279C.580, only if the person has not been paid in full and gives written notice of claim pursuant to ORS 279C.605 to Contractor and the City.
- 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 *forty (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. Contractor further agrees to abide by all other restrictions governing labor hours on public contracts pursuant to ORS 279C.540 and 279C.545, including time limitations on claims for overtime.



- 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.
- g. Retainage. The Parties agree retainage shall be withheld and released in accordance with ORS 279C.550 to 279C.580, as follows:
- (i) Retainage Generally. Contractor agrees the City may reserve as retainage from any progress payment an amount not to exceed *five (5%) percent* of the payment. As Work progresses, the City may reduce the retained amount and may eliminate retainage on any remaining monthly payments after *fifty (50%) percent* of the Work is completed if, in the City's opinion, such Work is progressing satisfactorily. The Parties agree elimination or reduction of retainage is allowed only upon Contractor's written application, which application must include Contractor's surety's written approval; provided, however, when the Work is *ninety-seven and one-half (97.5%) percent* completed, the City may, at its discretion and without Contractor's application, reduce the retained amount to *one hundred (100%) percent* of the value of the Work remaining to be done. Upon receipt of Contractor's written application, the City agrees to respond (in writing) within a reasonable time.
- (ii) Form of Retainage. In accordance with ORS 279C.560 and any applicable administrative rules, unless the City finds in writing accepting a bond, security, or other instrument described in options (a) or (c) below poses an extraordinary risk not typically associated with the bond, security, or instrument, the City agrees to approve Contractor's written request:
- (a) to be paid amounts which would otherwise have been retained from progress payments where Contractor has deposited with the City bonds, securities, or other instruments specified in ORS 279C.560 or in a custodial account or other mutually-agreed account satisfactory to the City, with an approved bank or trust company, to be held in lieu of the cash retainage for the City's benefit. Interest or earnings on the bonds, securities, or other instruments shall accrue to the Contractor. The Contractor agrees to execute and provide such documentation and instructions respecting the bonds, securities, and other instruments as the City may require to protect its interests. To be permissible, the bonds, securities, and other instruments must be of a character approved by the City Attorney;



- (b) retainage be deposited in an interest-bearing account in a bank, savings bank, trust company, or savings association for the City's benefit, with interest from such account accruing to the Contractor; or
- (c) the Contractor be allowed, with the City's approval, to deposit a surety bond for the City's benefit, in a form acceptable to the City Attorney, in lieu of all or a portion of funds retained or to be retained. Such bond and any proceeds therefrom shall be made subject to all claims and liens in the manner and priority as set forth for retainage under ORS 279C.550 to ORS 279C.625. Where the City has accepted Contractor's election of any of the options above, the City may recover from Contractor any additional costs incurred through such election by reducing Contractor's final payment. Where the City has agreed to Contractor's request to deposit a surety bond under this option (c), Contractor agrees accept like bonds from its subcontractors and suppliers from which Contractor has required retainage to support the Work.

If the City accepts bonds, securities, or other instruments deposited as provided in options (a) and (c), the City agrees to reduce the moneys held as retainage in an amount equal to the value of the bonds, securities, and other instruments and pay the amount of the reduction to Contractor in accordance with ORS 279C.570.

- (iii) Interest. The retainage held by the City shall be included in and paid to Contractor as part of the final payment of the Contract Price. The City agrees to pay Contractor interest at the rate of *one and one-half* (1.5% per month) *percent per month* on the final payment due Contractor, with interest commencing *thirty* (30) *days* after the Work has been completed and accepted and running until the date Contractor must notify the City in writing it considers the Work complete, and the City agrees, within *fifteen* (15) *days* after receiving the written notice, to either accept the Work or notify Contractor of Work yet to be performed. If the City does not within the time allowed notify Contractor of Work yet to be performed to fulfill its contractual obligations, the interest provided by this subsection shall commence to run *thirty* (30) *days* after the end of the 15-day period.
- (iv) Contractor's Retainage. If Contractor pays a subcontractor in full, including the amount Contractor withheld as retainage, the City agrees to pay Contractor (out of the amount the City withheld from Contractor as retainage) a sum equal to the amount of retainage Contractor paid its subcontractor. Contractor agrees to notice the City in writing when it pays a subcontractor in full under this subsection and the City agrees to pay Contractor the amount due Contractor under this subsection within *fifteen* (15) *days* after it receives notice. The City agrees to pay interest on the amount due Contractor at the rate of *one* (1% per month) *percent per month* commencing *thirty* (30) *days* after the City receives Contractor's notice of full payment to the subcontractor.
- (v) Subcontractor Retainage. If Contractor elects to reserve a retainage from any progress payment due any subcontractor or supplier, Contract agrees such



