



Agenda Item Executive Summary

Item Name Demolition of the Former Cruise America Project Agreement between Fowler Enterprises LLC and the Village of Bartlett Committee or Board Board

BUDGET IMPACT

Amount:	\$34,050.00	Budgeted	\$70,000.00
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List what fund	General Fund
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EXECUTIVE SUMMARY

Bids were opened and read on December 22, 2020 for the demolition of the former Cruise America site located at the southwest corner of IL Routes 20 & 59 with common address of 1105 W. Lake St. Ten (10) bids were received and ranged from \$34,050 to \$239,500. The low bidder, Fowler Enterprises LLC, met all requirements per the contract documents therefore they are the lowest responsible and responsive bidder. Gary Deigan and Associates, Inc. checked their references on similar projects and found their work acceptable.

We are currently working with two potential developers for the property and will seek to recoup the costs associated with the demolition through the sales agreements.

We recommend award of the Demolition of the Former Cruise America Project to Fowler Enterprises LLC.

ATTACHMENTS (PLEASE LIST)

Memo, Bid Analysis, Resolution, Contract Agreement & Attachments

ACTION REQUESTED

- For Discussion Only
- Resolution
- Ordinance
- Motion:

MOTION: I move to approve Resolution 2021-_____, a Resolution Awarding Contract and Approving the Contract Agreement Between Fowler Enterprises LLC and the Village of Bartlett for the Demolition of the Former Cruise America Project.

Staff: Dan Dinges, Director of Public Works Date: 12/23/20

Memo

DATE: December 23, 2020

TO: Paula Schumacher
Village Administrator

FROM: Dan Dinges, PE
Director of Public Works

SUBJECT: Demolition of Former Cruise America Project

Bids were opened and read on December 22, 2020 for the demolition of the former Cruise America site located at the southwest corner of IL Routes 20 & 59 with common address of 1105 W. Lake St. Ten (10) bids were received and ranged from \$34,050 to \$239,500. The low bidder, Fowler Enterprises LLC, met all requirements per the contract documents therefore they are the lowest responsible and responsive bidder. Gary Deigan and Associates, Inc. checked their references on similar projects and found their work acceptable.

We are currently working with two potential developers for the property and will seek to recoup the costs associated with the demolition through the sales agreements.

We recommend award of the Demolition of the Former Cruise America Project to Fowler Enterprises LLC.

MOTION: I move to approve Resolution 2021-_____, a Resolution Awarding Contract and Approving the Contract Agreement Between Fowler Enterprises LLC and the Village of Bartlett for the Demolition of the Former Cruise America Project.

28835 N. Herky Dr., Unit 120

 Lake Bluff, Illinois 60044

847.578.5000

December 28, 2020

 Mr. Dan Dinges, P.E.

 Director, Public Works

 Village of Bartlett

Re: Bid Analysis and Recommendation for Demolition Contractor Award

Former Cruise America Site

Route 59 & Route 20

Dear Dan:

Deigan & Associates, LLC prepared bid specifications, newspaper Bid Notice, and reviewed the bids received by the Village of Bartlett at 2PM on December 22, 2020 for demolition of the former Cruise America buildings, foundations, and related structures. We recommend the Village select the low bidder for this contract, **Fowler Services of South Elgin at \$34,050.**

Demolition Bid Tabulation											
Description	Unit of Measure	Acqua	Alpine	ATP Enterprises	Continental	Copenhaver	Fowler Services	Fox Excavating	KLF	McDonagh	Milburn
1.A. Demolition	Lump Sum	\$171,500.00	\$61,930.00	\$189,000.00	\$197,000.00	\$206,000.00	\$27,250.00	\$99,896.00	\$49,990.00	\$45,400.00	\$68,000.00
1.B. Water Supply Well Abandonment	Lump Sum	\$2,500.00	\$3,570.00	\$7,000.00	\$4,000.00	\$16,000.00	\$4,600.00	\$3,500.00	\$3,000.00	\$2,900.00	\$2,500.00
1.C. Septic Tank Removal	Lump Sum	\$11,000.00	\$1,200.00	\$31,000.00	\$17,000.00	\$17,500.00	\$2,200.00	\$4,000.00	\$2,700.00	\$2,100.00	\$4,000.00
Total		\$185,000.00	\$66,700.00	\$227,000.00	\$218,000.00	\$239,500.00	\$34,050.00	\$107,396.00	\$55,690.00	\$50,400.00	\$74,500.00
Schedule			Completion within six (6) weeks of notice to proceed			Completion within seven (7) weeks of notice to proceed	Completion within two (2) weeks of notice to proceed		Completion within four (4) weeks of notice to proceed	Completion within 60 day timeframe from notice to proceed	

We have checked the bid submittal and find it compliant with the Bid Documents. We have received acceptable work references from other municipalities for similar work by this low bidder. We appreciate the opportunity to conduct this work for the Village. Please contact me with any questions.

