



# Agenda Item Executive Summary

Item Name: Oneida Basin Improvements-Approving Change Order #1 between Nettle Creek Nursery and the Village of Bartlett  
Committee or Board: Board

BUDGET IMPACT			
Amount:	Not to Exceed \$20,000	Budgeted	\$250,000
List what fund	General Fund		

**EXECUTIVE SUMMARY**

On March 1, 2022, the Village Board approved a contract with Nettle Creek Nursery for the Oneida Basin Improvements. As you may recall, the project includes increasing the size of the basin to obtain the required stormwater detention volume associated with the Bittersweet Water Reclamation Facility rehabilitation. Increasing the basin results in excess fill material to be hauled away. A dispute has arisen with the contractor as to whether the plans and specifications included the removal and hauling of excess materials (~3400 CY) off-site. To avoid litigation and proceed with the project, we looked at utilizing the excess material to clean up along the railroad tracks and the Bartlett Hills entrance. We are proposing to have the contractor clear the scrub brush and trees along a portion of the entrance (~100 ft west of North Ave.) and deposit the excess material to create a berm along the roadway similar to what exists as you enter Bartlett Hills. We plan to restore the berm with native plantings and plant trees along the berm. We believe this will help dispose of some of the excess material and restore the entrance to Bartlett Hills. The additional cost will be paid per unit prices in the contract not to exceed \$20,000.

This will increase the Nettle Creek Nursery contract from \$201,063.40 to not exceed \$221,063.40.

**ATTACHMENTS (PLEASE LIST)**

Memo, Resolution, Change Order #1, Exhibit A

**ACTION REQUESTED**

- For Discussion Only
- Resolution
- Ordinance
- Motion:

**MOTION:** I move to approve Resolution 2022-\_\_\_\_\_, a Resolution Approving of Change Order #1 Between Nettle Creek Nursery, Inc. and the Village of Bartlett for the Oneida Basin Improvements.

Staff: Dan Dinges, Director of Public Works      Date: 9/12/22

# Memo

DATE: September 12, 2022

TO: Paula Schumacher  
Village Administrator

FROM: Dan Dinges, PE  
Director of Public Works

SUBJECT: Oneida Basin Improvements  
- Change Order #1

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RESOLUTION 2022 – \_\_\_\_\_

**A RESOLUTION APPROVING CHANGE ORDER #1  
BETWEEN NETTLE CREEK NURSERY, INC. AND THE VILLAGE OF  
BARTLETT FOR THE ONEIDA BASIN IMPROVEMENTS**

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**RECITALS:**

**WHEREAS**, the Village of Bartlett solicited bids for certain stormwater basin improvements to increase the stormwater detention storage volume of the Oneida Storage Basin in accordance with certain specifications, plans and drawings (the "Plans & Specs") prepared by Engineering Resource Associates ("ERA"), consisting of earth excavation and grading, tree/plant removal, vegetation clearing, tree planting and various plantings, native seeding, and all other collateral work such as restoration (the "Oneida Basin Improvements Project"); and

**WHEREAS**, the Village awarded the bid to the lowest bidder and entered the Oneida Basin Improvements Project Agreement dated March 1, 2022 (the "Contract") with said low bidder thereon, Nettle Creek Nursery, Inc. (the "Contractor") for a contract sum of \$201,063.40 (the "Original Contract Sum"); and

**WHEREAS**, a dispute has arisen with the Contractor as to whether the Plans & Specs and the contract documents included the removal and hauling of excess materials off-site and should be included in the Contract Sum (the "Excess Soils Removal Work"), or whether the excess materials removed from the basin (roughly 3,400 cubic yards) were to be stored on-site and then used to form a berm on-site; and

**WHEREAS**, the Contractor initially proposed an \$85,000 +/- change order to perform the Excess Soils Removal Work, which the Village staff summarily rejected and threatened to declare the Contractor in default and in anticipatory breach of the Contract, and thereafter file suit against the Contractor if it would not perform the Excess Soils Removal Work for the Original Contract Sum without any change order; and

**WHEREAS**, the Contractor responded to the Village's threats alleging that the Plans & Specs were unclear and that it was entitled to its proposed change order, or in any event, additional compensation to perform the Excess Soils Removal Work; and

**WHEREAS**, ERA claims the Plans & Specs are clear and contends that other bidders inferred that their respective bids included the Excess Soils Removal Work, and although confirmed with one other bidder that the Excess Soils Removal Work was included in its bid, ERA concedes that neither the Plans & Specs nor the Contract Documents expressly state that excess materials were to be hauled from the site at the bidder's expense; and

**WHEREAS**, if the Contract were to be terminated and the present dispute litigated, the outcome in any such litigation is uncertain, and would increase overall costs, including attorney's fees and delay the completion of the Project; and