retainage shall not exceed *five (5%) percent* of the payment and such retainage withheld from subcontractors and suppliers shall be subject to the same terms and conditions stated in this Agreement as applicable to the City's retainage from any progress payment due Contractor; provided, however, if (in accordance with ORS 279C.560) Contractor has deposited bonds, securities, or other instruments or has elected to have the City deposit accumulated retainage in an interest-bearing account, Contractor agrees to comply with ORS 701.435 respecting the deposit of bonds, securities, or other instruments by subcontractors and suppliers and the sharing of interest earnings with subcontractors and suppliers.

5. Prevailing Wage Rates, Retainage, and Bonds.

- a. Prevailing Wage Rates. Contractor agrees to comply with the prevailing wage provisions of ORS 279C.800 through 279C.870. The Oregon Bureau of Labor and Industries (**BOLI**) determines and publishes the existing Oregon prevailing wage rates in its publication *Prevailing Wage Rates for Public Works Contracts in Oregon*. Contractor agrees to pay workers performing Work not less than the specified minimum hourly wage rate according to ORS 279C.838 and ORS 279C.840, and further specifically agrees to include this requirement in any subcontracts relating to the Work or this Agreement.
- b. Certification and Prevailing Wage Retainage. Contractor (including subcontractors) agrees to submit written certified statements to the City on the form prescribed by BOLI's Commissioner in OAR 839-025-0010 certifying compliance with wage payment requirements and accurately setting out Contractor's (including subcontractors') weekly payroll records for each worker performing Work. Contractor (including subcontractors) agree to preserve the certified statements for a period of *six (6) years* from the Completion Date. Contractor agrees the City will retain *twenty-five (25%) percent* of any amount earned by the Contractor under this Agreement until the Contractor has filed the certified statements required by ORS 279C.845(7). The City agrees to pay Contractor the amount retained within *fourteen (14) days* after Contractor files the required certified statements, regardless of whether subcontractors failed to file certified statements.
- c. Contractor's Prevailing Wage Retainage. Contractor agrees to retain *twenty-five (25%) percent* of any amount earned by a first-tier subcontractor under this Agreement until the subcontractor files with the City the certified statements required by ORS 279C.845. Before paying any amount retained, Contractor agrees to verify the first-tier subcontractor filed the certified statement. Within *fourteen (14) days* after the first-tier subcontractor files the required certified statement, Contractor agrees to pay the subcontractor any amount retained.
- d. Bonds. Before starting any Work under this Agreement, and using the forms of bonds attached to and made part of the solicitation document for Project No. 2024-008 (and thus this Agreement) where applicable, Contractor (including its sureties) agrees:



- (i) to file a **public works bond** with the Construction Contractors Board in the amount of \$30,000 and consistent with ORS 279C.836, unless Contractor or its subcontractors are eligible to elect not to so file or are otherwise exempt from filing pursuant to ORS 279C.836(4), (7), (8), or (9), and further specifically agrees to include this requirement in any subcontracts relating to the Work or this Agreement;
- (ii) to execute and deliver to the City Manager a **performance bond** in an amount equal to the full contract price conditioned on the faithful performance of this Agreement in accordance with its plans, specifications, and conditions; and
- (iii) to execute and deliver a **payment bond** in an amount equal to the full contract price, solely for the protection of claimants under ORS 279C.600.

