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| RESOLUTION NO. | 2022-56 | FIRST READING | JUNE 13, 2022 |
| | | SECOND READING | JUNE 17, 2022 (8:00) |
| INTRODUCED BY: | Mark Porter | THIRD READING | JUNE 17, 2022 (8:05) |

AN ORDINANCE APPROVING THE AGREEMENT BETWEEN THE VILLAGE OF SOUTH RUSSELL AND MR. EXCAVATOR, INC. FOR THE MANOR BROOK STREAM HEADWATER RESTORATION 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 Manor Brook Stream Restoration Project ("Project") to Mr. Excavator, Inc. pursuant to Ordinance No. 2022-52, subject to an acceptable contract among the Village of South Russell, Mr. Excavator, Inc., and the Ohio Environmental Protection Agency (OEPA); and

WHEREAS, Council desires to enter into an agreement with Mr. Excavator, Inc. for the Manor Brook Stream Restoration Project, as approved by the OEPA.

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

Section 1. The Council of the Village of South Russell hereby accepts the Agreement Between the Village of South Russell and Mr. Excavator, Inc. for the Manor Brook Headwater Stream Restoration Project (hereinafter referred to as the "Agreement"), a copy of which is attached hereto as **Exhibit A**, and which the OEPA has approved.

Section 2. The Council of the Village of South Russell hereby authorizes the Mayor to enter into 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. This Ordinance is hereby declared to be an emergency measure for the immediate preservation of the public peace, health and safety of the Village of South Russell and to immediately allow the commencement of such restoration work; wherefore, provided it receives two-thirds (2/3) of the votes of all members elected to Council, this Ordinance shall be in full and effect from and immediately upon its passage by this Council and approval by the Mayor.



Mayor- President of Council

ATTEST:

Danielle Romanowski
Fiscal Officer

I certify that Ordinance No. 2022-56 was duly enacted on the 17TH day of JUNE, 2022 by the Council of the Village of South Russell and posted in accordance with the Codified Ordinances of the Village.

Danielle Romanowski
Fiscal Officer

AGREEMENT
BETWEEN
THE VILLAGE OF SOUTH RUSSELL
AND
MR. EXCAVATOR, INC.
FOR THE
MANOR BROOK HEADWATER STREAM RESTORATION PROJECT

THIS AGREEMENT is entered into on June 17TH, 2022 between the Village of South Russell ("Village") and Mr. Excavator, Inc. ("Contractor") (collectively, the "Parties" and each as "Party").

WHEREAS, the Parties desire to contract for construction services for the restoration of approximately 1,173 linear feet of stream channel and floodplain, treatment of 1 acre of invasive plant species, and revegetation of 1 acre of riparian zone with native riparian plant species on an unnamed primary headwater tributary to the North Branch of McFarland Creek (hereinafter the "Project").

WHEREAS, the Village received funding through a United States Environmental Protection Agency (US EPA) Section 319 grant through the Ohio Environmental Protection Agency (Ohio EPA) for the completion of the Project.

WHEREAS Chagrin River Watershed Partners, Inc. (CRWP) and the Village are partners on this Project.

WHEREAS, the Contractor shall be bound by the contracts between the Village and Ohio EPA in addition to this Agreement [See "Ohio Environmental Protection Agency Clean Water Act FY 2019 Section 319(h) Nonpoint Source Award Summary" included in the Contract Book and fully incorporated into this Agreement and hereinafter referred to as the "OEPA Grant Agreement".]

WHEREAS, the Contractor has agreed and by this presents 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 full execution of this Agreement and executing work within the time and in the manner specified and in conformity with the requirements set forth in this Agreement.

WHEREAS, the proposal submitted by the Contractor is incorporated by reference into this Agreement and is included in the Contract Book.

WHEREAS, the Bid Set released by the Village on April 22, 2022, is incorporated into the Contract Book which includes this Agreement, and the Ohio EPA has authorized the Village to engage in a construction agreement with Contractor based on the Bid Set and consultant selection process led by the Village.

WHEREAS, the Contract Book which includes this Agreement is sometimes referred to herein as the "Contract Documents".

