

SETTLEMENT AGREEMENT

This Settlement Agreement and Mutual Release (hereinafter the “Agreement”) is entered into as of October __, 2023 between **Fitzgerald Excavating and Trucking, Inc.** (“Fitzgerald”) and **Bassett Creek Watershed Management Commission** (“Commission”) (each entity may also be referred to as a “Party” and collectively, the “Parties”).

WHEREAS, Fitzgerald is a Minnesota business corporation with its principal place of business located at 21432 350th Street, Goodhue, MN 55027;

WHEREAS, the Commission is joint powers watershed management organization established under the laws of the State of Minnesota;

WHEREAS, the Commission, as owner, and Fitzgerald, as contractor, entered into a construction contract, dated November 10, 2022, for the Main Stem Lagoon Dredging Project (“Project”) by executing the 2013 EJCDC Form C-001, as modified (“Contract”);

WHEREAS, as part of the Project, Fitzgerald was responsible for the excavation and dredging with off-site disposal to landfill of sediment, muck, and vegetation from the Main Stem lagoons (“Dredging Work”);

WHEREAS, shortly after performing the Dredging Work, the Project engineer conducted surveys of the lagoons and identified certain discrepancies between the Project plans and specifications and the Dredging Work;

WHEREAS, as a result of the surveys and identified discrepancies, the Project engineer concluded that the Commission had overpaid Fitzgerald for the Dredging Work;

WHEREAS, Fitzgerald denied that there were any discrepancies in the Dredging Work, asserted that it had properly completed the Dredging Work in accordance with the Contract, and denied that the Commission had overpaid for any Dredging Work;

WHEREAS, the Commission has retained \$65,768.00 in Project retainage pending final completion, in accordance with the Contract;

WHEREAS, Fitzgerald has completed additional Project work with a Contract value of \$68,710.00, for which payment has not been made;

WHEREAS, Fitzgerald and the Commission desire to resolve the dispute over the alleged overpayment amicably and without assignment of fault to any party.

NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, Fitzgerald and the Commission agree as follows.

1. **Settlement Payment.**
 - A. Fitzgerald agrees to waive receipt of the outstanding retainage in the amount of \$65,768.00.
 - B. Fitzgerald further agrees to waive receipt of payment for the unpaid completed work in the amount of \$68,710.00.
 - C. Within 30 days of execution of this Agreement by both Parties, Fitzgerald shall deliver to the Commission a check in the amount of \$60,000.00.
2. **Final Completion.** The execution of this Agreement and payment of the consideration described in Paragraph 1 shall constitute final payment under Section 15.06 of the General Conditions of the Contract.
3. **Release of Claims.** In consideration of sums, services, work or other actions and consideration described Paragraph 1, the sufficiency of which is hereby acknowledged, Fitzgerald and the Commission hereby unconditionally mutually release and forever discharge each other, and each other's respective insurers, re-insurers, third party administrators, engineers, attorneys, successors, sureties, guarantors, parents, subsidiaries, affiliates, distributors, suppliers, agents, subcontractors, employees, insureds, subrogees, subrogors and their officers, directors and assigns from any and all claims, actions, causes of action, demands, damages, rights or remedies that were made, or could have been made, of whatever kind or nature, known or unknown, including claims for attorney's fees, that are in any way connected with the errors or omissions in development, design, construction, provision of products or materials, equipment utilized for the Project, including claims for contribution, indemnity and attorney's fees.
4. **Reservation of Contract Rights.** Notwithstanding any terms of this Agreement to the apparent contrary, any Contract rights and obligations that survive final payment with respect to any Contract work other than the Dredging Work remain in full force and effect.
5. **No Admission of Liability or Wrongdoing.** By entering into this Agreement, neither Party nor any of its respective agents, owners, employees, servants, officers, directors, principals, shareholders, elected officials, successors, assigns, engineers, and legal counsel, makes any admission of any culpability, fault, liability, or wrongdoing of any kind. The Parties recognize that this Agreement is a compromise of disputed claims and that the consideration accepted and paid hereunder is not intended nor shall it be construed as an admission of liability by or on behalf of any of the Parties.
6. **Authority to Execute.** The Parties hereby declare and represent that in executing this Agreement, each Party and/or its responsible officer has: (1) had the opportunity to consult with legal counsel of its choice, to receive independent legal advice from its attorney(s) with respect to its rights and liabilities, all matters settled and resolved

herein, and the advisability of executing this Agreement and being bound by its terms and conditions; and (2) carefully read this Agreement and understands its contents. Each signatory to this Agreement represents and warrants that they are duly empowered with the authority to execute and deliver this Agreement on behalf of their respective Party, thereby legally binding that Party on whose behalf they are signing and has obtained any consent or authorization required to bind their Party to this Agreement.

7. **Governing Law.** The parties hereto agree that this Agreement shall be interpreted, construed, governed and enforced under and pursuant to the laws of the State of Minnesota.
8. **Severability.** The terms and provisions of this Agreement shall be deemed separable, so that if any term or provision is deemed to be invalid or unenforceable, such term or provision shall be deemed deleted or modified so as to maintain the remainder of the Agreement as valid and enforceable to the full extent permitted by applicable law, unless such term negates the essential basis of the bargain.
9. **Counterparts.** This Agreement may be signed in counterparts, each of which will be considered an original.
10. **Electronic Signature.** This Agreement may be signed by electronic signature or via facsimile and electronic or facsimile signatures are intended to be binding.

[Signature page to follow.]

IN WITNESS WHEREOF, the parties hereto have executed the Settlement Agreement on the dates set forth below.

Fitzgerald Excavation and Trucking, Inc.

By: _____

Dated: _____, 2023

Its: _____

Bassett Creek Watershed Management Commission

By: _____

Dated: _____, 2023

Its: Chair

By: _____

Dated: _____, 2023

Its: Secretary