**WHEREAS**, the parties worked together to come up with various alternate solutions, including modifying the scope of the work to keep some of the excess soils on-site to solve the Excess Soils Removal dispute, and reduce the cost of any such change order and still complete the bulk of the Project this construction season; and

**WHEREAS**, the parties mutually agree to resolve the dispute by changing the scope of the work for the project to allow the Contractor to use a portion (2,700 +/- cy<sup>3</sup> of the estimated 3,400 cy<sup>3</sup>) of the excavated soils removed from the Oneida Basin to build a berm on the far west end of the property by raising that area from 3' to 4' above the adjacent curb height at the berm's highest point, with the Village approving of a Change Order in an amount not to exceed \$20,000 to pay for additional erosion control, tree and shrub removal, top soil, seeding and erosion control blanket to move the excess soils to an area on the western end of the property, and the Contractor will remove all additional soils, roughly 700 cy<sup>3</sup>, at its expense and with no additional compensation, we also removed the 3 year monitoring and maintenance of the plantings (to be completed by separate Village contractor) all as more fully described on Change Order #1 and depicted on the drawing attached thereto and made a part thereof;

**NOW, THEREFORE, BE IT RESOLVED** by the President and Board of Trustees of the Village of Bartlett, Cook, DuPage and Kane Counties, Illinois, as follows:

**SECTION ONE:** That based on the matters set forth in the Recitals with respect to proposed Change Order #1 which are expressly incorporated herein, the Corporate Authorities hereby find and determine as follows: (1) That the circumstances said to necessitate the changes in performance were not reasonably foreseeable when the Contract was signed; and/or (2) the change is germane to the original Contract as signed; and/or (3) the Change Order is in the best interest of the Village of Bartlett.

**SECTION TWO:** That Change Order #1 between Nettle Creek Nursery, Inc. and the Village of Bartlett dated as of September 20, 2022 ("Change Order #1") which will increase the Contract Sum under the Contract in an amount not to exceed \$20,000, and with such final price determined based on actual quantities determined or confirmed by the Village, times the unit prices in the Contract as originally bid, making the maximum price for the Project \$221,063.40, a copy of which Change Order #1 is attached hereto as Exhibit A, is hereby approved, and the Village Administrator is hereby authorized to execute Change Order #1 on behalf of the Village.

**SECTION THREE: SEVERABILITY.** The various provisions of this Resolution are to be considered as severable, and of any part or portion of this Resolution shall be held invalid by any Court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions of this Resolution.

**SECTION FOUR: REPEAL OF PRIOR RESOLUTIONS.** All prior Ordinances and Resolutions in conflict or inconsistent herewith are hereby expressly repealed only to the extent of such conflict or inconsistency.

**SECTION FIVE: EFFECTIVE DATE.** This Resolution shall be in full force and effect upon passage and approval.

ROLL CALL VOTE:

AYES:

NAYS:

ABSENT:

PASSED: September 20, 2022

APPROVED: September 20, 2022

\_\_\_\_\_  
Kevin Wallace, Village President

ATTEST:

\_\_\_\_\_  
Lorna Giles, Village Clerk

#### CERTIFICATION

I, the undersigned, do hereby certify that I am the Village Clerk of the Village of Bartlett, Cook, DuPage and Kane Counties, Illinois, and that the foregoing is a true, complete and exact copy of Resolution 2022 - \_\_\_\_\_ enacted on September 20, 2022, and approved on September 20, 2022, as the same appears from the official records of the Village of Bartlett.

\_\_\_\_\_  
Lorna Giles, Village Clerk

**VILLAGE OF BARTLETT  
CONTRACT CHANGE ORDER NO. 1**

**EXHIBIT A**

TO: Mr. Daniel Dinges  
Public Works Director  
Village of Bartlett  
1150 Bittersweet Drive  
Bartlett, IL 60103

DATE: September 8, 2022

PROJECT NAME: Oneida Basin Improvements

PROJECT NO: ERA No. W20215.00

I. You are directed to make the following changes in this contract:

Pay Item	Unit Cost	Additional Quantity	Units	Additional Cost
Sediment Control, Silt Fence	\$2.80	540	LF	\$1,512.00
Native Seeding (Low Profile Seed Mix)	\$12,000.00	0.35	ACRE	\$4,200.00
Erosion Control Blanket	\$2.60	1700	SQ YD	\$4,420.00
Clearing and Grubbing	\$8.00	1700	SQ YD	\$13,600.00
Topsoil Furnish and Place 6"	\$26.00	283	CU YD	\$7,358.00
Ecological Management	\$4,000.00	3	YEAR	(\$12,000.00)
Prescribed Burn (Year 3)	\$2,000.00	1	YEAR	(\$2,000.00)
Monitoring & Reporting	\$\$2,000.00	3	YEAR	(\$6,000.00)
<b>TOTAL</b>				<b>\$11,090.00</b>

II. The estimated increase in contract sum is \$11,090.00. Pay item quantities, for work approved by this change order, will be field verified by the Engineer. Each approved additional quantity, outlined in Paragraph I, will be compensated at the unit price provided in the Contractor's original project bid.

