

ORDINANCE NO.	<u>2024-53</u>	FIRST READING	<u>May 13, 2024</u>
INTRODUCED BY:	<u>CHRIS BELL</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 \$9,000.00 FOR EXCAVATION WORK FOR STORM WATER DRAINAGE IMPROVEMENT AT THE PROPERTY LOCATED AT 133 SOUTHWYCK DRIVE, 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 Southwyck Drive which will entail excavation work on private property located at 133 Southwyck Drive to clear certain trees and shrubs, to remove debris, to grade entire yard to slope into the 12” drainage pipe that goes under \_\_\_\_\_, and to install 2” of topsoil over disturbed area and hydroseed (the “Work”);

**WHEREAS**, Watts Excavating LLC, an excavating limited liability company, has provided Council with a proposal and estimate agreement to perform the Work on Southwyck Drive (“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 on property located at 133 Southwyck Drive, in an amount not to exceed \$9,000.00, 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.

William J. Koos  
Mayor - President of Council

ATTEST:

Danielle Romanowski  
Fiscal Officer

I certify that Ordinance No. 2024-53 was duly enacted on the 13<sup>th</sup> day of MAY, 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**

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: 133 Southwyck Dr, Chagrin Falls, OH 44022

**Effective Date of this Proposal: 5/3/24** Unless accepted by Customer, this Proposal will expire on midnight of the (30th) day following the above Effective Date.

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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:

Clear approx. 100'x80' area of all trees and shrubs. All debris will be hauled to South Russell Villages dump yard. The entire back yard will be graded to slope into the 12" drainage pipe that goes under the neighbors yard. We will install 2" of topsoil over the disturbed area and hydroseed.

**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 **\$ 9,000.00** ("Contract Price") within thirty (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*  
Kyle Watts, Owner

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**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: WILLIAM G. KOONS  
CUSTOMER'S SIGNATURE: X William G. Koons  
Email Address: MAXOR@SOUTHRUSSELL.COM  
DATE OF ACCEPTANCE: 5-13-2024

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 WAK (Customer's initials) Dated: 5-15-2024