NOW, THEREFORE, contingent on the foregoing recitals which are fully incorporated herein, the Parties mutually agree as follows:

1. AGREEMENT TERM, FINAL COMPLETION AND TIMELINE.

- a. This Agreement is effective for the period beginning June 17th, 2022 and terminating on or before the 28th day of October 2022, with the termination date dependent upon the Project's final completion as verified in writing to the Contractor by the Village.
- b. Prior to the final inspection of the Work (as "Work" is defined in Section 4 below) by the Village and its representatives (and Ohio EPA, if necessary) and written notice being given to the Contractor of the satisfactory completion of the Work as determined by the Village and its representatives, the Contractor shall deliver to the Village a "Certificate of Final Completion". The Certificate of Final Completion shall include:
 - (1) the date of final completion of the acquisition, construction, installation, equipping, and improvement of the Work for the Project and that all other facilities necessary for the proper functioning of the Project have been acquired, constructed, installed, equipped, and otherwise improved, including all punch-list items (the "Project Completion Date");
 - (2) that the acquisition, construction, installation, equipping, and improvement of the Project has been completed in accordance with the Contract Documents, and that all costs then due and payable in connection therewith have been paid, and all obligations, costs, and expenses in connection with the Project and then payable have been paid or discharged;
 - (3) that all other facilities necessary for the proper functioning of the Project have been provided and all costs and expenses incurred in connection with such facilities have been paid or discharged, including completion of all punch-list items and release of associated retainages;
 - (4) that the acquisition, construction, installation, equipping, and improvement of the Project and any other facilities has been accomplished in a manner that conforms to all applicable environmental, and other regulations of each governmental authority having jurisdiction over the Project;

- (5) that all licenses and approvals for the use and operation of the Project then required by any governmental authority have been obtained;
- (6) that the acquisition, construction, installation, equipping, and improvement of the Project have been accomplished in a manner that permits the Project to be used and operated for its intended uses and purposes; and
- (7) the following items shall accompany the Final Completion Certificate submitted by the Contractor to the Village:

- (a) an affidavit from the Contractor that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Contractor, subcontractor(s), the project site or the Project itself might be responsible or encumbered (less any amounts withheld by the Contractor) have been paid or otherwise satisfied;
- (b) a certificate evidencing that insurance required of the Contractor shall remain in force for a minimum of two (2) years following the Project Completion Date;
- (c) documentation of any special warranties, such as manufacturers' warranties or specific subcontractor warranties;
- (d) the maintenance bond required by Section 8 below; and
- (e) other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of any and all of the Contractor's contracts with its subcontractors.

- c. The Contractor understands that the Project must be completed in accordance with the specifications and contract drawings to the satisfaction of the Village on or before October 28, 2022 (the "Final Completion Date"). In default of completion on or before October 28, 2022, the Contractor shall pay to the Village as liquidated damages an amount equal to \$1,000.00 for each and every day (Saturdays, Sundays and legal holidays excepted) the completion of the work may be delayed beyond the date fixed in the manner as stipulated.

2. COST OF SERVICES.

- a. The Village agrees to pay the Contractor the lump sum of **\$281,484.85** as itemized in the Contractor's proposal and verified by the Bid Tabulation in the Contract Book for services rendered pursuant to the terms of this Agreement. No other expenses shall be billed to the Village, unless previously approved in writing by the Village. Final payments totaling this amount shall constitute full and final payment for all the Work under this Agreement.
- b. Availability of Award monies. It is expressly understood and agreed by the Parties that none of the duties and obligations described in this Agreement shall be binding on either Party until all relevant statutory provisions of the Ohio Revised Code including, but not limited to, R.C. § 126.07, have been complied with, and until such time as all necessary award monies are available or encumbered and, when required, such expenditure of award monies is approved by the Controlling Board of the State of Ohio, or until such time that Ohio EPA provides the Village with notice that such award monies have been made available to Ohio EPA by Ohio EPA's funding source. If the Village should learn that award monies are unavailable to meet its obligations set forth herein, the Village will use

best efforts to promptly notify the Contractor and this Agreement shall be deemed void ab initio.

