

BRUNSWICK CITY

SERVICES, UTILITIES, TECHNOLOGY & CABLE COMMITTEE

Agenda

NOVEMBER 28, 2022

6:20 PM

or Immediately Following
Finance Committee

1. Discussion Items

RES. NO. 107-2022 - An emergency resolution authorizing the City Manager to enter into a purchasing agreement with Cargill for the purchase of an estimated 1,000 tons of ClearLane enhanced road salt for the Service Department in an amount not to exceed \$79.99 per ton. - **1st Reading** (To be brought from Services, Utilities, Technology & Cable Committee, *Administration/Paul Barnett*)

RES. NO. 108-2022 - An emergency resolution providing consent to the Ohio Department of Transportation for the performance of bridge inspection program services for the City. - **1st Reading** (To be brought from Services, Utilities, Technology & Cable Committee, *Administration/Matt Jones*)

2. General Discussion

3. Adjournment

PROPOSED LEGISLATION



DATE: 11/28/2022

TO: Vice Mayor Nicholas Hanek and Members of City Council

FROM: Carl S. DeForest, City Manager
Paul Barnett

COPY: Mayor Ron Falconi

LEGISLATION: **RES. NO. 107-2022** - An emergency resolution authorizing the City Manager to enter into a purchasing agreement with Cargill for the purchase of an estimated 1,000 tons of ClearLane enhanced road salt for the Service Department in an amount not to exceed \$79.99 per ton. - **1st Reading** (To be brought from Services, Utilities, Technology & Cable Committee, *Administration/Paul Barnett*)

BACKGROUND: When temperatures lower to 18 degrees Fahrenheit or lower, standard rock salt becomes less effective. During these times, an enhanced salt is used with a much lower useful temperature. The enhanced salt that Brunswick uses is called ClearLane and it is a proprietary product that is offered through the Sourcwell purchasing program that Brunswick is a member of. The Sourcwell price is \$87.36 per ton. We are being offered this product from Cargill for a reduced price of \$79.99 per ton.

PURPOSE AND EXPLANATION: This agreement would allow the City to purchase enhanced sodium chloride(road salt) at a cheaper price directly from Cargill rather than the listed bid price through the Sourcwell purchasing program. Sourcwell is a purchasing program that the City uses from time to time.

IMPLEMENTATION SCHEDULE: We want the option to begin ordering this material starting on January 1, 2023. Orders will be dictated on the severity of the winter season.

FINANCIAL INFORMATION:

FINANCIAL SUMMARY: 01/01/2023 - 12/31/2023 salt purchases will be contingent upon the City Council's adoption of the 2023 budget, sufficient appropriations in place in account#117-0420-55300 and a certified purchase order executed in accordance with ORC 5705.41.

RECOMMENDED ACTION:

One Reading	No
Two Readings	No
Three Readings	Yes
Emergency	Yes
Suspension of Rules	No

If emergency or suspension of the rules, why the request?

It is requested that legislation is passed as an emergency measure for the rules for the immediate preservation of public peace, property, health, safety, or welfare and so that the legislation will be enacted before January 1, 2023.

**ADDITIONAL
INFORMATION:**



Salt, Road Safety
24950 Country Club Blvd, Suite 450
North Olmsted, OH 44070

Tuesday, November 15, 2022

Billing Information		Shipping Information	*Contact Information	
Account Number		2500022987	Attn:	VALUED CUSTOMER
Name	Brunswick		Title	
Address 1	4383 Center Rd		Phone	330-55-6804
P O Box			Fax	
City State Zip	Brunswick, OH 44212		Mobile	
County			e-mail	
*PLEASE VERIFY THAT ALL CONTACT INFORMATION IS CORRECT. IF CHANGES ARE REQUIRED PLEASE NOTE THEM ON THE NEXT PAGE.				

Cargill, Incorporated Deicing Technology Business Unit ("Cargill") is pleased to submit the following quote for your DEICING SALT needs for the 2022/2023 season.