6. Other.

- a. Solicitation. Contractor agrees to each and every obligation or restriction imposed by the solicitation document for Project No. 2024-008 and this Agreement, all as if incorporated here; Contractor further specifically agrees such obligations or restrictions are supplemental to its duties under this Agreement. In the event of a conflict between any provision of the solicitation document for this Agreement and this Agreement, the Parties agree to attempt to reconcile the apparently conflicting provisions so as to harmonize them; if the Parties fail to reasonably harmonize such provisions, the terms of this Agreement control.
- b. Final Inspection and Acceptance. Upon completion, Contractor agrees to notice the City in writing it completed the Work so the City can undertake a final inspection. The City agrees to inspect the Work (and all records generated by Contractor relating to the Work) within *fifteen (15) days* of its receipt of Contractor's completion notice. The City agrees to either accept the work or notice Contractor of any defects or remaining performance necessary to fully complete the Work. The City agrees to provide Contractor its final acceptance of the Work once it determines all of the Work has been performed satisfactorily.
- c. Drug Testing. Contractor agrees to demonstrate to the City it has an employee drug testing program in place before it commences performance of this Agreement.
- d. Environmental Compliance. Contractor agrees to abide all applicable ordinances, rules, and regulations dealing with the prevention of environmental pollution and the preservation of natural resources impacting the performance of this Agreement, including (without limitation) ORS Chapters 459 (Solid Waste Management), 459A (Reuse and Recycling), 465 (Hazardous Waste and Hazardous Material I), 466 (Hazardous Waste and Hazardous Materials II), 467 (Noise Control), 468 (Environmental Quality Generally), 468A (Air Quality), and 468B (Water Quality), the associated Oregon Administrative Rules promulgated by Oregon Department of Environmental Quality, plus all other reasonably similar or relevant local, state, or federal laws.



- e. 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.

## B. City's Duties

### 1. Compensation.

- a. Total. The City agrees to compensate Contractor for the Work in an amount not to exceed **\$1,933,455.00**.
- b. Progress Payments. The City agrees to make progress payments 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. The City shall pay Contractor interest on its progress payments (not including retainage) commencing *thirty (30) days* after receiving Contractor's invoice or *fifteen (15) days* after payment is approved by the City, whichever is earlier. The Parties agree ORS 279C.570(2) determines the rate of interest charged to the City for this subsection's purpose.
- 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.
- e. Other Duties. The City agrees to reasonably satisfy any commitments it made in this Agreement's solicitation.

## 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, all as subject to Section C(8); provided, however, the Parties agree Contractor will not perform any on-site Work prior to the City's issuance of a *Notice to Proceed*, which the City agrees to send once Contractor submits all required information and documentation pursuant to this Agreement.
- 2. Termination/Modification. 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. The Parties agree termination of this Agreement is subject to ORS 279C.655. The Parties agree this Agreement may only be modified by a written instrument duly executed by the Parties.

3. Full Integration/Conflict. This Agreement contains the Parties' entire understanding and intent and supersedes all prior negotiations, representations, or other written or oral agreements on this matter (including the City's solicitation for the Work and the applicable *City of The Dalles Standard Specifications for Construction – General Conditions*). If any of the negotiations or documents mentioned in this subsection conflict with the terms of this Agreement, the Parties expressly agree the provisions of this Agreement control.
4. Independent Contractor. The Parties agree Contractor is an *independent contractor* as defined by ORS 670.600(2) and as interpreted by regulations promulgated by BOLI. 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.
5. 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.
6. Subcontractors.
  - a. List. Contractor agrees to provide the City with a list of proposed subcontractors within *ten (10) days* of this Agreement's mutual execution and before awarding any subcontract connected with the Work or this Agreement, and shall not retain any subcontractor the City reasonably objects to as incompetent or unfit.
  - b. Responsibility. Contractor agrees it is as fully responsible to the City for its subcontractors' and employees' (whether directly or indirectly employed) negligent acts and omissions as it is for its employees' negligent acts and omissions.
  - c. Registration. Contractor agrees (and by executing this Agreement, certifies) all subcontractors performing Work under this Agreement will be registered with the Construction Contractors Board in accordance with ORS 701.035 to 701.055 before they commence any Work.
  - d. No Privity. Contractor agrees all of its subcontracts under this Agreement shall provide the Work performed under the subcontract shall be performed according to the terms of this Agreement; whether stated in the subcontract, Contractor agrees to remain solely responsible for the administration of the subcontract, including (without limitation) the performance of the subcontracted Work, progress of the subcontracted Work, payment for accepted subcontracted Work, and disputes and claims for additional compensation regarding all subcontracted Work. The Parties agree nothing in this Agreement is intended to or shall create any contractual privity between the City and any subcontractor.



