

ORDINANCE NO.	<u>2025- 69</u>	FIRST READING	<u>November 24, 2025</u>
INTRODUCED BY:	<u>MARK PORTER</u>	SECOND READING	<u>WAIVED</u>
		THIRD READING	<u>WAIVED</u>

**ORDINANCE APPROVING THE CONTRACT AGREEMENT
BETWEEN THE VILLAGE OF SOUTH RUSSELL AND CMG
CONTRACTING LLC FOR THE EXCAVATION OF SUGAR
BUSH HOMEOWNERS' ASSOCIATION'S SILT POND IN THE
AMOUNT OF \$32,950, AUTHORIZING THE MAYOR TO
EXECUTE THE CONTRACT AGREEMENT ON BEHALF OF
THE VILLAGE, AND DECLARING AN EMERGENCY.**

WHEREAS, by ordinance adopted by Council on November 10, 2025, the quote from CMG Contracting, LLC to excavate Sugar Bush Homeowners' Association's silt pond (the "Project") in the amount of \$32,950 was approved subject to a contract agreement acceptable to Council and the Village Solicitor and subject to Sugar Bush Homeowners' Association paying 20% of the cost to the Village prior to the commencement of any work;

WHEREAS, Council has received a contract agreement from CMG Contracting LLC, and after revisions made by the Village Solicitor, which CMG Contracting LLC accepted; and

WHEREAS, Council desires to approve the aforementioned contract agreement with CMG Contracting LLC.

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

SECTION 1: The contract agreement with CMG Contracting, LLC for the excavation of the Sugar Bush Homeonwers' Association's silt pond in the amount of \$32,950, which contract agreement is attached hereto and incorporated herein by reference as **Attachment 1**, is hereby approved.

SECTION 2: The Mayor is hereby authorized to execute the contract agreement on behalf of the Village.

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 any of its committees on or after December 2, 1975, that resulted in formal action, were in meetings open to the public in compliance with all legal requirements including Section 121.22 of the 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 work to commence as soon as possible but not before the Sugar Bush Homeowners' Association provides to the Village 20% of the costs of the contract; 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 S. Koss
Mayor – Presiding Officer

ATTEST:

Danielle Romanowski
Fiscal Officer

I certify that Ordinance No. 2025-69 was duly enacted on the 24th day of NOVEMBER 2025, by the Council of the Village of South Russell, and published in accordance with the Codified Ordinances of the Village.

Danielle Romanowski
Fiscal Officer



CONTRACT AGREEMENT

THIS CONSTRUCTION CONTRACT AGREEMENT ("Agreement") is made and entered into between CMG CONTRACTING LLC 11729 Chillicothe Rd. Chesterland, Ohio 44026, ("Contractor") and the Village of South Russell whose mailing address is 5205 Chillicothe Rd. Chagrin Falls, OH 44022 (collectively referred to as "Owner"). In consideration of the content set forth in this Agreement, and with the intent to be legally bound, Contractor and Owner agree as follows:

- 1. CONTRACTOR'S WORK.** Subject to the terms and conditions set forth in this Agreement, Contractor shall operate as general contractor for construction of the Owner's project (Pond Dredge) of the silt pond located in the Sugar Bush subdivision of the Village of South Russell on the Owner's property (hereinafter "Site"). Estimate Reference Number (#1665)
- 2. CONTRACT DOCUMENTS.** The contract documents for this Agreement shall consist of the following (collectively, the "Contract Documents"): (i) this Agreement; and (ii) the attached Proposal dated: (01/10/25) and (iii) any written addenda, amendments and/or change orders issued or to be issued. In the event of a conflict between the terms of the Contract Documents, the following order of precedence shall govern: (i) written addenda, amendments and change orders), then (ii) this Agreement, then (iii) the Proposal.
- 3. CONTRACT PRICE AND PAYMENTS.** The price payable to Contractor for construction of the Project shall be Thirty Two Thousand Nine Hundred Fifty Dollars (\$32,950.00) (the "Contract Price"), and shall also be subject to additions, deductions and change orders as set forth in this Agreement. Owner shall pay (0%) of the Contract Price (the "Deposit") to the Contractor prior to commencement of construction of the Work. In addition to the Deposit, and unless otherwise specified in writing, the cost for all custom items shall be payable in advance of order and nonrefundable in all circumstances. The remaining balance of the Contract Price shall be paid through progress payments, which shall be due and payable within ten (10) business days of receipt of written applications from Contractor to Owner. No amounts for retainage or escrow shall be withheld from any application for payment submitted as Owner acknowledges and agrees that all applications for payment shall be paid in full in accordance with this Section. Final Payment shall be due and payable within ten (10) business days after Contractor submits notice of substantial completion to Owner. Payment for all change order work and payment for any items elected to be incorporated into the Work not otherwise set forth in the Contract Documents shall be due, unless stated otherwise in writing by Contractor, immediately prior to the execution of any change order work. Time shall be of the essence with regard to all payments due under this Agreement. Interest at the rate of one and one-half percent (1.5%) per month (or eighteen percent (18%) per annum) shall be charged on all overdue payments. In addition, Owner shall be responsible for all collection fees and costs incurred by Contractor to collect overdue payments under this Agreement, including but not limited to reasonable attorney's fees and court costs.