Price Basis Per Ton

Product	SHIPPED PRICE	Estimated Tons	Terminal
100012763 – ClearLane® enhanced deicer	\$79.99	1000	CLEVELAND MIDLAND
THE PRODUCT QUOTED IN THIS AGREEMENT IS INTENDED FOR BULK DEICING USE ONLY.			

PLEASE SIGN AND RETURN THIS QUOTE LETTER TO OUR ATTENTION WITHIN TEN (10) BUSINESS DAYS FROM DATE OF LETTER. WE CANNOT UPDATE YOUR ACCOUNT FOR THIS YEAR WITHOUT THE SIGNED QUOTE LETTER. THIS PRICE QUOTE LETTER DOES NOT CONSTITUTE AN ORDER. ORDERS MUST BE PLACED BY CALLING CUSTOMER SERVICE AT 800-600-SALT (7258). ORDERS BEING PLACED FOR PICKUP MAY NOT BE AVAILABLE FOR 24 HOURS FROM THE TIME THE ORDER IS PLACED.

TERMS AND CONDITIONS –

- Provided this Price Quote Letter is signed and returned within ten (10) business days from the Date, Cargill agrees to hold the quoted prices firm from November 15, 2022 through April 30, 2023. Notwithstanding the foregoing, the prices contained in this Price Quote Letter are contingent on Customers adherence to these Terms and Conditions and the attached Terms and Conditions of Sale, including, but not limited to, Customer's compliance with the Customer account's payment and credit terms stated below.
- If purchase is not made by December 31, 2022, Cargill reserves the right to revoke the pricing provided in this Price Quote Letter.
- The Estimated Tons figure is an estimate of the total quantity of each Product(s) to be purchased by Customer under this Price Quote Letter. Customer is not obligated to purchase a minimum percentage of the Estimated Tons. Cargill is not obligated to sell Customer any quantity of the Estimated Tons.
- Cargill's obligation to sell Product(s) is SUBJECT TO PRODUCT AVAILABILITY. Cargill has the right to (i.) decline, or suspend shipments of, any Customer order placed under this Price Quote letter or (ii) terminate this Price Quote Letter if, at any time, Cargill encounters Product shortages due to commitments to other customers. In addition, Cargill reserves the right to decline, or suspend shipments of, any Customer order placed under this Price Quote Letter for any reason(s) relating to: Conditions at any Cargill terminal/production facility, weather conditions, or any other reason that may affect Cargill's ability to accept orders.
- Estimated delivery time three to seven business days after release of an order. This quote assumes that Product will be delivered from or picked up at the terminal set forth above. Sourcing of products from another Cargill facility is subject to availability and additional fees that may be applied to your account. Cargill's sale of Product is expressly conditional upon these Terms and Conditions and Customer's acceptance of the attached Terms and Conditions of Sale. Any terms which may exist on the Customer's standard purchase order (or similar forms) and which alter or are inconsistent with the terms and conditions will be of no legal force or effect and will not govern the transaction contemplated by this Price Quote Letter.
- By accepting, Customer agrees that this Price Quote Letter (including the Terms and Conditions and the attached Terms and Conditions of Sale) constitutes the entire understanding between Cargill and Customer and supersedes all other prior agreements or quotations, whether written or oral, between Cargill and Customer with respect to the Product(s). Any individual signing this Price Quote on behalf of Customer represents and warrants that they have full authority to do so, and that the transaction described herein is consistent with any applicable procurement regulations.

Payment Terms	NET 30	Credit Limit	\$125,000
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Payment terms & credit limits are subject to change.

Thank you for the opportunity to be of service. We are looking forward to supplying your salt needs.

Cargill, Incorporated Salt, Road Safety Kaitlyn Jackson District Manager Kaitlyn_jackson@cargill.com 800-600-7258 - p	Accepted
	Signature:
	Name:
	Title:
	e-mail:



Deicing Technology Business
24950 Country Club Blvd, Suite 450
North Olmsted, OH 44070

Please notify us of any required changes to your account information. Any incorrect information will delay your account setup.

