

ORDINANCE NO.: 2024- 41

FIRST READING April 22, 2024

INTRODUCED BY: CHRIS BELL

SECOND READING WAINED

THIRD READING WAINED

ORDINANCE AMENDING THE EXCAVATION PROPOSAL AND ESTIMATE AGREEMENT BETWEEN THE VILLAGE OF SOUTH RUSSELL AND WATTS EXCAVATING LLC IN A TOTAL AMOUNT NOT TO EXCEED \$16,000 WHICH INCLUDES THE ADDITIONAL WORK ENCOUNTERED AT THE WORKSITE AND POSSIBLE FUTURE ADD-ONS, RATIFYING THE APPROVAL OF THE MAYOR, FISCAL OFFICER, AND CHAIR OF THE FINANCE COMMITTEE FOR SUCH ADDITIONAL WORK, AND DECLARING AN EMERGENCY.

WHEREAS, pursuant to Ordinance No. 2024-27, Council for the Village of South Russell entered into the Excavation Proposal and Estimate Agreement (“Agreement”) with Watts Excavating LLC (“Watts”) for excavation services to improve the sewer on Fairview Road in an amount not to exceed \$10,000 (a copy of the Agreement is attached hereto and incorporated herein by reference as **Attachment 1**);

WHEREAS, during Watts’ excavation at the worksite, Watts encountered rock which required additional excavation work not originally contemplated in the Agreement and Watts notified the Village prior to continuing with its excavation work to advise that there would be additional services and additional charges of \$4,750 for such service due to the rock (a copy of the description of the additional work and charges is attached hereto and incorporated herein as **Attachment 2**);

WHEREAS, upon being notified by Watts of the additional services and charges, the Mayor, the Fiscal Officer, and the Chair of the Finance Committee approved the additional services and costs since Watts was already at the worksite with its excavating equipment and issued a purchase order in the amount of \$6,000 for possible future add-ons; and

WHEREAS, Council for the Village of South Russell desires to amend the Agreement to reflect the additional services and charges and to ratify the approvals of the Mayor, Fiscal Officer, and Chair of the Finance Committee as to same.

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

SECTION 1. The additional services and charges incurred as a result of excavating rock not contemplated in the Agreement and possible future add-ons in the amount of \$6,000 are hereby approved and the Agreement is hereby approved in a total amount not to exceed \$16,000.

SECTION 2. The actions and approvals of the Mayor, Fiscal Officer, and Chair of the Finance Committee agreeing to the additional services of Watts and the additional costs of \$6,000 are hereby ratified.

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 ratify the actions requiring immediate attention; 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.

William H. Koons
Mayor - President of Council

ATTEST:

Danielle Romanowski
Fiscal Officer

I certify that Ordinance No. 2024-41 was duly enacted on the 22ND day of APRIL, 2024, by the Council of the Village of South Russell, and published in accordance with the Codified Ordinances of the Village.

Danielle Romanowski
Fiscal Officer

ORDINANCE NO.	<u>2024- 27</u>	FIRST READING	<u>March 25, 2024</u>
INTRODUCED BY:	<u>CHRIS BEU</u>	SECOND READING	<u>WAIVED</u>
		THIRD READING	<u>WAIVED</u>

ORDINANCE APPROVING THE EXCAVATION PROPOSAL AND ESTIMATE AGREEMENT BETWEEN THE VILLAGE OF SOUTH RUSSELL AND WATTS EXCAVATING LLC IN AN AMOUNT NOT TO EXCEED \$10,000.00 FOR EXCAVATION WORK FOR STORM WATER DRAINAGE IMPROVEMENT AT THE PROPERTY LOCATED AT 114 FAIRVIEW ROAD, AUTHORIZING THE MAYOR AND FISCAL OFFICER TO EXECUTE THE AGREEMENT ON BEHALF OF THE VILLAGE, AND DECLARING AN EMERGENCY.

WHEREAS, Council desires to improve storm water drainage on Fairview Road which will entail excavation work on private property located at 114 Fairview Road to install 3 catch basins and 24” pipe and tie-ins where necessary;

WHEREAS, Watts Excavating LLC, an excavating limited liability company, has provided Council with a proposal and estimate agreement to improve the sewer on Fairview Road (“Agreement”); and

WHEREAS, Council desires to enter into such Agreement with Watts Excavating LLC.