Sincerely,



Gary J. Deigan

 Principal

RESOLUTION 2021 - _____

**A RESOLUTION APPROVING OF THE DEMOLITION PROJECT AGREEMENT
BETWEEN THE VILLAGE OF BARTLETT AND FOWLER ENTERPRISES, LLC**

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: The Demolition Project Agreement dated January 5, 2021, between the Village of Bartlett and Fowler Enterprises, LLC for the former Cruise America at the southwest corner of IL Rt. 20 and Rt.59 and commonly known as 1105 West Lake Street, Bartlett, Illinois (the "Agreement"), a copy of which is appended hereto and expressly incorporated herein by this reference, is hereby approved.

SECTION TWO: That the Village President and the Village Clerk are hereby authorized and directed to sign and attest, respectively, the Agreement on behalf of the Village of Bartlett.

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: January 5, 2021

APPROVED: January 5, 2021

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 2021 - _____ enacted on January 5, 2021, and approved on January 5, 2021, as the same appears from the official records of the Village of Bartlett.

Lorna Giles, Village Clerk

DEMOLITION PROJECT AGREEMENT

This Demolition Project Agreement (the “Agreement”) is entered as of January 5, 2021, between the Village of Bartlett, an Illinois municipal corporation of Cook, DuPage and Kane Counties, Illinois (the “Village” or the “Owner”) and Fowler Enterprises, LLC (the “Demolition Contractor”).

IN CONSIDERATION of the covenants and conditions herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, the Parties hereby agree as follows:

1. Project Work.

A. “Project Work” shall mean the demolition and removal of all structures, foundations, building slab, walls, roof, interior equipment, personal property, roll-off box and box trailer and its contents, parking bollards, Cruise America entrance signs, nine (9) light posts and other material from the Project Site in accordance with the Scope of Work defined in the Contract Documents.

B. Demolition Contractor shall procure and furnish the District at the Demolition Contractor’s expense the following: (i) all licenses and permits required for the Project Work from any federal, state and local governmental entities and/or agencies thereof having jurisdiction over the Project Work, Performance Bond and the Payment Bond in accordance with paragraph 12 below; (iii) Demolition Contractor shall furnish the Owner with the certificates of insurance, additional insured endorsements and other insurance documents in accordance with paragraph 11 below; and (iv) Demolition Contractor shall immediately commence the Project Work following receipt of notice to proceed from the Owner.

C. “Project Site” shall mean the former Cruise America on the Southwest corner of IL Route 20 and 59 and commonly known as 1105 West Lake Street, Bartlett, Illinois, legally described on the ALTA/ASTM Land Title Survey included in the Demolition Bid Request.

D. “Contract Documents” shall mean:

1. The Demolition Bid Request dated December 11, 2020, including:
 - a. Appendix A thereto listing Applicable Standards and Guideline Specific Requirements.
 - b. Special Provisions.
 - c. Exhibit I: Village of Bartlett Specifications Covering Compliance with laws, Indemnification and Insurance Requirements.
 - d. ALTA/NSPS Land Title Survey of the Project Site dated October 16, 2018.

- e. Demolition Bid Request Photographs.
- f. Log of potential on-site supply well.

2. Demolition Contractor's Bid Offer

- 3. This Demolition Project Agreement, the form of which was included in the Demolition Bid Request.
- 4. Demolition Contractor's Performance bond to be submitted by Demolition Contractor after award of contract to be co-signed by the Demolition Contractor and surety.
- 5. Demolition Contractor's Payment Bond as described herein (to be submitted by the Demolition Contractor after award signed by the Demolition Contractor and its surety.

2. Completion Date. Sixty (60) days after the issuance of a Notice to Proceed by the Owner or the Environmental Consultant.

3. Contract Sum and Payment Terms.

A. The contract sum for the Project Work is \$34,050.00 (the "Contract Sum"). The Contract Sum includes all costs attributable to the Project Work, including but not limited to, all materials, equipment, labor, permits, licenses, insurance, additional insured endorsements, certifications, removal and disposal of construction debris, payment of Prevailing Wages, Performance and Payment Bonds, fees, expenses, costs, profits and overhead required under the Contract Documents.

