

ORDINANCE NO.: 2022-53

FIRST READING June 13, 2022

INTRODUCED BY: MARK PORTER

SECOND READING WAIVED

THIRD READING WAIVED

**ORDINANCE APPROVING THE AGREEMENT WITH MR. EXCAVATOR, INC. FOR THE CONSTRUCTION OF THE VILLAGE OF SOUTH RUSSELL'S CENTRAL RETENTION BASIN PROJECT, AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT ON BEHALF OF THE VILLAGE OF SOUTH RUSSELL, AND DECLARING AN EMERGENCY.**

**WHEREAS**, the Village of South Russell awarded the bid for the Central Retention Basin project in the Village of South Russell ("Project") to Mr. Excavator, Inc. pursuant to Ordinance No. 2022-44, subject to an acceptable contract between the Village of South Russell and Mr. Excavator, Inc.; and

**WHEREAS**, Council desires to enter into an agreement with Mr. Excavator, Inc. for the construction of the Village of South Russell's Central Retention Basin.

**NOW, THEREFORE, BE IT ORDAINED** by the Council of the Village of South Russell, Geauga County, Ohio that:

**SECTION 1.** The Agreement for the Construction of the Village of South Russell's Central Retention Basin ("Agreement") with Mr. Excavator, Inc., attached hereto and incorporated herein as Exhibit A, and which Agreement will also be part of the Bid Book, is hereby approved.

**SECTION 2.** The Mayor is hereby authorized to execute the Agreement on behalf of the Village of South Russell.

**SECTION 3.** It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees on or after December 2, 1975, that resulted in formal actions, were in meetings open to the public in compliance with all legal requirements, including Section 121.22, Ohio Revised Code.

**SECTION 4.** That this Ordinance is declared to be an emergency measure necessary for the immediate preservation of the public peace, property, health and safety of the inhabitants of the Village and for the further reason to allow the commencement of the construction to begin immediately; wherefore provided it receives the affirmative vote of at least two-thirds (2/3) of all members elected to Council, this Ordinance shall be in full force and effect from and immediately upon its passage by this Council and approval by the Mayor.

Wilhami H. Roms  
Mayor - President of Council

ATTEST:

Danuelle Romanowski  
Fiscal Officer

I certify that Ordinance No. 2022-53 was duly enacted on the 13<sup>TH</sup> day of JUNE, 2022, by the Council of the Village of South Russell, and posted in accordance with the Codified Ordinances of the Village.

Danuelle Romanowski  
Fiscal Officer

AGREEMENT FOR THE CONSTRUCTION OF THE VILLAGE OF SOUTH RUSSELL'S  
CENTRAL RETENTION BASIN

This Agreement for the Construction of the Village of South Russell's Central Retention Basin ("Agreement") is made this 13<sup>TH</sup> day of JUNE, 2022 by and between the Village of South Russell ("Village"), a municipality in the State of Ohio, and Mr. Excavator, Inc. ("Contractor") (collectively, the "Parties" and each as a "Party").

WHEREAS, the Parties desire to contract for the construction of a central retention basin located in the Village to control certain stormwater issues in the Village (the "Project");

WHEREAS, the Village solicited for bids for construction of the Project in accordance with Ohio law and opened such bids on May 13, 2022 in which the Village determined that the lowest responsible responsive bidder for the Project was Contractor;

WHEREAS, the Village is the recipient of funds from the federal government pursuant to the American Rescue Plan Act ("ARPA"), which ARPA funds will be applied by the Village toward this stormwater Project; and

WHEREAS, Contractor acknowledges that the Village will use ARPA funds to pay for the Project that is part of this Agreement provided that Contractor complies with all terms and conditions associated with ARPA, including all state and federal laws, regulations, and executive orders.

NOW THEREFORE, based on the mutual promises and covenants above, the Parties mutually agree as follows:

1. CONTRACTOR REPRESENTATIONS. Contractor agrees and by this presents that it does agree with the Village for the consideration hereinafter mentioned and contained, and under penalty expressed in a bond given with these presents, and herein contained or hereunto annexed,

to furnish at its own cost and expense, all the necessary tools, equipment, materials, labor, and tests in an expeditious, substantial and workmanlike manner, the equipment and appurtenances herein contemplated, commencing work within 20 days from the date of the Notice to Proceed and executing the work within the time and in the manner specified and in conformity with the requirements set forth in this Agreement for the Project.

The following form the essential parts of this Agreement which are contained in the Contract Book:

1. Advertisement for Bids/Public Notice to Bidders
2. Instruction to Bidders
3. Bid Forms and Proposal
4. Contract Forms and Exhibits
5. Contract Bond – ORC 153.571 or ORC 153.57
6. Contract Provisions
7. General Conditions
8. Supplementary Conditions
9. Specifications
10. Specific Project Requirements
11. Prevailing Wage Rate Schedule
12. Contract Drawings, if any
13. Village of South Russell Uniform Guidance Procurement Policy American Rescue Plan Act

Contractor further agrees to perform construction for the Project in accordance with the Specifications, the Specific Project Requirements, and the Contract Drawings and plans contained in the Contract Book.