- e. Mandatory Construction Contract Clauses. Contractor agrees to include in each subcontract for property or services it enters with a first-tier subcontractor (including a material supplier) for the purpose of performing a *construction* contract to support the Work:
- (i) a payment clause obligating Contractor to pay the first-tier subcontractor for satisfactory performance under the subcontract within *ten (10) days* out of amounts the City pays to Contractor under this Agreement;
  - (ii) a clause requiring Contractor to provide a first-tier subcontractor with a standard form the first-tier subcontractor may use as an application for payment or as another method by which the subcontractor may claim a payment due from Contractor;
  - (iii) a clause requiring Contractor, except as otherwise provided in this subsection, to use the same form and regular administrative procedures for processing payments during the entire term of the subcontract. Contractor may change the form or the regular administrative procedures Contractor uses for processing payments if the Contractor (a) notifies the subcontractor in writing at least *forty-five (45) days* before the date on which Contractor makes the change and (b) includes with the written notice a copy of the new or changed form or a description of the new or changed procedure; and
  - (iv) an interest penalty clause obligating Contractor, if Contractor does not pay the first-tier subcontractor within *thirty (30) days* after receiving payment from the City, to pay the first-tier subcontractor and interest penalty on amounts due in each payment the Contractor does not make in accordance with the payment clause included in the subcontract under Section C(6)(e)(i). Contractor or its first-tier subcontractor is not obligated to pay an interest penalty if the only reason Contractor or its first-tier subcontractor did not make payment when payment was due is neither received payment from the City or Contractor when payment was due. The interest penalty (a) applies to the period beginning on the day after the required payment date and ends on the date on which the amount due is paid and (b) is computed at the rate specified in ORS 279C.515(2).
- f. Mandatory Payment Clause. Contractor agrees to include in each subcontract it enters with a first-tier subcontractor for the purpose of performing *any* contract to support the Work a clause requiring the first-tier subcontractor to include a payment clause and an interest penalty clause conforming to the standards of Section C(6)(e) in each of the first-tier subcontractor's subcontracts and to require each of its first-tier subcontractor's subcontractors to include such clauses in the first-tier subcontractors' subcontracts with each lower-tier subcontractor or supplier.

7. 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.

8. Liquidated Damages. Contractor agrees to prosecute the Work vigorously to completion and consistent with Section C(1). Contractor agrees delays in its performance under this Agreement will cause the City to sustain damages, increase risk to, inconvenience, and interfere with the public and commerce, and increase costs to taxpayers; accordingly, because the City finds it unduly burdensome and difficult to demonstrate the exact dollar value of such damages, Contractor specifically agrees to be subject to the provisions of Section 00180.85(b) of the applicable *City of The Dalles Standard Specifications for Construction – General Conditions* and pay the City (not as a penalty but as liquidated damages) the amounts determined by that Section 00.180.85(b) for each day the Work remains incomplete after the expiration of the contract time or adjusted contract time applicable to that Work. The Parties further agree any such damages paid pursuant to this subsection constitute payment in full only of damages incurred by the City due to Contractor's failure to complete the Work on time.
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. Force Majeure. The Parties agree neither Party shall be held responsible for delay in the performance of this Agreement caused by circumstances beyond their control and making performance commercially impracticable, illegal, or impossible. The City may terminate this Agreement upon written notice after determining such delay will unreasonably prevent successful performance of this Agreement.

***Continues on next.***



11. 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:* City Manager  
City of The Dalles  
313 Court Street  
The Dalles, OR 97058

*To Contractor:* Erik Kerr  
Crestline Construction Company, LLC  
3600 Crates Way, Suite 100  
The Dalles, OR 97058

**IN WITNESS WHEREOF**, the Parties duly execute this **PUBLIC WORKS AGREEMENT** this 5<sup>th</sup> day of December, 2024.

**CITY**

  
Matthew B. Klebes, City Manager

**CONTRACTOR**

  
Erik Kerr, Manager

*Bill Kerrison  
Operations Manager*

**ATTEST:**

  
Amie Ell, City Clerk

**Approved as to form:**

  
Jonathan M. Kara, City Attorney