B. Upon completion of the Project Work, the Demolition Contractor shall provide a final invoice to the Owner in the amount of the Contract Sum plus any pre-approved change orders. It shall be a condition precedent to the Village's obligation to make a final payment that the Demolition Contractor shall have submitted, not less than seven (7) days prior to the first day of the month in which the Demolition Contractor is applying for final payment, the following documentation, which shall hereinafter collectively be referred to as the "Contractor's Final Payment Documents":

(i) An itemized Application of Payment for operations and Continuation Sheets using AIA G702 and G703 supported by such data to substantiate the Demolition Contractor's right to payment as the Owner may require, such as copies of requisitions from material suppliers, until after final acceptance has been made by the Owner. Payment may be reduced by such additional amounts as the Owner determines for non-conforming work and unsettled claims.

(ii) A General Contractor's Sworn Statement in form customarily used by Chicago Title and Trust Company listing the name and address of each subcontractor that furnishes labor on the Project and for each subcontractor in separate columns, the original amount of each subcontract, the amount of issued

change orders, adjusted contract amount, the total completed and stored to date, net amount previously paid, net amount this payment and balance to complete.

(iii) **Final Waivers of Lien** from the Demolition Contractor and from all subcontractors of every tier that furnished labor, materials and/or equipment in connection with the Project Work and final waivers of lien from all material suppliers that supplied material in connection with the Project. **Trailing Waivers of Lien will not be accepted.**

(iv) All of the Demolition Contractor's Final Payment Documents shall be sworn to and notarized.

(v) It shall also be a condition precedent to any payment hereunder that Demolition Contractor and its subcontractors must complete and submit certified payrolls to the Owner covering all payouts in strict compliance with the Prevailing Wage Act (820 ILCS 130/01, et seq.) using forms furnished by the Illinois Department of Labor (IDOL) (the "Certified Payrolls"). The Owner will not process or release any payments prior to receiving the Certified Payrolls relative to each applicable pay application.

(vii) Payments shall be further contingent upon the consent of the surety that issued the Performance Bond and the Payment Bond (sometimes collectively referred to as the "Performance and Payment Bonds") and/or other bond required hereunder to said payment. Any amounts required to be withheld from said payment by the surety shall be withheld without any liability to the Owner.

(vii) Following receipt of the Final Payment Request Documentation and all documents and submittals required under the Contract Documents, and following the Environmental Manager's determination that the Project Work has been completed in strict compliance with the Contract Documents and is free from defects, the Owner shall tender payment to the Demolition Contractor of the Contract Sum plus any approved change orders and less any deductions as provided, subject to the terms and conditions herein.

C. Except as provided in paragraph D of this Section 2, no payments shall be made by the Owner until the Project Work has been substantially completed and in strict compliance with the Contract Documents, and further subject to the requirements of this Section 2.

D. It shall be a condition precedent to any payment required by the Owner hereunder, that the Environmental Manager has certified to the owner that the Project Work is substantially completed and that the Project Work being invoiced is free from any defects and has been substantially completed in accordance with the terms and conditions herein. Provided the Environmental Manager certifies substantial completion, the Owner may deduct from the final payment hereunder, amounts as it reasonably determines for minor incomplete Project Work, including but not limited to 110% of the value of the punch list work, and any required restoration work, and for any unsettled claims, and further subject to the conditions herein.

E. Notwithstanding the foregoing, in no event shall the Owner's acceptance of the Project Work, Demolition Contractor's Final Payment Request Documentation and/or any Certification and/or the Owner's payments to the Demolition Contractor be deemed a waiver, express or implied, of any warranties and/or guaranties required under the Contract Documents.

4. Intentionally Omitted.

5. Non-Discrimination. Demolition Contractor shall not discriminate against any worker, employee or applicant for employment because of religion, race, sex, sexual orientation, color, national origin, marital status, ancestry, age, physical or mental disability unrelated to ability, or an unfavorable discharge from the military service, nor otherwise commit an unfair employment practice.