Billing Information			Shipping Information	
Name:				
DBA (if applicable)				
Address 1				
Address 2				
City State Zip				
County				
Attn:				
Phone		Fax		e-mail:

TERMS AND CONDITIONS OF GOVERNMENT ROAD SALT SALES

1. **TERMS TO GOVERN.** The terms and conditions set forth herein shall constitute the sole terms and conditions of sale for this quotation (the "Quote") and any orders placed thereunder. No other terms or conditions, whether contained in Buyer's purchase order or elsewhere, shall be binding on Seller unless agreed to in writing by Seller.

2. **TITLE/RISK OF LOSS.** Title and risk of loss shall pass to Buyer at the time the goods are delivered to or picked up by Buyer.

3. **PAYMENT AND CREDIT TERMS.** Failure of the Buyer to pay on the due date for products shipped shall give Seller the right, but not the obligation, to suspend further shipment, without notice to the Buyer, until all previous shipments are paid, or to terminate this agreement and seek all available remedies from Buyer. Interest at the maximum rate permitted by law will accrue on all invoices unpaid as of the net due date. All payments by Buyer shall be final 180 days after shipment of the goods and Buyer shall have no right to audit payments or deduct future payments after such date. Notwithstanding anything else herein contained, Seller reserves the right to modify payment terms or to allow no credit whatsoever to Buyer if Seller determines that it cannot grant Buyer the credit terms which are specified herein or Buyer's credit changes. Buyer understands that this reservation is necessary to allow Seller's credit department to have adequate time to review Buyer's credit status.

4. **WARRANTY AND LIMITATION OF LIABILITY.** Seller warrants that it has the right to convey good title to the goods and that the goods will be delivered free of all liens and encumbrances. EXCEPT FOR THE WARRANTIES SPECIFICALLY SET FORTH ABOVE, SELLER DISCLAIMS ALL OTHER EXPRESS OR IMPLIED WARRANTIES WITH RESPECT TO THE PRODUCTS, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY AND/OR FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL SELLER BE LIABLE FOR TO BUYER, OR TO ANY THIRD PARTY, FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES OF WHATSOEVER NATURE (INCLUDING, BUT NOT LIMITED TO, LOST BUSINESS, LOST PROFITS, DAMAGE TO GOODWILL OR REPUTATION AND/OR DEGRADATION IN VALUE OF BRANDS, TRADEMARKS, TRADENAMES, SERVICE NAMES OR SERVICE MARKS) WHETHER ARISING OUT OF BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE, FAILURE TO WARN, OR STRICT LIABILITY) OR OTHERWISE.

5. **EXCLUSIVE REMEDY.** If upon delivery to Buyer the goods appear not to meet the above warranty, Buyer shall immediately notify Seller who shall have a right to inspect them. Buyer shall not return, repair or dispose of any goods that fail to meet the above warranty without Seller's written consent. In the event Seller breaches the above warranty, Buyer's sole and exclusive remedy and Seller's sole and exclusive liability shall be limited to, at Seller's option, replacement of non-conforming goods with conforming goods or return of the purchase price.

6. **FORCE MAJEURE.** Seller shall be excused for failure to deliver or delay occasioned by conditions beyond Seller's reasonable control, including, but not limited to, Acts of God, fire flood, windstorm, acts of governmental authorities, strikes shortage of raw materials, breakdown, shortage or non-availability of transportation facilities or equipment or any similar event not within Seller's control. In the event Seller is unable to supply the total requirements of its customers, Seller may allocate its available supply among its customers in a manner deemed by Seller to be fair and equitable. If Seller declares force majeure hereunder, Seller may cancel any unperformed portion hereof upon ten (10) days written notice to Buyer.