3. PAYMENT TERMS

- a. The Contractor may bill the Village in the form of monthly progress payments for work completed after the beginning of the Agreement. Each month, the Contractor will submit to the Village an itemized estimate covering the work performed during the period covered by the partial payment invoice. Estimates and invoices shall be supported by such data as the Village may reasonably require, including:
 - i. Construction costs shall be documented in a form sufficient to allow the Village to review, inspect and approve materials, labor, and quantities installed for the Project.
 - ii. Certified prevailing wage reports when required.
 - iii. Activities and expenses may include construction, materials, and signage specifically related to the project. Only project components described in **Exhibit A** and/or approved modifications will be eligible for payment.
- b. The Village will, within ten (10) business days after receipt of each invoice estimate, either indicate in writing the approval of the estimate or request further documentation or clarification.
- c. Itemized and signed final invoices for monthly progress payments are due monthly. If the monthly progress invoice exceeds the approved estimate, the Contractor must provide additional documentation regarding the additional contract costs. The Village will pay the Contractor within 30 business days of receiving funds from Ohio EPA. The Village anticipates that disbursements of project funds will be received within 30 days.
- d. In case of a refused partial payment invoice or invoice estimate, the Contractor may make the necessary corrections and resubmit the partial payment invoice.
- e. Delays in the processing of partial payment invoices may result in a hold on work until such time as payments are made current.

4. PROJECT SCOPE OF WORK AND PROJECT DELIVERABLES (collectively, the “Work”).

a. General

As of the date of execution of this Agreement, the Contractor agrees to be bound in all respects by the terms and conditions of the OEPA Grant Agreement as well as this Agreement.

As of the date of execution of this Agreement, the Village also accepts, except as otherwise provided, and the Contractor also agrees to be bound by the Contractor’s proposal which is included in the Contract Book and is made a part of this Agreement, except as changed or modified by any provisions of this Agreement. In the event of any conflict between the scope of services contained in the Contractor’s proposal and this Agreement, in order of what Contract Documents shall take precedence, the provision of this Agreement shall govern first, followed by the Ohio EPA Grant Agreement, followed by the Village’s

Request for Proposals, followed by the Contractor's proposal. The Contractor agrees to perform and is engaged under the terms, conditions and provisions of this Agreement to provide the professional services required in connection with the Project.

b. Specific

Provide complete construction of approximately 1,173 linear feet of stream and floodplain restoration, 1 acre of invasive plant species removal, and 1 acre of riparian corridor revegetation with native plant species along the newly restored 1,173 linear foot stream section, according to the design/engineering specifications prepared by CT Consultants. Design/engineering specifications include the following components:

- i. Restoration of approximately 1,173 linear feet of stream and reconnection of the stream to 1,173 linear feet of floodplain at the Project site by excavating areas along the stream and regrading streambanks to a 3:1 or a more gradual slope. Rock protection may be used at the toe of the regraded streambanks in addition to the installation of native woody plant species along the entire regraded streambanks for further long-term stabilization. Woody debris may also be used to create aquatic habitat diversity and additional slope stabilization. Restoration will move the stream away from the sewer right-of-way so that riparian revegetation can occur.
 - ii. Removal/treatment of 1 acre of invasive plant species, including removal and treatment of existing *Phragmites australis*.
 - iii. Revegetation of 1 acre of riparian corridor with a diversity of native woody tree and shrub species along the restored stream in accordance with the Project's Landscape Plan.
- c. Contractor must lead and attend a Project kick-off meeting, weekly or bi-weekly on-site construction meetings, and a punch list meeting.
 - d. Any fill or spoils generated as a result of this Project should remain on-site and be placed in locations designated by the Village.
 - e. The Project specifications shall indicate work limits to be delineated in the field for restricted access to any wetland areas. The Contractor shall be required to perform pre-construction video documentation to document these work limits and prevent disturbance.
 - f. Disturbance to existing natural vegetation shall be minimized in accessing the Project site, restoring the stream and revegetating the riparian zone.
 - g. Any areas disturbed to access the Project Site, including roadways/right of ways and private property must be restored to former condition at the close of this Project at the Contractor's expense. Contractor must obtain photographs and video of the approach roads within Project limits and submit copies to the Village Engineer, prior to the commencement of construction.
 - h. The Contractor shall be bound by local, state, and federal permits, certifications, and authorizations for the Project secured by CT Consultants on behalf of the Village. The Contractor will be responsible for securing, on behalf of the Village, all other necessary local, state, and federal permits, certifications, and authorizations for the Project, as needed. This includes payment of all required fees to obtain permit or agency authorizations to proceed. No work shall be commenced until the permits are secured. Requirements include but are not limited to permits required by the U.S. Army Corps of Engineers, Ohio Environmental Protection Agency, and the Ohio State Historic Preservation Office.