2. COMPLIANCE WITH ARPA. Contractor agrees and understands that the work and construction pursuant to this Agreement shall be subject to the acceptance of the Village based upon and in accordance with the Specifications, the Specific Project Requirements, and Contract Drawings and plans on file in the office of the Village and that payment of such work on this Project is contingent upon compliance with all federal and state law, regulations, executive orders,

and ARPA.

3. PREVAILING WAGES. Contractor agrees that each individual employed by the Contractor or any subcontractor and engaged in work on the Project under this Agreement shall be paid by prevailing wage established by the Department of Industrial Relations of the State of Ohio or the U.S. Department of Labor (Davis-Bacon Act) as detailed in the Section 8 of the Contract Book titled "Prevailing Wage Rates" and that such prevailing wage shall be paid regardless of any contractual relationship which may be said to exist between the Contractor or any subcontractor and such individual.

4. CONSTRUCTION COMPLETION DATE; LIQUIDATED DAMAGES. Contractor shall proceed with the work on the Project in a prompt and diligent manner and shall do the several parts thereof. Contractor shall complete the whole of said work on the Project in accordance with the Specifications, Specific Project Requirements, and Contract Drawings and plans to the satisfaction of the Village on or before October 28, 2022, and in default of completion within the time as fixed, the Contractor shall pay to the Village as liquidated damages, an amount equal to \$1,000.00 for each and every day (Sundays and legal holidays excepted) the completion of the work for the Project may be delayed beyond the date fixed in the manner and as stipulated.

5. PAYMENT CONTINGENT UPON ARPA COMPLIANCE. It is hereby mutually agreed that the Village is to pay and the Contractor is to receive, as full compensation for furnishing all materials and labor in building, constructing and testing and in all respect completing the herein described work and appurtenances in the manner and under the conditions herein specified for the Project, the prices stipulated in Contractor's Proposal and verified by the Bid Tabulation contained herein and the total sum is \$306,835.20 upon the Village's verification and confirmation that Contractor complied with all federal and state law, regulations, executive orders, and ARPA. Final

payments totaling this amount shall constitute full and final payment for all the work on the Project under this Agreement.

6. TERM. This Agreement is effective for the period beginning June 13, 2022 and terminating on or before October 31, 2022, with the termination date dependent upon the Project's final completion as verified in writing to the Contractor by the Village Engineer, unless either Party terminates the Agreement in accordance with Section 7 of this Agreement or the General Conditions contained in the Bid Book.

7. TERMINATION. The Village may terminate this Agreement with or without cause upon thirty (30) days written notice to Contractor. In the event of termination without cause, the Village agrees to pay Contractor for work executed and costs incurred by Contractor for the Project up to the date of termination. Either Party may terminate this Agreement for a material breach; provided however, that the terminating party has given the other party at least fourteen (14) days written notice of the opportunity to cure the breach. Termination for breach will not alter or affect the terminating Party's right to exercise any other remedy for a breach, which remedies include but are not limited to specific performance, injunctive relief, monetary damages, and all other remedies available at law or in equity

8. INDEMNIFICATION. Contractor agrees to indemnify and hold the Village harmless from any and all claims for injury or damages arising from the work on the Project and activities that are the subject of this Agreement and which are attributable to Contractor's own actions or omissions of those of its officers, agents, employees, subcontractors, suppliers, third parties utilized by Contractor in performance of this Agreement, or those persons or entities in a joint venture with Contractor in any activities related to the performance of this Agreement. In no event shall either Party be liable to the other Party for indirect, consequential, incidental, special



or punitive damages or for lost profits.

9. MISCELLANEOUS.

a. Contractor shall adhere to all requirements of the Davis-Bacon Act as amended, 40 U.S.C. §3141-3148 and/or Ohio Prevailing Wage law.

b. Contractor agrees to comply with all provisions set forth in 41 C.F.R. Part 60-1.4(b), including but not limited to prohibiting discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, national origin, or for inquiring about, discussing, or disclosing compensation. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity or national origin.

c. To the extent applicable to this Agreement, Contractor must comply with the Contract Work Hours and Safety Standards Act, codified at 40 U.S.C. §3702 and 3704, as supplemented by Department of Regulations codified at 29 C.F.R. Part 5. The Contract Work Hours and Safety Standards Act require in part that computation of the wages of every mechanic and laborer on the basis of a standard work week is forty (40) hours, work in excess of the forty (40) hour work week for compensation at a rate of not less than one and one-half (1 ½) times the basic rate, and prohibition of work conditions that are unsanitary, hazardous or dangerous.

d. Contractor must comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act and Federal Water Pollution Control Act as codified at 42 U.S.C. §7401 to 7671q codified at 33 U.S.C. §1251-1387. Violations must be reported to the Federal Awarding Agency in the Regional Office of the

Environmental Protection Agency.

e. Contractor represents and warrants that it is not included on the Ohio or Federal Debarred Bidders List.