6. Compliance With Law. All goods, equipment, materials, and all labor furnished by Demolition Contractor and Demolition Contractor's Agents (defined below) shall comply with all applicable federal, state and local laws, regulations, rules, ordinances, statutes and codes relative thereto including, but not limited to, the Federal Occupational Safety and Health Act (OSHA), the Americans with Disabilities Act of 1990 as amended, the Architectural Barriers Act, the Illinois Accessibility Codes, Illinois and United States Department of Labor (IDOL and USDOL), the Human Rights Commission, the Illinois Department of Human Rights, EEOC, Environmental Laws (defined below), and the Bartlett Municipal Code, including but not limited to the Village of Bartlett Building Codes, with the most stringent standards governing (collectively, the "Laws"). To the fullest extent permitted by law, the Demolition Contractor shall indemnify, defend, and hold harmless the below defined Indemnified Parties from loss or damage, including but not limited to, attorney's fees, and other costs of defense by reason of actual or alleged violations of any Law(s) related to the Project Work. This obligation shall survive the expiration and/or termination of this Agreement.

7. Indemnification. To the fullest extent permitted by law, the Demolition Contractor shall indemnify, defend and hold harmless the Village of Bartlett, its Village President and Board of Trustees, and its officials, officers, employees, and Deigan & Associates, LLC, and its managers, members, officers and employees (collectively, the "Indemnified Parties"), from and against all injuries, deaths, damage to property, loss, damages, claims, suits, liens, lien rights, liabilities, judgments, costs and expenses, including but not limited to legal defense costs, attorney's fees, court costs, settlement judgments, prejudgment interest, post judgment interest, whether by direct suit or third parties which may in any way arise directly or indirectly from the Project Work provided hereunder caused in whole or in part by any negligent act and/or omissions of or on behalf of the Demolition Contractor, its employees, contractors, subcontractors of any tier, material suppliers, and/or agents and/or any person and/or entity acting on behalf of any of them and/or anyone directly or indirectly employed by any of them and/or anyone for whose acts and/or omissions any of them may be liable (collectively, "Contractor's Agents"); except to the extent caused by the active negligence, sole negligence or willful misconduct of the Owner or its Environmental Manager. In the event of any such suit, Demolition Contractor shall at its own expense, appear, defend and pay all charges of

attorneys and costs and other expenses arising there from or incurred in connection therewith, and if any judgment shall be rendered against the Indemnified Parties or any of them, in any such action, Demolition Contractor agrees that any bond or insurance protection required herein, or otherwise provided by Demolition Contractor, shall in no way limit the responsibility to indemnify, keep and save harmless and defend the Indemnified Parties as herein provided. Demolition Contractor shall similarly protect, indemnify and hold and save harmless the Indemnified Parties against and from any and all claims, costs, causes, actions and expenses including but not limited to attorney's fees, incurred by reason of Demolition Contractor's breach of any of its obligations under, or Demolition Contractor's default of, any provision of the Agreement. This obligation shall survive the expiration and/or termination of the Agreement.

8. Binding Obligation and Non-Assignability. Demolition Contractor shall not assign the whole or any part of this Agreement without the written consent of the Owner. Any such assignment by Demolition Contractor without the Owner's written approval shall be null and void.

9. Taxes. The Owner is a Tax-Exempt Organization and is not subject to sales, consumer, use, and other similar taxes required by law. This exemption does not, however, apply to tools, machinery, equipment or other property leased by the Demolition Contractor, or to suppliers and materials which, even though they are consumed are not incorporated into the completed Project Work. The Demolition Contractor shall be responsible for and pay any and all applicable taxes, including sales and use taxes, on such leased tools, machinery, equipment or other property and upon such unincorporated supplies and materials. Notwithstanding the forgoing, it shall be Demolition Contractor's responsibility to determine and pay all applicable taxes attributable to the Project Work. All such taxes are included in the Contract Sum.

10. Investigations by Demolition Contractor. Demolition Contractor has made such investigations as it deems necessary to perform the Project Work, including but not limited to, inspection of the Project Site and the present condition of the Project Site and represents and warrants that the Contract Documents and depictions are adequate, and the required results can be produced under the Contract Documents and requirements herein. No plea of ignorance of conditions that exist or of conditions or difficulties that may be encountered in the execution of the Project Work under this Agreement as a result of failure to make the necessary investigations will be accepted as an excuse for any failure or omission on the part of the Demolition Contractor to fulfill in every detail all of the requirements of this Agreement or will be accepted as a basis for any claims whatsoever, for extra compensation.

11. Insurance. The Demolition Contractor shall procure and maintain for the duration of the Project Work insurance of the types and in amounts of not less than the coverage's listed on Exhibit I of the Contract Documents. The cost of such insurance is included in the Contract Sum.