- i. Provide and execute a Stormwater Pollution Prevention Plan (SWP3) for the Project. Erosion and sediment discharge must be controlled throughout the construction process in accordance with the Ohio EPA construction general permit, local erosion and sediment control regulations, and local stormwater management standards, if applicable.
- j. If necessary, a floodplain development permit shall be filed for the Work. Floodplain development permit applications shall comply with all federal and state statutes, and local laws, rules, and ordinances.
- k. Contractor and any additional contractors, including subcontractors, performing work in the Village for which permits are required must be registered with the Village.
- l. All Work shall be performed in a lien-free, good, and workmanlike manner and in accordance with the requirements of all applicable federal, state, and local ordinances, codes, regulations and laws.
- m. Contractor shall make no use of the Project Site other than between the hours of 8:00 AM and 6:00 PM, Cleveland, Ohio time, Monday through Friday (national holidays excluded); provided, however, that Contractor shall be permitted to leave stored equipment and materials within agreed upon areas at the Project Site at other times.
- n. Contractor shall, at its sole cost and expense, install a temporary construction fence surrounding the Project Site, and maintain such fence in good and sightly condition during construction.
- o. Contractor must provide a two-year warranty labor and materials, including plant materials installed through this Project, ensuring 75% survival of all live stake plantings and 90% survival for all other plant material. Plant materials shall be replaced by the warranty if more than 25% of the plant is dead, diseased, or dying.
 - i. "Warranty Period" means a period of two (2) years from the final completion date of the entire Work (or a specific part of the Work) or the longer periods of time as may be required by specific warranties contained in the Agreement, provided by manufacturers or suppliers, or as otherwise stated in any certificate of final completion, during which the Contractor, at its sole cost and expense, shall remove or correct all work performed by Contractor under the Agreement, which the Village deems to be defective in material or workmanship or not in conformance with the Agreement.
 - ii. Contractor warrants to the Village that all materials and equipment furnished shall be new and unused, unless otherwise specified in the Agreement, and that the work will be free from faults and defects and in conformance with the design documents, Contract Documents, Agreement, and all applicable laws or regulations. Contractor agrees, at its sole cost and expense, to remove or correct all work performed by it under the Agreement, which the Village deems to be defective or not in conformance with the design documents, Contract Documents, Agreement, or applicable laws or regulations during the Warranty Period. Contractor also agrees during the Warranty Period to remove or correct any portions of the Work that may be damaged or destroyed by such defective Work or by the removal or correction of such defective work. Village shall approve the Work performed during the Warranty Period and, if the Work is unacceptable, the Warranty Period shall be extended until the Work is acceptable to Village. Upon request by Village, the Contractor and Village shall jointly inspect the Work during the twenty-fourth month following the date of final completion to identify and investigate any

