

ORDINANCE NO. 2017- 13

AN ORDINANCE TO RESOLVE ALL MATTERS WITH VITITOE CONSTRUCTION, INC. FOR WORK ON THE WASTEWATER RECLAMATION FACILITY PROJECT AND TO DECLARE AN EMERGENCY

WHEREAS, Council has determined it appropriate and necessary to proceed with the New Water Reclamation Facility Project (“WRF Project”); and

WHEREAS, a contract was awarded to Vititoe Construction, Inc. pursuant to Ordinance 2013-16; and

WHEREAS, the contract with Vititoe Construction, Inc. was amended pursuant to Ordinance 2015-02; and

WHEREAS, the Village and Vititoe Construction, Inc. negotiated a final payment amount of \$20,000 from Vititoe Construction, Inc. to the Village to conclude all work by Vititoe Construction, Inc. on the WRF Project; and

WHEREAS, the Village and Vititoe Construction, Inc. have agreed to the terms of a final agreement requiring the approval of Counsel;

NOW, THEREFORE, be it ordained by the Council of the Village of Centerburg, Ohio as follows:

Section 1: That the Village Administrator and/or Mayor are hereby authorized to execute the Agreement between the Village and Vititoe Construction, Inc. attached hereto as Exhibit A.

Section 2: That Council authorized the Village Administrator and/or Mayor to execute a Change Order and related documents to resolve all matters in conformance with the REVISED CONTRACT amount with Vititoe Construction, Inc. subject to the approval of the Village Solicitor, Village Engineer and the Ohio EPA Division of Environmental and Financial Assistance.

Section 3: That Council declares this to be an emergency measure, immediately necessary for the public health and safety, such emergency rising out of the need to revise the contract so that the remaining portion of the Contract B-1 and Alternate B-2 can be bid for completion.

WHEREFORE, this Ordinance is declared to be an emergency and shall take effect and be in full force immediately from and after its passage and approval by the Mayor.

DATE PASSED Aug 7, 2017

signature on file

ATTEST signature on file
CLERK OF COUNCIL

PRESIDENT OF COUNCIL

signature on file

MAYOR

DATE APPROVED 8-7-2017

APPROVED AS TO FORM:

signature on file

LEGAL COUNSEL

I hereby certify that the Ordinance or a summary of the Ordinance was published once a week for two consecutive weeks on August 10, 2017 and August 17, 2017 in the *Mount Vernon News* in conformance with the Ohio Revised Code.

signature on file

CLERK-TREASURER

SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS
Vititoe Construction, Inc. / Village of Centerburg, Ohio

This Settlement Agreement and Release of All Claims ("Agreement") is made on **effective on the date of the Village Ordinance reference below** (the "date of this Agreement") between **Vititoe Construction, Inc.** ("Contractor") and **Village of Centerburg, Ohio** ("Owner") (together with Contractor, the "Parties") under the following circumstances:

- A. Contractor was awarded a prime contract with Owner for installation of approximately 13,850 lineal feet of new gravity sewer pipe (the "Project"); and
- B. Contractor claimed that it encountered changed work and Type I differing site conditions on the Project and, as a consequence, Contractor claimed that it was entitled to more than \$900,000 from Owner to complete its work on the Project (the "Contractor Claim"); and
- C. Owner disputed a significant portion of the Claim; and
- D. The Parties met as part of the dispute resolution procedures under the General Conditions of the Contract and reached a resolution of Contractor's claim; and
- E. As part of the first settlement, Contractor agreed to warrant all "Completed Work" (as that term was defined by the first Settlement Agreement); and
- F. Owner claims that certain of the Completed Work was defective and had to be replaced; and
- G. As a result of such warranty claims on the Completed Work, the parties now desire to finally and fully resolve all such warranty claims.