12. Performance Bond, Payment Bond. Prior to commencement of the Project Work, Demolition Contractor shall furnish the Owner with a Performance Bond and a

Labor and Material Payment Bond ("Payment Bond") each in the amount of 100% of the Contract Sum using AIA-312 Forms (2010) or in form otherwise acceptable to the Owner, co-signed by a surety licensed by the Illinois Department of Insurance to issue and sign sureties, which surety shall have a financial strength rating (FSR) of not less than "A-" by A.M. Best Company Inc., Moody's Investor Service, Standard & Poors Corporation, or similar rating agency, and naming the Village of Bartlett as primary obligee (sometimes collectively referred to herein as the "Performance and Payment Bonds") to guarantee the performance of the Demolition Contractor's obligations under the Contract Documents, completion of the Contract, and the payment of all labor and materials furnished for the Project Work, including but not limited to the payment of the below defined Prevailing Wages. The cost of said Performance and Payment Bonds shall be included in the Contract Sum.

13. Illinois Prevailing Wage Act

A. All laborers, workers and mechanics employed by Demolition Contractor and/or by any subcontractor(s) performing any Project Work shall be paid wages (hourly cash wages plus fringe benefits) at rates not less than those required under the Illinois Prevailing Wage Act (820 ILCS 130/01 et seq.) (the "Act") (hereinafter, "Prevailing Wages") for Cook County, the county in which the Project Work will be performed. Demolition Contractor and all subcontractor(s) shall comply with all regulations issued pursuant to the Act and other applicable federal, state, and local laws and regulations pertaining to labor standards with the most stringent laws and regulations controlling.

B. The Demolition Contractor shall notify immediately in writing all of its subcontractors, of all changes in the schedule of Prevailing Wages. Demolition Contractor shall include in each of its subcontracts a written stipulation that not less than the Prevailing Wages shall be paid to all laborers, workers, and mechanics performing work under the Contract and shall require each of its sub-subcontractors of every tier to include said stipulation regarding payment of Prevailing Wages. Any increase in costs to the Demolition Contractor due to changes in the Prevailing Wages or labor law during the term of any contract and/or sub-contract of any tier shall be at the expense of the Demolition Contractor and not at the expense of the Village. Any change orders shall be computed using the Prevailing Wages applicable at the time the change order work is scheduled to be performed. The Demolition Contractor shall be solely responsible to maintain accurate records as required under the Act, and shall be solely liable for paying the difference between Prevailing Wages and any wages actually received by laborers, workers, and/or mechanics engaged in the work and for insuring strict compliance with the requirements of the Act, including but not limited to providing certified payrolls to the Village in strict accordance with the Act using forms and affidavits furnished by IDOL (the "Certified Payrolls"). A copy of the July 15, 2020 prevailing wage rates for Cook County, Illinois (which as of July 15, 2020, appear to be the most current prevailing wages) are attached hereto. Notwithstanding the foregoing, said prevailing wage rates are revised by the Illinois Department of Labor (IDOL) from time to time. Demolition Contractor is solely responsible for obtaining and paying the applicable revised prevailing rate of wages for Cook County, Illinois as determined by the IDOL for the time period in which the work is

being performed. Said revised prevailing wage rates are available at IDOL's website: <http://www.state.il.us/agency/idol/rates/rates.HTM>.

14. Intentionally Omitted.

15. Default. In the event of default hereunder, the non-defaulting party shall be entitled to all remedies available at law and/or equity, including reasonable attorney's fees, subject to the limitations set forth in paragraph 18 of this Agreement.

16. Notice. Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed served (a) when delivered by Federal Express or similar overnight courier service to that party's address set forth below during the hours of 9:00 a.m. and 5:00 p.m. local time Monday through Friday, excluding federal holidays;(b) when mailed to any other person designated by that party in writing herein to receive such notice, via certified mail, return receipt requested, postage prepaid; or (c) via fax. Fax notice shall be effective as of date and time of facsimile transmission, provided that the notice transmitted shall be sent on business days during business hours (9:00 A.M. to 5:00 P.M. Chicago time). In the event fax notice is transmitted during non-business hours, the effective date and time of notice is the first hour of the first business day after transmission. Notice shall be given to the following:

If to the Demolition Contractor:

Fowler Enterprises, LLC
41W691 Russell Road
Elgin, IL 60124
Attn: Jake Fowler

If to the Owner:

Village of Bartlett
228 South Main Street
Bartlett, Illinois, 60103
Attn: Paula Schumacher, Village Administrator
Fax: 630-837-7168

With a copy to the Environmental Manager:

Deigan & Associates, LLC
28835 North Herky Drive, Unit 120
Lake Bluff, IL, 60044
Attn: Gary Deigan
Fax: 847-549-3242

Either party hereto may change the place of notice to it by sending written notice to the other party.