III. The total amount of additional compensation resulting from this change order is not to exceed \$20,000. The Contractor remains responsible for completion of the contracted project, as amended by this change order, should the cost of additional work (calculated in accordance with Paragraph II) exceed \$20,000.

IV. Payment relating to this change order will be made only for the pay items outlined in Paragraph I. Any additional work required to complete this change order, in adherence with the Project Special Provisions and amended project design, will be considered incidental and will not result in additional compensation.

V. The following referenced documents further describe the changes outlined in Paragraph I and are to be considered a part of the Change Order.

SEE ATTACHED: "EXHIBIT A – ADDITIONAL CLEARING AREA"

The changes result in the following adjustment of Contract Price and Contract Time:

Contract Sum prior to this Change Order .....	\$ 201,063.40
Contract Sum will be <b>INCREASED</b> by the Change Order ...	\$ 20,000.00
New Contract Sum including this Change Order .....	\$ 221,063.40
Net increase/decrease resulting from this Change Order <u> 0 </u> Days	

This Change Order is for full and final settlement of all direct, indirect impact costs and time extensions incurred at any time resulting from the performance of the changed work.

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The Above Changes are Recommended:

The Above Changes are Accepted:

**Engineering Resource Assoc, Inc.**

Engineer  
3S701 West Avenue  
Warrenville, IL 60555

By: Erin Pande

Phone: 630.393.3060

**Nettle Creek Nursery, Inc.**

Contractor  
320 Ottawa Street.  
Morris, IL 60450

By: Steve Sztapka

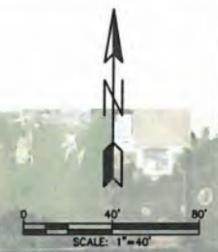
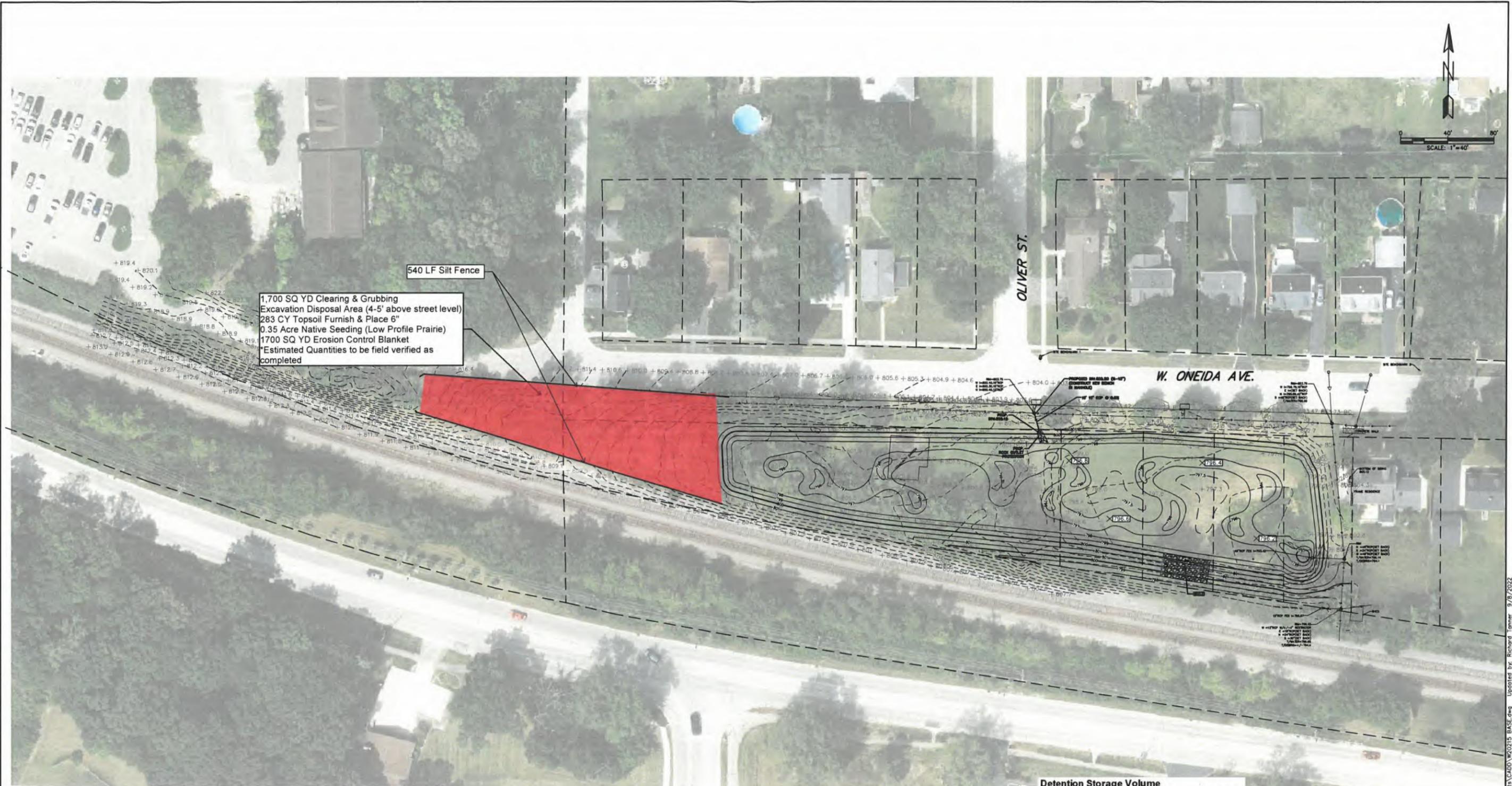
Phone: 815.693.9763