4. **SITE CONDITIONS.** Contractor and Owner acknowledge that this Agreement, the Work, and the Contract Price are based upon normal site conditions and any other site conditions disclosed specifically in writing to Contractor prior to the execution of this Agreement. Any additional construction, work, labor, material, or otherwise required due to site conditions not disclosed in writing to Contractor prior to the execution of this Agreement are excluded from the Work and Contractor shall have no obligation whatsoever to undertake to perform the same unless as otherwise agreed to by Owner and Contractor as a Change Order in accordance with this Agreement. If during the course of construction of the Work, Contractor encounters any unforeseen geological or physical formations or other concealed conditions that make it impractical for Contractor to complete the Work in accordance with the Contract Documents within Contractor's normal and customary construction standards and procedures, Contractor shall immediately notify Owner of the condition(s) and shall also give Owner an estimate of the additional cost necessary to complete the Work under such condition(s). Owner shall then either (i) execute a change order in an amount satisfactory to both Contractor and Owner to compensate Contractor for additional costs or (ii) terminate the Contract, in which case Owner shall immediately pay Contractor for actual cost of construction to date and any additional costs necessary to backfill any excavation, remove partially completed work, and/or perform other work that may be requested by Owner.
5. **STANDARD SCOPE OF WORK.** Contractor agrees to complete the Work in a good and workmanlike manner. Unless otherwise specified in the Contract Documents or set forth in any written change order, Contractor shall furnish all necessary equipment, labor and materials for the Work. Contractor shall use materials of the type and quality customarily used in the industry for the Work; provided, however, if such materials cannot be obtained through reasonable sources of supply, and in order not to delay construction, Contractor may use substitute materials of an equivalent color, utility and quality.
6. **CHANGE ORDERS.** Except as otherwise provided herein, no change in the Work or the Contract Documents shall be made without a written change order or other writing initialed or signed by Contractor and Owner (in the form attached hereto a "Change Order"). All Change Orders must contain an accurate description of the additional construction and work or change, the required material, labor, and equipment to complete the additional change in construction or work, the cost associated with the additional or change in Work. Notwithstanding the above, however, Owner hereby authorizes payment for work without a Change Order when (i) changes are made because of unforeseen site conditions not disclosed nor reasonably foreseen by; or (ii) when an emergency situation threatens injury to persons or damage to property. In the event that Contractor advances payment for any of the foregoing charges, costs, expenses, or fees, Owner shall immediately reimburse Contractor for costs of the same upon demand.
7. **COMPLETION.** For purposes of this Agreement, "substantial completion" shall mean that the Work is at least ninety-seven percent (97%) complete and is ready for use or is being used for the intended purpose. At the time of substantial completion, Contractor shall perform a walk-through inspection with Owner or Owner's authorized representative,

and Owner shall provide a written punch-list to Contractor within five (5) business days thereafter. The written punch-list shall specify all items to be corrected or completed by Contractor. Owner agrees to accept the Work in that "AS IS" condition subject only to those specific items contained within the written punch-list.

8. **LIMITED ONE (1) YEAR WARRANTY** Upon the condition precedent of full payment of the Contract Price including all Change Orders, Contractor warrants to Owner that the Work and all labor and installations will be of good and workmanlike quality, free from faults and defects, and that Contractor will correct any defects in the Work caused by labor and /or installation that appear within a period of one (1) year from the date of final completion of the Work, provided that Contractor is notified of the same in writing. This warranty excludes: (i) defective materials, whether covered by manufacturer's warranty, (ii) errors, omissions or defects in documents, materials, products, or services provided by persons not under right of control of Contractor; (iii) damage due to Owner's misuse negligence, intentional acts, improper or insufficient maintenance, Acts of God, acts of nature, or inadequate allowances to make obvious needed repairs; (iv) defects caused or created by pre-existing conditions. This limited warranty is not transferable. Concrete: (i) CMG is not liable for testing or sampling of any kind prior or later than installation. Testing or sampling is the responsibility of the approved testing agency contracted directly by the owner or engineer of the project if chosen. (ii) All concrete can be susceptible to cracking, settling, and spaulding due to environmental factors within the northeast region or improper use of the concrete surface and cannot be liable by the installer/ contractor. (iii) Texture & salt damage: CMG does not cover any defective areas affected by salt damage and does not recommend use of salt at any time. (iv) Cracks: Cracks larger than $\frac{1}{2}$ " in height or separation will be susceptible for replacement of the concrete section.
9. **PROPOSED START DATE**. Following acceptance of this Agreement and the Contract Documents and after the Deposit is received by Contractor, Owner proposes that the start date of the Work shall be TBD early 2026 Contractor shall attempt to begin the Work on or prior to this date; provided, however, Owner acknowledges that Contractor must order materials that may require specific lead times and, thus, does not represent or warrant to Owner that construction of the Work will commence on or prior to schedule.
10. **COMPLETION DATES**. Substantial completion of the Work is estimated at (1-2) Weeks from the point at which the Work begins. Owner acknowledges and agrees that any indication of a substantial completion date representing Contractor's good faith best estimate of any such substantial completion date and should not be deemed determinative of any such date.



IN WITNESS WHEREOF, The Contractor and Owner have executed this Agreement making this contract legally binding after 3 days as of the respective dates set forth below.

CONTRACTOR: CMG Contracting LLC

By: 

Date: 2-3-26

OWNER: Village of South Russell

By: 

Date: 11-24-25 Signature

PAYMENT SCHEDULE

TOTAL JOB COST: \$32,950.00

- Remainder of bill: Upon Completion Of Work
 - Final Payment of remaining bill: (\$32,950.00)
- (If landscape restoration must be completed at a later date due to weather hold \$4950)