17. Repair Work. Demolition Contractor shall repair any damage to the Project Site and/or any other owner property attributable to acts and/or omissions of the

Demolition Contractor and/or Demolition Contractor's Agents and/or otherwise attributable to the Project Work.

18. Limitation on the Owner's Liability. The Demolition Contractor agrees to waive any right which it may have to punitive, consequential, special, indirect, incidental, and/or exemplary damages against the Village of Bartlett and other Indemnified Parties and agrees not to make any claim or demand for such damages against the Village and/or other Indemnified Parties.

19. Hazardous Substances. Demolition Contractor shall not cause or permit any Hazardous Substances to be brought upon, kept, stored or used in or about any of the Project Site and/or any other property owned, leased or controlled by the Owner (collectively, "Subject Property") by Demolition Contractor and/or Demolition Contractor's Agents (defined above). If the presence of Hazardous Substances brought upon, kept, stored or used in or about the Subject Property by or on behalf of Demolition Contractor or Demolition Contractor's Agents in violation of this paragraph, results in contamination of the said Property, Demolition Contractor shall pay for all actual costs of clean up and shall indemnify, hold harmless and defend the above defined Indemnified Parties from and against any and all claims, demands, expenses (including reasonable attorneys' fees), costs, fines, penalties and other liabilities of any and every kind and nature, including, but not limited to, costs and expenses incurred in connection with any clean-up, remediation, removal or restoration work required by any federal, state or local governmental authority because of the presence of any such Hazardous Substances on or about said Property.

For purposes hereof, Hazardous Substances shall include, but not be limited to, substances defined as "hazardous substances," "toxic substances" in the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended; the federal Hazardous Materials Transportation Act, as amended; and the federal Resource Conservation and Recovery Act, as amended ("RCRA"); those substances defined as "hazardous substances," "materials," or "wastes" under any Federal law or the law of the State of Illinois; and as such substances are defined in any regulations adopted and publications promulgated pursuant to said laws (collectively, "Environmental Laws"). If Demolition Contractor's activities or the activities of any of Demolition Contractor's Agents violate or create a risk of violation of any Environmental Laws, Demolition Contractor shall cause such activities to cease immediately upon notice from the Owner. Demolition Contractor shall immediately notify the Owner both by telephone and in writing of any spill or unauthorized discharge of Hazardous Substances or of any condition constituting an "imminent hazard" under any Environmental Laws.

Demolition Contractor's indemnification obligations and duties as stated in the paragraph 19 and as set forth in Exhibit I of the Contract Documents shall survive the termination and/or expiration of this Contract.

20. Delays in Project Work. The Demolition Contractor's sole remedy for delay shall be an extension of time, and reasonable additional compensation for delay of any

kind that is beyond the Demolition Contractor's control and without fault or neglect of Demolition Contractor.

21. Change Orders.

A. Notwithstanding any provisions herein to the contrary, where proposed changes to the Project Work involve a modification to (i) the Contract Sum; (ii) the Contract Time, or (iii) material changes in the Work (i.e., other than minor field changes), a written Change Order shall be prepared by the Superintendent of Parks and Planning. It shall be a condition precedent to the acceptance of any Change Order or any Series of Change Orders which involves an increase or decrease in the Contract Sum of \$10,000 or more or changes the time of completion by a total of thirty (30) days or more, that the Village President and Board of Trustees of the Village of Bartlett (the "Corporate Authorities") shall have first approved such written Change Order(s) and made the requisite determinations and findings in writing as required by 720 ILCS 5/33 E-9 (as amended). Other changes involving modifications to the Contract Sum, Contract Time or material change in the Work which will result in an increase or decrease of less than \$10,000 or extension of less than thirty (30) days to the Contract Time shall be made by the Bartlett Village Administrator or the Corporate Authorities.

B. For any adjustments to the Contract Sum based on other than the unit prices method, the Demolition Contractor agrees to change and accept payment for its overhead and profit at the following percentages of the cost attributable to the change in the Project Work:

- i. Ten percent (10%) of the project Work by the Demolition Contractor not involving subcontractors.
- ii. Five percent (5%) for project Work by subcontractors.
- iii. When both additions and credits are involved in any one change, the allowance for overhead and profit shall be figured on the basis of the net increase, if any.
- iv. For additional Project Work ordered as described which will be executed by subcontractors of the Demolition Contractor, it is agreed subcontractors will be permitted to charge ten percent (10%) for Project Work not involving sub-subcontractors and five (5%) for Project Work by sub-subcontractors. To the net Subcontract amount the Demolition Contractor may add five (5%).