- defective or non-conforming work covered during the Warranty Period. Contractor's warranty excludes remedy for normal wear and tear and normal usage.
- iii. If Contractor does not fully perform its obligations under the warranty provisions within a reasonable time following written notice by the Village to Contractor then, in addition to, and not in lieu of any other right or remedy available to the Village under the Contract or at law, the Village may perform or cause such obligations to be performed at the sole cost and expense of Contractor.
 - iv. Nothing contained in the warranty provision will be construed to establish a period of limitation with respect to any other obligation which Contractor might have under the Agreement or related Contract Documents. The Warranty Period relates only to the obligation of the Contractor to correct the Work following final completion of the project.
 - p. Contractor shall be responsible for conducting all pre-, during, and post-Project monitoring activities and preparation and submittal to the Village of all reports required for compliance with federal, state, and local permit conditions, including U.S. Army Corps of Engineers permit post-Project monitoring if applicable.
 - q. Each part or detail of Work shall be subject to inspection by the Village and its partners.
 - r. As-built construction plans shall be provided to the Village upon completion of the Project. Red-line as-built construction plans are acceptable to meet this requirement.
 - s. Contractor shall be responsible for adhering to all in-water construction work restrictions and tree cutting restrictions as applicable.
 - t. Planting is encouraged in Spring or Fall to promote plant survival. If Summer planting is necessary, the Contractor will be responsible for any watering needs at no additional cost to the Village.
 - u. Upon completion of all restoration activities, the Project will be turned over to the Village. Project turnover will include:
 - a. The Contractor and the Village and its representatives will inspect the site to ensure adherence to Project plans.
 - b. The Contractor will demobilize all job storage/trailers, lavatories, temporary facilities, staging areas, access areas, and equipment from the work site.
 - c. The Contractor will remove all temporary erosion control devices upon completion of site stabilization.
 - d. The Contractor will ensure that permanent site stabilization has been achieved.
 - e. The Contractor will ensure the site is completely clean and ready for occupancy.
 - f. The Contractor will confirm all project deliverables have been provided to the Village, identify all warranties and guarantees, and review all requirements of the Agreement and Contract Documents and ensure that all terms have been met.
 - g. The Contractor will perform final accounting and provide a complete record of all Project expenses.

5. APPLICABLE LOCAL, STATE AND FEDERAL REQUIREMENTS.

The Contractor must comply with all duties and obligations under the OEPA Grant Agreement. In the performance of the duties and obligations under the OEPA Grant Agreement, the Contractor shall comply with all applicable:

- a. Ohio Governor Executive Orders; Federal, state and local laws, regulations (rules), assurances, orders, and Ohio Department of Commerce Prevailing Wage Guidelines, regarding prevailing wages, deductions, worker compensation, taxes, social security and unemployment, compensation, and any contributions thereto;
- b. Federal state, and local laws and regulations (rules, ordinances), assurances, and orders, whether or not specifically referenced herein; and
- c. All terms and conditions of the OEPA Grant Agreement.

6. TERMINATION.

The Village may terminate this Agreement with or without cause upon thirty (30) days written notice. In the event of the termination without cause, the Village agrees to pay the Contractor for Work executed and costs incurred up to the date of termination. In the event that there is a material breach of the contract and it is not cured within twenty-one (21) days after the non-breaching Party has provided notice, in addition to any other legal rights the non-breaching Party may have under law or in equity, the non-breaching Party shall also have the right to terminate its obligations under this Agreement and shall be entitled to immediately recover and/or cease providing the payments and consideration provided to the materially breaching Party under this Agreement and to obtain damages as provided by law. Either Party may terminate this Agreement for a material breach, provided however, that the terminating Party has given the other Party at least twenty-one (21) 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.

7. INDEMNIFICATION.

The Contractor agrees to indemnify and to hold the Village and its representatives harmless and immune from any and all claims for injury or damages arising from the Work and activities which are the subject of this Agreement and which are attributable to the Contractor's own actions or omissions or those of its officers, agents, employees, subcontractors, suppliers, third parties utilized by the Contractor in performance under this Agreement, or those persons or entities in a joint venture with the Contractor in any activities related to the performance under 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.

8. TRANSFER OF RECORDS AND DATA.

- a. The Contractor agrees to store and maintain data pertaining to its Work under this Agreement for a period of three (3) years after completion of its Work or the termination of this Agreement, whichever occurs first.
- b. The Contractor shall submit to the Village or its duly authorized representatives any requested books, documents, papers and records (including but not limited to bank erosion and habitat assessments, original tracings, maps, field sketches, lab reports, flow data,

graphics originals, design calculations, electronic files including model input and output files, etc.) of Contractor involving transactions or other activities related to this Agreement within two (2) weeks following receipt of a written request therefor.

