

EXCAVATION AGREEMENT

This Excavation Agreement ("Agreement") is made and entered into effective on June 7, 2018 (the "Effective Date") between the City of John Day ("City"), whose address is 450 E Main Street, John Day, Oregon 97845, and L&L Excavating ("Contractor"), whose address is P.O. Box 28, Mount Vernon, Oregon 97865.

RECITALS:

- A. The City desires to contract services for the excavation and removal of material for the Canton Street Extension project.
- B. Subject to the terms and conditions contained in this Agreement, Contractor will perform the Services (as defined below) for and on behalf of the City.

AGREEMENT:

NOW, THEREFORE, in consideration of the parties' mutual obligations contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. Contractor Services. Contractor will perform the excavation services for and on behalf of City as described in Specifications and engineered plan enclosed.
2. Contractor Compensation. Subject to the terms and conditions contained in this Agreement, City will pay Contractor at the per yard rate of \$8.99/cubic yard. Quoted \$/yard rate will be all inclusive of equipment and time and materials required to perform the Services. Contractor will invoice City upon completion of the project. Invoice will contain the following information: (a) a summary of the Services performed by Contractor; (b) the number of yards excavated to perform the Services.
3. Quality of Services. Contractor will perform the Services to the best of Contractor's ability, diligently, in good faith, in a professional manner, and consistent with the terms and conditions contained in this Agreement. The Services will be performed in accordance with applicable State and Local Regulations. Contractor will be solely responsible for the Services. Contractor warrants they have obtained all licenses, approvals, and/or certificates necessary or appropriate to perform the Services.
4. Insurance. During the term of this Agreement, Contractor will obtain and maintain minimum levels of general liability insurance for all losses or claims arising out of or related to Contractor's performance of its obligations under this Agreement (including, without limitation, damages as a result of death or injury to any person or destruction or damage to any property).
5. Indemnification. Contractor will defend, indemnify, and hold City harmless for, from, and against all claims, actions, proceedings, damages, liabilities, injuries, losses, and expenses of every kind, whether known or unknown, including, without limitation, attorney fees, resulting from or arising out of, whether directly or indirectly, the following: (a) damage, injury, and/or death to person or property caused directly or indirectly by Contractor (and/or Contractor's shareholders, officers, agents, employees, directors, representatives, and/or contractors); (b)

Contractor's failure to pay any tax arising out of or resulting from the performance of the Services; and/or (c) Contractor's breach and/or failure to perform any Contractor representation, warranty, covenant, and/or obligation contained in this Agreement. Contractor's indemnification obligations provided in this Section 5 will survive the termination of Agreement.

6. Term; Termination. Subject to the terms and conditions contained in this Agreement, the term of this Agreement commences on the Effective Date and will remain in full force and effect until the completion of the Services (which in no event will be later than June 30, 2018) unless sooner terminated as provided in this Agreement. This Agreement may be extended by the parties' mutual written agreement.
7. Termination by Mutual Agreement or City Notice. Notwithstanding anything contained in this Agreement to the contrary, this Agreement may be terminated (a) at any time by the mutual written agreement of City and Contractor, and/or (b) immediately by City for convenience and with or without cause.
8. Consequences of Termination. Upon termination of this Agreement, City will not be obligated to reimburse or pay Contractor for any continuing contractual commitments to others or for penalties or damages arising from the cancellation of such contractual commitments.
9. Remedies. If a party breaches or otherwise fails to perform any of its representations, warranties, covenants, and/or obligations under this Agreement, the non-defaulting party may, in addition to any other remedy provided to the non-defaulting party under this Agreement, pursue all remedies available to the non-defaulting party at law or in equity.
10. Dispute Resolution. If any claim, dispute, or controversy arising out of or related to this Agreement occurs (a "Dispute"), City and Contractor will exert their best efforts to seek a fair and prompt negotiated resolution of the Dispute and will meet at least once to discuss and seek a resolution of the Dispute. If the Dispute is not resolved by negotiated resolution, the Dispute will be settled by arbitration. The resolution of any controversy or claim as determined by the arbitrator will be binding on the parties and judgment upon the award rendered may be entered in any court having jurisdiction. The prevailing party in the arbitration will be entitled to recover from the other party all expenses incurred in connection with the arbitration.

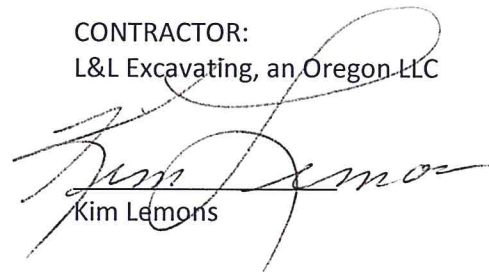
IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed and made effective for all purposes as of the Effective Date.

CITY OF JOHN DAY:
City Manager



Nicholas Green

CONTRACTOR:
L&L Excavating, an Oregon LLC



Kim Lemons

SPECIFICATIONS:

The Canton Street Plan and Profile enclosed (Figure 1), created by Sisul Engineering, dated April 2018 are the engineered plans for this project and detail the required excavation Services.

- 1) Excavation scope. Contractor will excavate 14" of street and cul-de-sac as detailed in (Figure 1). City reserves the right to modify scope increasing or decreasing the amount of material to be excavated.
- 2) Material Removal. Contractor will be responsible for the removal and disposal of excavated material. If necessary, a dump site will be assigned on the north side of the City's Oregon Pine property.
- 3) Locates. Contractor required to call in any necessary locates prior to commencement of work.
- 4) Schedule. Excavation work needs to be complete by June 30, 2018. If this timeframe cannot be met, a reasonable completion date will be mutually agreed upon.
- 5) Neighbors. Due to timing on this project there may be construction work being performed simultaneously on adjacent properties. Please be aware and mindful as access and logistics may be impacted.
- 6) Contact. Please direct questions or clarifications related to this project to Monte Legg, Public Works Director for the City of John Day, 541-792-0703 or Joe Hitz, Sisul Engineering, 541-575-3777.