NOW THEREFORE, the Parties, based on the mutual promises set forth herein, agree as follows:

- 1) **Payment to Owner:** Contractor agrees to pay Owner \$20,000.00 as full and complete satisfaction of any and all warranty claims on Completed Work. Payment will be made within fifteen (15) days of the date this Agreement is fully executed.
- 2) **Contractor's Release:** In consideration for the payments under this Agreement, Contractor, for itself and all of its parents, subsidiaries, affiliates, members, shareholders, officers, directors, general and limited partners, insurers, bonding companies, sureties, employees, servants, agents, legal and personal representatives, successors and assigns, past, present and future, releases, forever discharges and covenants not to sue Owner and all of its, officers, employees, servants, agents, based on any and all claims, rights, demands, actions, damages and causes of action, whether in law or in equity, contract or tort, which Contractor now has or claims to have against Owner related to Contractor's Scope of Work, including the Claim.
- 3) **Owner's Release:** In consideration for the receipt of payments under this Agreement, Owner releases, forever discharges and covenants not to sue Contractor and all of its, officers, employees, servants, agents, and sureties based on any and all claims, rights, demands, actions, damages and causes of action, whether in law or in equity, contract or tort, which Owner now has or claims to have against Contractor related to Contractor's

performance of the original Scope of Work, including the Claim, and any warranty claims on Contractor's performance of the Completed Work. It is the intent of this Settlement Agreement that all claims by the Owner against Contractor are hereby forever extinguished. Provided however, the Parties agree that Owner is not releasing any claims that could potentially arise from defects in the materials or equipment installed, which would not be the fault of Contractor, but could still result in claims based on the Completed Work for the fault of a third party.

- 4) **Additional Documents.** The Parties agree to cooperate fully to cause to be negotiated, drafted, and executed any additional and any supplementary documents that they agree to be reasonably necessary or appropriate to give full force and effect to the basic terms and intent of this Agreement including appropriate releases of Claims.
- 5) **No Admission.** In entering this Agreement, neither Party admits any liability or wrongdoing, and each Party is entering this Agreement solely to avoid the expense of litigation.
- 6) **Non-Disparagement:** Owner shall refrain from issuing any press release or statements regarding Contractor. Further, Owner shall not make any defamatory or disparaging remarks or talk about or otherwise communicate to any third parties about Contractor in a disparaging manner. All employees and Council members will be advised that if they are asked about Contractor, that they are to direct all inquiries to the Mayor or Village Administrator, who shall respond on behalf of the Owner. Regarding the claims between the Parties, the Mayor and/or Village Administrator shall respond on behalf of Owner that "all matters between Owner and Contractor were resolved to the mutual satisfaction of the parties." Nothing herein shall in anyway be deemed a restriction on Owner from complying with its obligations under the Ohio Public Records Laws (i.e. R.C. 149.43).
- 7) **Ownership of Claims.** Each Party represents and warrants to the other that it is authorized to enter into this Agreement and that it owns and it has not sold, pledged, hypothecated, signed or transferred the Claim being released, and agrees to indemnify and hold the other Party harmless from any claim inconsistent with the foregoing representation and warranty that may be asserted against the Party by any person or entity.
- 8) **Faxed Documents.** The Parties agree that a fully executed faxed or electronic copy of this Agreement shall be treated as an original and shall be valid and binding upon all Parties.
- 9) **Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of the Parties, their respective heirs, beneficiaries, personal representatives, successors and assigns.
- 10) **Authority.** The Parties to this Agreement represent that the persons signing below on behalf of each Party are duly authorized to execute this Agreement and to bind each party thereto.
- 11) **Choice of Law:** This Agreement has been, and shall for all purposes be deemed to have been, executed and delivered within the state of Ohio, and the rights and obligations of

the parties hereto shall be construed and enforced in accordance with and governed by the laws of the state of Ohio. This Agreement is the entire agreement between the Parties with respect to the subject matter hereof. It supersedes all prior and contemporaneous and oral and written agreements and discussions. It may be amended only by an agreement in writing, signed by all of the parties hereto. Each party has cooperated in, and in any construction to be made of this Agreement, shall be deemed to have cooperated in, the drafting and preparation of this Agreement.

- 12) **Counterparts:** For convenience of the Parties hereto, this Agreement and Mutual Release may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of them shall constitute one and the same instrument.

The undersigned execute this Settlement Agreement:

Village of Centerburg
(Per Ord. 2017-13)

By: signature on file ✓

Its: Village Administrator

Date: 8.7-17

Vititoe Construction, Inc.

By: _____

Its: _____

Date: _____