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

SECTION 1. The Agreement between the Village of South Russell and Watts Excavating LLC, attached hereto and incorporated herein by reference as Attachment A, engaging Watts Excavating LLC to perform the work described in the Agreement, including but not limited to the excavation work necessary on property located at 114 Fairview Road, in an amount not to exceed \$10,000.00, is hereby approved.

SECTION 2. The Mayor and Fiscal Officer are hereby authorized to execute the Agreement on behalf of the Village and are authorized to take all necessary and other action in accordance with Agreement.

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 enable the Village to have the work completed in a timely manner; 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.

Mark J. Protti
Mayor - President of Council, PROTEM

ATTEST:

Danielle Romanowski
Fiscal Officer

I certify that Ordinance No. 2024-27 was duly enacted on the 25th day of MARCH, 2024, by the Council of the Village of South Russell, and published in accordance with the Codified Ordinances of the Village.

Danielle Romanowski
Fiscal Officer

EXCAVATION PROPOSAL AND ESTIMATE

Watts Excavating LLC

9480 Sherman Road, Chesterland, Ohio 44026

Phone: 440-666-1869 Email (for notices): WattsExcavatingllc@gmail.com

Customer Name(s): Village of South Russell

Mailing Address:

Phone Number(s): 440-338-3891

Email (for notices): fiscalofficer@southrussell.com

Worksite Location: 114 Fairview Rd, Chagrin Falls, OH 44022

Effective Date of this Proposal: 3/19/24 Unless accepted by Customer, this Proposal will expire on midnight of the seventh (7th) day following the above Effective Date.

Watts Excavating Services (the "Excavator") makes the following proposal and gives the following estimate to Customer for the described work to be performed at the Worksite. If Customer accepts this Proposal, a binding contract by and between the parties, effective as of the date of such acceptance, shall result.

DESCRIPTION AND SCOPE OF WORK: Excavator shall provide to Customer all labor and materials at the Worksite to complete the following work (collectively the "Project") pursuant to any attached and incorporated specifications, plans and/or drawings:

We will install the 3 catchbasins and 24in pipe connecting them supplied by the Village. For the pipe along the road any pipes that need to be tied in will be tied in. The pipe will be bedded in 57 limestone. We will haul in approximately 50 tons of limestone. On either side of the catchbasin behind the house swales will be cut to redirect the water. The trench will be backfilled with the excavated dirt and any leftover dirt will be hauled away.

Estimated Completion: Within 60 days after Excavator's receipt of Customer's Acceptance of this Proposal.

PRICE AND PAYMENT: In consideration of Excavator's performance and upon the completion of the Project, Customer shall pay to Excavator the sum of \$ 10,000.00 ("Contract Price") within three (30) days following the date of Excavator's email Invoice to Customer. Any and all requested changes (collectively, "Amendments") to the scope of work and/or pricing shall be in writing and signed by all parties prior to Excavator's execution of such change(s). Excavator's email Invoice shall include the original Contract Price, as adjusted by any and all such signed Amendments.

PERMITS AND INSURANCE: Excavator shall apply for and obtain, at Excavator's expense, any and all permits and regulatory approvals as may be required by the township, city and/or county government. Excavator shall maintain general liability and worker's compensation coverage during the term of this contract.

WORKSITE SURVEYS: Customer shall advise Excavator of the property lines of the Worksite. If Customer is unsure of such property boundaries, Customer shall provide, at Customer's cost, boundary stakes by a licensed land surveyor. Customer shall also provide, at Customer's expense, all underground utility surveys on the Worksite as are needed prior to Excavator's commencement of work.

WORKSITE ACCESS: Customer will allow Excavator free access to work areas for its workers, vehicles and equipment and will allow areas for the storage of material and/or debris. Driveways will be kept clear for the movement of such vehicles and equipment during regular work hours.

WARRANTY: Excavator shall complete the Project in a timely and workmanlike manner, using knowledge and recommendations for performing the work with generally-acceptable standards in the community of the Worksite and will provide a standard of care equal, or superior to, the care used by service providers similar to Excavator on similar projects.