22. Relationship of the Parties.

A. It is understood, acknowledged and agreed by the parties that the relationship of the Demolition Contractor to the Owner arising out of this Agreement shall be that of an independent contractor. Neither Demolition Contractor, nor any employee or agent of Demolition Contractor, is an employee, partner, joint venture, and/or agent of

the Owner, and therefore is not entitled to any benefits provided to employees of the Owner. Demolition Contractor has no authority to employ/retain any person as an employee or agent for or on behalf of the owner for any purpose. Neither Demolition Contractor nor any person engaging in any work or services related to this Agreement at the request or with the actual or implied consent of the Demolition Contractor may represent himself to others as an employee of the Owner. Should any person indicate to the Demolition Contractor or any employee or agent of the Owner by written or oral communication, course of dealing or otherwise, that such person believes Demolition Contractor to be an employee or agent of the Owner, Demolition Contractor shall use its best efforts to correct such belief. In ordering or accepting delivery of or paying for any goods or services, Demolition Contractor shall do so in Demolition Contractor's own business.

B. Demolition Contractor shall at all times have sole control over the manner, means and methods of performing the services required by this Agreement according to its own independent judgment. Demolition Contractor acknowledges and agrees that it will devote such time and resources as necessary to produce the contracted for results. The Owner shall not have control over, charge of, nor be responsible for, the construction means, methods, techniques, sequences of procedures, or for safety precautions and programs in connection with the Project Work since they are solely the Demolition Contractor's rights and responsibilities. The Demolition Contractor shall supervise and direct the Project Work efficiently with his, her or its best skill and attention; and the Demolition Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Project Work; and the Demolition Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to all employees on the Project Site and all other persons who may be affected thereby. The Owner shall not have any authority to stop the work of the Demolition Contractor or the work of any subcontractor on the Project.

23. Exhibits and Contract Documents. All Exhibits and Contract Documents referred to herein are expressly incorporated herein and made a part hereof as though fully set forth herein.

24. Assumption of Liability. **To the fullest extent permitted by law, Demolition Contractor assumes liability for all injury to or death of any person or persons including employees of Demolition Contractor, any subcontractor of any tier, any supplier or any other person and assumes liability for all damage to property sustained by any person or persons occasioned by or in any way arising out of any work performed pursuant to this Contract.**

25. No Waiver of Immunities and/or Privileges. Nothing herein shall be construed as an express and/or implied waiver of any common law and/or statutory immunities and/or privileges of the Village of Bartlett, and/or any of its officials, officers, employees, volunteers and/or agents as to any liability whatsoever, and all such immunities and privileges are expressly reserved.

26. Intentionally Omitted.

27. Illinois Human Rights Act. The Demolition Contractor shall comply with all terms and procedures of the Illinois Human Rights Act, (775 ILCS 5/1-101, et seq.) and Demolition Contractor represents and warrants to the Owner as follows:

(1) That it will not discriminate against any employees or applicant for employment because of race, color, religion, sex, marital status, national origin or ancestry, age physical or mental handicap unrelated to ability, or an unfavorable discharge from military service, and further that it will examine all job classifications to determine if minority persons or women are under-utilized and will take appropriate affirmative action to rectify any such under-utilization.

(2) That, if it hires employees in order to perform this Contract or any portion thereof, it will determine the availability (in accordance with the Department's Rules and Regulations) of minorities and women in the areas from which it may reasonably recruit and it will hire for each job classification for which employees are hired in such a way that minorities and women are not under-utilized

(3) That in all solicitations or advertisements for employees placed by it or on its behalf, it will state that all applicants will be afforded equal opportunity without discrimination because of race, color, religion, sex, sexual orientation, marital status, national origin, or ancestry, age, physical or mental handicap unrelated to ability, or an unfavorable discharge from military service.

(4) That it will send to each labor organization or representative of workers with which it has or is bound by a collective bargaining or other agreement or understanding, a notice advising such labor organization or representative of the Demolition Contractor's obligations under the Illinois Human Rights Act and the Department's Rules and Regulations. If any such labor organization or representative fails or refuses to cooperate with the Demolition Contractor in its efforts to comply with such Acts and Rules and Regulations, the Demolition Contractor will promptly so notify the Department and the contracting agency and will recruit employees from other sources when necessary to fulfill its obligations there under.