f. Contractor shall comply with title 40 C.F.R. Part 34, New Restrictions on Lobbying and the Byrd Anti-Lobbying amendment, 31 U.S.C. §1352. A Contractor must also certify that each tier must also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award.

g. Contractor agrees to comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, specifically the guidelines set forth in 40 C.F.R. Part 247, namely that in the performance of this Agreement, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired: (i) competitively within a time-frame providing for compliance with the Contractor from its schedule; (ii) meeting contract performance requirements; or (iii) at a reasonable price. Contractor agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

h. To the extent consistent with law, Contractor should, to the greatest extent practical, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States, including but not limited to iron, aluminum, steel, cement, and or manufactured products. Contractor acknowledges and agrees that it is prohibited from obligating or expending funds, consistent with Public Law 115-232 §889, to procure or obtain, extend or renew a contract to procure or obtain, or enter into a contract to procure or obtain equipment, services, or systems that uses covered



telecommunications equipment or services (as defined in the Public Law) as a substantial or central component of any system, or as critical technology as part of any system.

i. Contractor shall be and remain an independent Contractor to the Village with respect to all work with respect to the Project performed hereunder this Agreement and agrees to and does hereby accept full and exclusive liability for its officers and employees for the payment of any and all compensation, contributions or taxes, unemployment benefits, pensions and annuities now or hereafter imposed under any state or federal laws which are measured by wages, salaries, or other remuneration paid for work performed under the terms of this Agreement and further agrees to obey all lawful rules and regulations and to meet all lawful requirements which are now or hereafter that may be issued or promulgated under said laws by any authorized state or federal officials.

j. All change orders shall be writing, approved by the Village prior to starting any additional work or deleting any work from the original scope of the Project described in Contractor's bid proposal, be signed by both the Village and Contractor, and be incorporated into, and become part of, this Agreement. The scope of the Project as currently included in this Agreement is contemplated by the Parties to be under periodic discussion and may be modified by change order or amendment to this Agreement.

k. Contractor shall, at its own expense, obtain all permits and licenses necessary for the Project to be performed under this Agreement.

l. To the extent required by law, the Project shall be performed by individuals

duly licensed and authorized by law to perform the Project.

m. Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the work for the Project under this Agreement. Contractor shall take reasonable precautions for safety during performance of the work for this Project and shall provide reasonable protection to prevent damage, injury or loss to employees on the Project and other persons who may be affected thereby, the Project and materials to be incorporated therein, and any other property at the Project site or adjacent thereto.

10. GOVERNING LAW. This Agreement shall be interpreted according to the laws of the State of Ohio, regardless of its place of execution. Any actions, suits, or claims that may arise pursuant to this Agreement shall be brought in the Court of Common Pleas of Geauga County, Ohio.

11. UNRESOLVED FINDING FOR RECOVERY PERIOD. Ohio Revised Code Section 9.24 prohibits the award of a contract to any entity against whom the Auditor of the State has issued a finding for recovery, if the finding for recovery is “unresolved” at the time of the award of the contract. By executing this Agreement, Contractor warrants that it is not now, and will not become, subject to an “unresolved” finding for recovery under Section 9.24 of the Ohio Revised Code. Upon the execution of this Agreement, Contractor shall supply to the Village a Certification of Compliance warranting compliance with Section 9.24 of the Ohio Revised Code.

12. NOTICES. All notices, invoices and correspondences which may be necessary or proper for either Party shall be addressed as follows:

If to the Village,

Village of South Russell  
Danielle Romanowski, Fiscal Officer  
5205 Chillicothe Road  
South Russell, Ohio 44022  
Email: [fiscalofficer@southrussell.com](mailto:fiscalofficer@southrussell.com)

If to Contractor,

Mr. Excavator, Inc.  
8616 Euclid Chardon Road  
Kirtland, Ohio 44094  
Email:

13. SEVERABILITY. If any provision of this Agreement or any application thereof shall be declared by a court or government agency to be invalid or enforceable, the remainder of the Agreement and any other application of such provision shall not be affected thereby.

14. COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original, and such counterparts together shall constitute and be one and the same instrument.

*(Signature Page Follows)*

IN WITNESS WHEREOF, the Parties hereunto affix their signature the day and year first mentioned above.

CONTRACTOR

MR. EXCAVATOR, INC.

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

VILLAGE OF SOUTH RUSSELL

By: William G. Koons  
Printed Name: WILLIAM G. KOONS  
Title: MAYOR  
Date: 6-13-2022

APPROVED AS TO FORM:

Bridey Matheney  
Bridey Matheney  
Solicitor for the Village of South Russell

CERTIFICATION OF FUNDS

I hereby certify that funds in the amount of Three Hundred Six Thousand Eight Hundred Thirty-Five Dollars and Twenty Cents (\$306,835.20) necessary to satisfy payment under the foregoing Agreement are available through funds that have been fully appropriated, authorized, or directed for the Project pursuant to this Agreement and are free from any obligation or certification now outstanding.

Danielle Romanowski  
Danielle Romanowski, Fiscal Officer  
Village of South Russell