DEFAULT AND REMEDIES: In addition to any and all of the remedies a party may have according to law, if a party defaults by failing to substantially perform any provision, term or condition or obligation of this contract (including without limitation the failure to make a monetary payment when due) the other party may terminate the contract by providing written notice to the defaulting party. This notice shall describe with sufficient detail the nature of the default. The party receiving such notice shall have ten (10) days from the effective date of such notice to cure the default. Unless waived by a party providing notice, the failure to cure the default within such time shall result in the automatic termination of this contract.

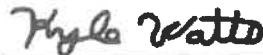
MISCELLANEOUS TERMS AND CONDITIONS:

Force Majeure: If performance of any obligation of under this contract is prevented, restricted or interfered with by causes beyond either party's reasonable control ("Force Majeure") and if the party unable to carry out its obligation(s) gives the other party prompt written notice of such event, then the obligation(s) of the party invoking this provision shall be suspended to the extent necessary by such event. The term Force Majeure shall include, without limitation, acts of God, plague, epidemic, pandemic, outbreaks of infectious disease or any other public health crisis, including quarantines (or other such imposed personal or business restrictions or lockdowns), fire, explosion, vandalism, storm or other similar occurrences, orders or acts of military or civil authority, or national emergencies, insurrections, riots or wars or strikes or lockouts or work stoppages. The excused party shall use reasonable effort under the circumstances to avoid or remove such causes of non-performance and shall proceed with reasonable dispatch to perform upon the removal of such causes. An act or omission shall be deemed within the reasonable control of a party if committed, omitted or caused by such party, its employees, officers or agents.

Entire Agreement: This contract contains the entire agreement of the parties and there are no other promises or conditions in any other prior agreement, whether oral or written, concerning the subject matter of this contract. This contract supersedes any prior written or oral agreement between the parties. This contract shall be construed in accordance with the laws of the State of Ohio.

Notices: Any notice or communication required or permitted under this contract shall be sufficiently given and effective if delivered by hand; by U.S. certified mail (return receipt requested) or by electronic mail (email) to the mailing addresses and/or email addresses set forth in the opening paragraph above. U.S. mail notice is effective upon receipt. Email notice is effective upon the date of transmission.

WATTS EXCAVATING SERVICES

by: 

Kyle Watts, Owner

CUSTOMER'S ACCEPTANCE OF PROPOSAL AND ESTIMATE

The undersigned Customer approves and accepts all of the terms and conditions of the above Proposal and Estimate and intends the same to be a binding contract with Excavator upon all such terms and conditions.

YOU, THE BUYER MAY CANCEL THIS TRANSACTION AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DATE OF THIS TRANSACTION. SEE THE ATTACHED NOTICE OF CANCELLATION FOR AN EXPLANATION OF THIS RIGHT TO CANCEL.

Customer's Printed Name:

MARK E. COOPER

CUSTOMER'S SIGNATURE: X

Mark E Cooper, PRES. PROTEA

Email Address:

DATE OF ACCEPTANCE:

3/25/20

Customer acknowledges by initials below that Customer has received or retained a paper copy, electronic copy or photographic copy of each page of this signed contract. x (Customer's initials) Dated: 3/25/20

MEC



Danielle Romanowski <fiscalofficer@southerussell.com>

Fwd: additional charge for rock removal

1 message

Street Commissioner <streets@southerussell.com>
To: Danielle Romanowski <fiscalofficer@southerussell.com>

Wed, Apr 17, 2024 at 2:18 PM

----- Forwarded message -----

From: **Kyle Watts** <wattsexcavatingllc@gmail.com>
Date: Wed, Apr 17, 2024, 1:48 PM
Subject: additional charge for rock removal
To: Street Commissioner <streets@southerussell.com>

Good afternoon Tim,

This email is following up our phone call about the rock removal.

The cost will be \$3250.00 per day that we have to hammer the rock out. We are predicting it to take one day. As i've mentioned the rock is very hard so it may require 2 days.

As of now you owe Watts Excavating an additional \$1500.00 from hammering rock with my machine on monday april the 15th

If you need anything else please let me know.

Thank You,
Watts Excavating LLC
440-666-1869
Check out our website- <https://www.wattsexcavating.com/>

**WATTS EXCAVATING**

440-666-1869

W.E. Can Dig It