9. OWNERSHIP OF DATA AND DOCUMENTS.

- a. Data shall be collected and formatted in a manner consistent with common good engineering practices. All records (original tracings, maps, field sketches, lab reports, flow data, graphics originals, design calculations, electronic files including model input and output files, etc.) generated by the Project shall be the property of the Village and shall be turned over to the Village upon completion of the Project or as directed.
- b. The Village shall have unrestricted authority to reproduce, distribute, and use in whole or in part any submitted material, data, or report prepared pursuant to this Agreement. No report, document, or other material produced in whole or in part pursuant to this Agreement and with the funds provided to the Contractor by the Village shall be subject to copyright by the Contractor in the United States or any other country. The Contractor and its officers and employees relinquish any and all copyrights and/or privileges to the data developed under this Agreement to the Village. Any use of project information by others, or on other projects, shall be at their own risk with no liability to the Contractor.

10. UNRESOLVED FINDING FOR RECOVERY.

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 the recovery is “unresolved” at the time of the award of the contract. By executing this Agreement, the Contractor warrants that it is not now, and will not become, subject to an “unresolved” finding for recovery under Ohio Revised Code Section 9.24. Upon the execution of this Agreement, the Contractor shall supply to the Village a Certification of Compliance in compliance with Section 9.24.

11. CLEAN AIR AND WATER POLLUTION CONTROL ACTS

(A) Clean Air Act:

(1) The Contractor shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

(2) The Contractor agrees to report each violation to the Village and understands and agrees that the Contractor will also, in turn, report each violation as required to assure notification to the appropriate Ohio Environmental Protection Agency Regional Office and the Federal awarding agency.

(3) The Contractor agrees to include these requirements in each subcontract exceeding \$150,000.

(B) Federal Water Pollution Control Act:

1. The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

2. The Contractor agrees to report each violation to the Village and understands and agrees that the Contractor will, in turn, report each violation as required to assure notification to the appropriate Ohio Environmental Protection Agency Regional Office and the Federal awarding

agency.

3. The Contractor agrees to include these requirements in each subcontract exceeding \$150,000.

12. SEVERABILITY.

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

13. NOTICES.

All notices, invoices and correspondence which may be necessary or proper for either Party shall be addressed as follows:

South Russell Village
Attn: Mayor Dr. William Koons
5205 Chillicothe Road
South Russell, OH 44022
440-338-6700
mayor@southrussell.com

Mr. Excavator
Attn: Thomas J. Flesher, Vice President
8616 Euclid-Chardon Road
Kirtland, OH 44094
440.256.2008
thom@mrexavtor.com

Eric Haibach (ehaibach@ctconsultants.com), South Russell Village Engineer, should be included on all email correspondence, including all Contractor pay applications and invoices.

Danielle Romanowski (fiscalofficer@southrussell.com), Village Fiscal Officer, and Kim Brewster Shefelton (kbrewster@crwp.org), Chagrin River Watershed Partners, should be included on all Contractor pay applications and invoices.

14. MISCELLANEOUS.

- a. In performing the Work specified under the terms of this Agreement, the Contractor shall not subcontract, nor shall any subcontractors commence performance of any part of the Work or services included in this Agreement without previous written consent of the Village except as provided in the Contractor's proposal and Section 4, Project Scope of Work and Project Deliverables within this Agreement.

- b. The Contractor shall be and remain an independent contractor to the Village with respect to all Work and services performed hereunder 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 may be issued or promulgated under said laws by any authorized state or federal officials.
- c. Designated representatives of the Director of the Ohio EPA shall have access to the Project and the Work whenever it is in preparation or progress for inspection purposes and the Contractor shall provide for such access and inspection.
- d. All change orders shall: be in writing, approved by the Village prior to starting any additional work or deleting any Work from the original scope described in the Contractor's proposal and Section 4, Project Scope of Work and Project Deliverables, of this Agreement; be signed by both the Village and the Contractor; and be incorporated into, and become part of, this Agreement. The Project Scope of Work and Project Deliverables 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.
- e. Contractor shall, at its own expense, obtain all permits and licenses necessary for the Work to be performed.
- f. To the extent required by law, the Project shall be performed by individuals duly licensed and authorized by law to perform the Project.
- g. Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Work under this Agreement. Contractor shall take reasonable precautions for safety during performance of the Work 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 and equipment to be incorporated therein; and other property at the Project site or adjacent thereto.
- h.
 - (1) Compliance with the Davis-Bacon Act: All transactions regarding this contract shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141- 3144, and 3146-3148) and the requirements of 29 CFR pt. 5 as may be applicable. The Contractor shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 CFR pt. 5 as applicable. Contractors are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. Additionally, contractors are required to pay wages not less than once a week. The Contractor shall comply with the Ohio Prevailing Wage law as may be applicable.
 - (2) Compliance with the Copeland "Anti-Kickback" Act: Contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 CFR pt. 3 as may be applicable, which are incorporated by reference into this Agreement.
 - (3) Subcontracts. Contractor and any subcontractors shall insert in any subcontracts the clause above and such other clauses as the Ohio EPA Grant Agreement may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses

in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

(4) Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment.

i. Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708):

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The Ohio EPA shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) Subcontracts. The contractor and any subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

j. Contractor shall comply with Title 40 CFR Part 34, New Restrictions on Lobbying and the Byrd Anti-Lobbying Amendment, 31 USC §1352. The Contractor certifies that it will not and has not used federally-appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Contractor shall also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from up to the recipient who in turn will forward the certification(s) to the awarding agency.

k. Procurement of Recovered Materials:

(1) The Parties agree to comply, to the extent applicable, with 2 CFR §200.322 in the procurement of recovered materials in accordance with 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247.

(2) 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— 1. Competitively within a timeframe providing for compliance with the contract performance schedule; 2. Meeting contract performance requirements; or 3. At a reasonable price.

(3) Information about this requirement, along with the list of EPA designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensiveprocurement-guideline-cpg-program>.

(4) The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

l. If the Work to be done under this Agreement involves the performance of experimental, developmental, or research work, the Contractor shall comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

m. Contractor must comply with energy efficiency policies and standards contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201).

n. Debarment and Suspension:

(1) This Agreement is a covered transaction for purposes of 2 CFR pt. 180 and 2 CFR pt. 3000. As such, the Contractor is required to verify that none of its principals (defined at 2 CFR § 180.995) or its affiliates (defined at 2 CFR § 180.905) are excluded (defined at 2 CFR § 180.940) or disqualified (defined at 2 CFR § 180.935).

(2) The Contractor must comply with 2 CFR pt. 180, subpart C and 2 CFR pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

(3) This certification is a material representation of fact relied upon by the Village. If it is later determined that the Contractor did not comply with 2 CFR pt. 180, subpart C and 2 CFR pt. 3000, subpart C, in addition to remedies available to the Village and the Ohio EPA, the federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

(4) The bidder or proposer agrees to comply with the requirements of 2 CFR pt. 180, subpart C and 2 CFR pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

o. Equal Employment Opportunity: Contractor will provide Equal Opportunity to Employees. During the performance of this Agreement, the Contractor agrees as follows:

(1) Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.

(4) Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Agreement or with any of the said rules, regulations, or orders, this Agreement may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other

sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

p. Contractor is prohibited from obligating or expending grant funds to:

- (1) Procure or obtain;
- (2) Extend or renew a contract to procure or obtain; or
- (3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115–232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
 - (i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
 - (ii) Telecommunications or video surveillance services provided by such entities or using such equipment.
 - (iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

In implementing the prohibition under Public Law 115–232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained. 2 CFR 200.216

q. As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, 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 other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award. For purposes of this section:

(1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

(2) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

15. 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.

The Parties have caused this Agreement to be executed as of the date and year first above written.

SOUTH RUSSELL VILLAGE

By: William H. Koons
Mayor Dr. William Koons, South Russell Village

Date: 6-17-2022

MR. EXCAVATOR, INC.

By: _____
Print Name: _____
Title: _____
Date: _____

CERTIFICATION OF FUNDS

I hereby certify that funds in the amount of Two Hundred Eighty-One Thousand Four Hundred Eighty-Four Dollars and Eighty-Five Cents (\$281,484.85) necessary to satisfy payment under the foregoing Agreement are available through funds which have been fully appropriated, authorized, or directed for the Project and are in the Treasury or are in the process of being collected and are free from any obligation or certification now outstanding.



Danielle Romanowski, Fiscal Officer
Village of South Russell