7. **INCREASES.** Any advance in applicable freight rates or taxes taking effect before the fulfillment of orders placed under this Quote shall be for Buyer's account. All demurrage or detention charges shall be for Buyer's account. Seller reserves the right to add energy and/or transportation related surcharges for Buyer's account. In addition, if Seller is unable, for any reason, to supply the goods from its plant closest to Buyer's facility, then Seller may, but is not required to, supply the goods from another plant, to the extent it is available, subject to Buyer's payment of all increased freight costs.

8. **DELIVERY.** Buyer shall furnish complete shipping instructions in sufficient time to enable Seller to perform its obligations hereunder. Seller shall not be obligated to make shipment in absence thereof. If more than one delivery is called for, each delivery is to be considered a separate contract for purposes of furnishing complete shipping instructions by Buyer. Unless otherwise provided for herein, if the Quote provides for deliveries over a period exceeding one month, Seller shall not be obligated to deliver in any thirty day period more than approximately equal monthly quantities, in relation to the total amount. The destination routing of shipments will be at Seller's option.

9. **TERMINATION.** If either party breaches any of its obligations under this Quote or any order thereunder, the non-breaching party may give ten (10) day notice of termination, and if the breach has not been cured during the said 30-day period, this Quote shall terminate. In the event Buyer files a voluntary petition in bankruptcy, makes an assignment for the benefit of creditors; is adjudicated as bankrupt; and/or becomes insolvent, Seller may terminate this Agreement effective immediately. Termination, pursuant to this Section, while being in itself a remedy for breach, shall not preclude any other legal or equitable remedy which is available to the terminating party.

10. **TAXES.** Buyer shall be liable for any taxes or other exactions levied by Federal, State or local authorities upon the sale, delivery, storage, consumption or transportation of the goods or services, and if any such items are paid or required to be paid by Seller, the amount shall be added to and become part of the price payable to Seller for such goods or services.

11. **ASSIGNMENT.** The rights and obligations under this Quote are not assignable by Buyer unless in writing and signed by Seller.

12. **FORWARD CONTRACT.** The Parties agree that the transactions hereunder constitute a "forward contract" within the meaning of the United States Bankruptcy Code and that each Party is a "forward contract merchant" within the meaning of the United States Bankruptcy Code.

13. **CONTRACT AMBIGUITIES.** The Parties acknowledge that they have had the opportunity to consult with legal counsel of their own choosing. As a result, the rule of construction that provides that ambiguities in a contract shall be construed against the drafter shall not apply to these terms and conditions and the Parties waive any such defense to the terms of these terms and conditions.

CITY OF BRUNSWICK, OHIO
RESOLUTION NO. 107-2022

BY: Mr. Smith, Mr. Abella, Mr. Capretta

AN EMERGENCY RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH CARGILL FOR THE PURCHASE OF AN ESTIMATED 1,000 TONS OF CLEARLANE ENHANCED ROAD SALT FOR THE SERVICE DEPARTMENT IN AN AMOUNT NOT TO EXCEED \$79.99 PER TON.

WHEREAS: The City of Brunswick is a member of the Sourcewell purchasing program as authorized by this Council and Ohio Revised Code Section 9.48;

WHEREAS: Ohio Revised Code Section 9.48(D) permits the City to purchase supplies or services from another party without competitive bidding and outside the purchasing programs authorized by Ohio Revised Code Section 9.48 if such supplies or services can be purchased under equivalent terms, conditions and specifications, but at a lower price than through such authorized purchasing programs; and

WHEREAS: The proposed purchase of an estimated 1,000 tons of ClearLane enhanced road salt for the Service Department from Cargill in an amount not to exceed \$79.99 per ton, is upon equivalent terms, conditions and specifications and at a lower price than through purchasing programs authorized by Ohio Revised Code Section 9.48.

WHEREAS: THE COUNCIL OF THE CITY OF BRUNSWICK HEREBY RESOLVES:

SECTION 1: That the City Manager is hereby authorized to enter into an Agreement with Cargill for the purchase of an estimated 1,000 tons of ClearLane enhanced road salt for the Service Department in an amount not to exceed \$79.99 per ton.