(5) That it will submit reports as required by the Department's Rules and Regulations, furnish all relevant information as may from time to time be requested by the Department or the contracting agency, and in all respects comply with the Illinois Human Rights Act and the Department's Rules and Regulations.

(6) That it will permit access to all relevant books, records, accounts and work sites by personnel of the contracting agency and the Department for purposes of investigation to a certain compliance with the Illinois Human Rights Act and the Department's Rules and Regulations.

(7) That it will include verbatim or by reference the provisions of these clauses in every subcontracting awards under which any portion of the Contract obligations are undertaken or assumed, so that each provision will be binding upon such subcontractor. In the same manner as with other provisions of this Contract, the Demolition Contractor will be liable for compliance with applicable provisions of this clause by such subcontractors; and further it will promptly notify the contracting agency and the Department in the event any Subcontractor fails or refuses to comply therewith. In addition, the Demolition Contractor will not utilize any subcontractor declared by the Illinois Human Rights Commission to be ineligible for Contracts or Subcontracts with the State of Illinois or any of its political subdivisions or municipal corporations.

28. Intentionally Omitted.

29. Clean Air Act and Federal Water Pollution Control Act. Demolition Contractor shall comply with the Clean Air Act of 1970, as amended, the Federal Water Pollution Control Act, as amended, and all Environmental Laws (as defined above) with the most stringent laws controlling.

30. Removal and Disposal. The Demolition Contractor must remove and dispose of all construction or demolition debris materials, waste and soils at licensed facilities in accordance with applicable federal, state and local laws, including but not limited to the NEPA Act and Illinois Public Act 97-137, with the most stringent and demanding requirements controlling.

31. Work by Trade Unions. If the Project Work is to be performed by trade unions, the Demolition Contractor shall make all necessary arrangements to reconcile, without delay, damage, recourse, or cost to the Owner, any conflict between the Contract Documents and any agreements or regulations of any kind at any time in force among members or councils which regulate or distinguish what activities shall not be included in the work of any particular trade. In case the progress of the Work is affected by any undue delay in furnishing or installing any items or materials or equipment required under the Contract Documents because of the conflict involving any such agreement or regulation, the Owner may require that other material or equipment of equal kind and quality be provided at no additional cost to the Owner.

32. Miscellaneous

A. This Agreement supersedes all prior agreements and understandings, both written and oral, of the parties to the subject matter hereof. This Agreement applies to and binds the successors and assigns of the Parties to this Agreement. Any amendments to this Agreement must be in writing and executed by both Parties.

B. This Agreement may be executed in any number of counterparts, and by the Owner and Demolition Contractor on different counterparts, each of which when executed shall be deemed an original and all of which together shall constitute one and the same Agreement.

C. Changes in the number, gender and grammar of terms and phrases herein when necessary to conform this Agreement to the circumstances of the parties hereto shall in all cases, be assumed as though in each case fully expressed therein.

D. This Agreement shall be construed, governed and enforced according to the laws of the State of Illinois, and the exclusive venue for the enforcement of this Agreement and/or litigation between the parties shall be the Circuit Court of Cook County, Illinois.

E. In construing this Agreement, section headings shall be disregarded.

F. Time is of the essence of this Agreement and every provision contained herein.

G. If any clause, phrase, provision or portion of this Agreement or the application thereof, to any person or circumstance, shall be invalid or unenforceable under applicable law, such event shall not affect, impair or render invalid or unenforceable the remainder of this Agreement, nor shall it affect the application of any other clause, phrase, provision or portion hereof to other persons or circumstances.

H. Each of the undersigned signing as an officer or agent on behalf of the respective party to this Agreement warrants that he or she holds such capacity as is specified beneath his or her name and further warrants that he or she is authorized to execute and effectuate this Agreement and that he or she does so voluntarily and in his or her official capacity.

I. Survival of Obligations. Except as otherwise provided, any obligations and duties which by their nature extend beyond the expiration or termination of this Agreement, including, without limitation, Sections pertaining to Indemnity shall survive the expiration of this Agreement.

J. In the event of any conflict between the terms and conditions of any of the Contract Documents, the most stringent and demanding requirements shall control.

K. Facsimile signatures shall be sufficient for purposes of executing, negotiating, and finalizing this Agreement.

Village of Bartlett

Demolition Contractor:
Fowler Enterprises, LLC

By: _____
Kevin Wallace
Village President

By: _____
Name: Jake Fowler
Title: Owner

Attest:

Attest:

Lorna Gilles
Village Clerk

Name: Christine Swanson
Title: Agent