**Village of Bartlett**

Owner  
1150 Bittersweet Drive  
Bartlett, IL 60103

By: Daniel Dinges

Phone: 630.837.0811



1,700 SQ YD Clearing & Grubbing  
 Excavation Disposal Area (4-5' above street level)  
 283 CY Topsoil Furnish & Place 6"  
 0.35 Acre Native Seeding (Low Profile Prairie)  
 1700 SQ YD Erosion Control Blanket  
 \*Estimated Quantities to be field verified as completed

540 LF Silt Fence

OLIVER ST.

W. ONEIDA AVE.

Detention Storage Volume

Elevation (ft)	Area (sq. ft.)	Ave End Area (sq. ft.)	Volume (acre-ft)	Total Volume (acre-ft)
794.00	0			
795.0	95	48	0.00	0.00
796.0	1994	1044	0.02	0.03
797.0	11498	6746	0.15	0.18
798.0	36043	23771	0.55	0.73
799.0	40558	38300	0.88	1.60
800.0	45048	40545	1.86	3.47
800.50	47395	43977	1.51	4.98
			<b>Total</b>	<b>4.98</b>

**SITE BENCHMARKS**  
 SITE BENCHMARK (BM) #1  
 NORTHEASE BONNET BOLT ON FIRE HYDRANT AT THE NORTHEAST INTERSECTION OF ONEIDA AVE. AND OLIVER ST.  
 ELEV: 805.90 (NAVD 88)  
 SITE BENCHMARK (BM) #2  
 ELEV: RAILROAD SPIKE IN SOUTH FACE OF POWER POLE NORTH OF ONEIDA AVE. FIRST POLE WEST OF VALLEY ST.  
 ELEV: 805.38 (NAVD 88)

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PREPARED FOR: VILLAGE OF BARTLETT

TOPO DATED: OCTOBER 14, 2020

PROFESSIONAL DESIGN FIRM NUMBER: 184.001186

DATE	BY	DESCRIPTION	DATE	BY	DESCRIPTION
9.24.2021	RT	REVISE POND			

DRAWN BY: RT  
 CHECKED BY: MP  
 APPROVED BY: EP



35701 WEST AVENUE, SUITE 150  
 WARRENVILLE, ILLINOIS 60555  
 PHONE (630) 393-3060  
 FAX (630) 393-2152

10 S. RIVERSIDE PLAZA, SUITE 875  
 CHICAGO, ILLINOIS 60606  
 PHONE (312) 474-7841  
 FAX (312) 474-6099

2416 GALEN DRIVE  
 CHAMPAIGN, ILLINOIS 61821  
 PHONE (217) 351-6268  
 FAX (217) 355-1902

**ONEIDA BASIN IMPROVEMENTS  
 VILLAGE OF BARTLETT, ILLINOIS**

TITLE:

**GRADING PLAN**

SCALE: 1"=40'  
 DATE: February, 2021  
 JOB NO: W20215  
 SHEET 4 OF 6

C:\Users\Project\Bartlett\_Village\W20215\00\_OneidaBasinImprovements\CADD\W20215\_BASE.dwg Updated by: Richard Tanner 9/8/2022