SECTION 2: That this Resolution is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, property, health, safety or welfare, and for the additional reason that immediate passage is necessary to acquire ClearLane enhanced road salt for use during the 2022-2023 winter season. Therefore, the same shall be in full force and effect from and after its passage by the required number of votes or from the earliest time allowed by law.

PASSED: 1st Reading _____

2nd Reading _____

3rd Reading _____

ADOPTED: _____ AYES _____ NAYS _____

ATTEST: _____
Clerk of Council
Laura E. Timura

PROPOSED LEGISLATION



DATE: 11/28/2022

TO: Vice Mayor Nicholas Hanek and Members of City Council

FROM: Carl S. DeForest, City Manager
Matt Jones

COPY: Mayor Ron Falconi

LEGISLATION: **RES. NO. 108-2022** - An emergency resolution providing consent to the Ohio Department of Transportation for the performance of bridge inspection program services for the City.
- **1st Reading** (To be brought from Services, Utilities, Technology & Cable Committee, *Administration/Matt Jones*)

BACKGROUND: The City of Brunswick is a current participant in the ODOT Municipal Bridge Inspection program as authorized by City Council via Res. No. 95-19 passed on December 9, 2019. The current three-year cycle will expire on December 31, 2022.

PURPOSE AND EXPLANATION: The Ohio Department of Transportation (ODOT) will provide municipal bridge inspection services to the City through ODOT-hired consultants for calendar year 2023. This program is offered at no cost to the City.

IMPLEMENTATION SCHEDULE: This program will be in place for calendar year 2023.

FINANCIAL INFORMATION:

FINANCIAL SUMMARY: This program is offered by ODOT at no cost to the City.

RECOMMENDED ACTION:

One Reading	Yes
Two Readings	No
Three Readings	No
Emergency	Yes
Suspension of Rules	Yes

If emergency or suspension of the rules, why the request?

It is requested that legislation is passed by emergency measure with suspension of the rules for the immediate preservation of the public peace, property, health, safety, or welfare, and providing for the usual daily operation of a municipality, and for the further reason to ensure timely application to ODOT for continued participation in the program.

**ADDITIONAL
INFORMATION:**

CITY OF BRUNSWICK, OHIO
RESOLUTION NO. 108-2022

BY: Mr. Smith, Mr. Abella, Mr. Capretta

AN EMERGENCY RESOLUTION PROVIDING CONSENT TO THE OHIO
DEPARTMENT OF TRANSPORTATION FOR THE PERFORMANCE OF
BRIDGE INSPECTION PROGRAM SERVICES FOR THE CITY.

WHEREAS: It has been determined that the City is in need of Bridge Inspection Program Services, including, without limitation, bridge load rating calculations, scour assessments, bridge inspections and fracture critical plan development (the “Program”); and

WHEREAS: The Ohio Department of Transportation (“ODOT”) will provide Program services through ODOT hired consultants for 2023 at no cost to the City.

WHEREAS: THE COUNCIL OF THE CITY OF BRUNSWICK HEREBY RESOLVES:

SECTION 1: That being in the public interest, the City hereby consents to participation in the Program wherein ODOT shall assume and bear 100% of all eligible Program services requested by the City and approved by ODOT. The City agrees to pay 100% of the cost of ineligible Program services that have been requested by the City and completed by ODOT.

SECTION 2: The City agrees that all existing rights-of-way required for the Program shall be made available in accordance with current State and Federal regulations.

SECTION 3: That the City Manager is hereby authorized and directed, upon approval of the Law Director, to execute any document with the Director of Transportation necessary for participation in the Program.

SECTION 4: That this Resolution is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, property, health, safety or welfare, and for the additional reason to ensure timely application to ODOT for continued participation in the Program. Therefore, the same shall be in full force and effect from and after its passage by the required number of votes or from the earliest time allowed by law.

PASSED: 1st Reading _____

Rules Suspended: AYES _____ NAYS _____

ADOPTED: _____ AYES _____ NAYS _____

ATTEST: _____
Clerk of Council
Laura E. Timura