

BRUNSWICK CITY

SERVICES, UTILITIES, TECHNOLOGY & CABLE COMMITTEE

Agenda

OCTOBER 23, 2023
6:00 PM

1. Discussion Items

- (a) **RES. NO. 89-2023** - An emergency resolution authorizing the City Manager to enter into an agreement with CCG Automation, Inc. for HVAC upgrades at City Hall in an amount not to exceed \$63,780.00. - **1st Reading** (To be brought from Services, Utilities, Technology & Cable Committee, *Administration/Grant Aungst*)
- (b) **RES. NO. 90-2023** - An emergency resolution authorizing the City Manager to enter into an agreement with Cargill for the purchase 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 Magovac*)
- (c) **RES. NO. 91-2023** - An emergency resolution authorizing the City Manager to enter into an agreement with Konstruction King, Inc. for the provision of emergency concrete road repairs in an amount not to exceed \$47,400.00. - **1st Reading** (To be brought from Services, Utilities, Technology & Cable Committee, *Administration/Paul Magovac*)

2. General Discussion

3. Adjournment

PROPOSED LEGISLATION



DATE: 10/23/2023

TO: Vice Mayor Nicholas Hanek and Members of City Council

FROM: Carl S. DeForest, City Manager
Grant Aungst

COPY: Mayor Ron Falconi

LEGISLATION: **RES. NO. 89-2023** - An emergency resolution authorizing the City Manager to enter into an agreement with CCG Automation, Inc. for HVAC upgrades at City Hall in an amount not to exceed \$63,780.00. - **1st Reading** (To be brought from Services, Utilities, Technology & Cable Committee, *Administration/Grant Aungst*)

BACKGROUND: Proposal #M23002BW, dated October 3, 2023, has been received from CCG Automation to upgrade the Brunswick City Hall HVAC system, including sheet metal work to perform openings in full height walls to allow more return air; reconnect existing diffusers that were disconnected over the years; and relocate one ALC sensor. Insulation work and duct sealing on designated areas will be included as outlined in the three alternates, for a total amount not to exceed \$63,780.00. Funding for the above work is through a NOPEC grant.

PURPOSE AND EXPLANATION: The HVAC upgrades are necessary to promote greater energy efficiency throughout City Hall.

IMPLEMENTATION SCHEDULE: Immediately

FINANCIAL INFORMATION: City Hall HVAC upgrades - 10/24/2023 - \$63,780.00 - 336-2023-56800 - - \$63,780.00

FINANCIAL SUMMARY: City Hall HVAC upgrades

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?

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 lock-in pricing and allow for energy efficient HVAC upgrades to be completed as soon as possible.

**ADDITIONAL
INFORMATION:**

CITY OF BRUNSWICK, OHIO
RESOLUTION NO. 89-2023

BY: Mr. Smith, Mr. Abella, Mr. Kuczma

AN EMERGENCY RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH CCG AUTOMATION, INC. FOR HVAC UPGRADES AT CITY HALL IN AN AMOUNT NOT TO EXCEED \$63,780.00.

WHEREAS: The City belongs to the State Procurement Program under the direction of the Department of Administrative Services; and

WHEREAS: The contract under the State Procurement Program has been awarded to CCG Automation, Inc.

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

SECTION 1: That the City Manager, with the approval of the Law Director, is hereby authorized and directed to enter into an Agreement with CCG Automation, Inc. for HVAC upgrades at City Hall in an amount not to exceed \$63,780.00.

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 lock-in pricing and allow for energy efficient HVAC upgrades to be completed as soon as possible. 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



CCG AUTOMATION, INC.

PROPOSAL

October 3, 2023

Proposal #M23002BW

Mr. Grant R. Aungst
Brunswick City Hall
4095 Center Road
Brunswick, OH 44212

**PROJECT: CITY HALL
HVAC UPGRADES – IMPLEMENTATION
Revision #3**

CCG Automation, Inc. is pleased to propose the following:

Base Price:

Sheet Metal Work shown of Building Drawing.

This includes creating openings in the full height walls
to allow more Return Air.

This includes connecting all the existing diffusers that became
disconnected over the years.

One of the two ALC Sensors that serve two different areas,
yet are next to each other, will be relocated.

Price: \$15,261.

Alternate #1:

Insulation Work in the Red Block on attached Drawing

Price: \$25,865.

Alternate #2:

Insulation Work in the Blue Block on attached Drawing

Price: \$8,552.

Alternate #3:

Provide Duct Seal on all Supply ducts in Red and Blue Areas

Price: \$14,102.

Work will start after 5:00 pm.

This proposal is valid for 30 days from the above date, and subject to Terms and Conditions included.



Proposed by:

A handwritten signature in black ink, appearing to read "Brian C. Wagner", is written over a horizontal line.

Brian C. Wagner
President

Accepted by:

Signature/Title

Date

By accepting this proposal, the purchaser agrees to be bound by the following terms and conditions:

- 1.) **SCOPE OF WORK.** This proposal and agreement is based solely on the written scope of work included on the reverse side of this form and the attached Scope of Work form(s) ("Work"). Unless specifically noted, this Work is based on regular, straight-time labor rates. Any requirements for extra or overtime labor arising from delays caused by other trades or by the purchaser will be considered billable at the applicable standard rates.

Unless specifically noted in the statement of the Work or services undertaken by CCG Automation, Inc. under this agreement, CCG Automation's obligations under this agreement EXPRESSLY EXCLUDE any work or service of any nature associated or connected with the identification, abatement, cleanup, control, removal or disposal of environmental hazards or substances, including, but not limited to, asbestos-containing building materials, lead, or PCB's discovered in or on the premises. In addition, the owner will provide a high-speed internet connection and VPN access, if applicable, to the building automation systems installed by CCG that can be accessed off-site by the employees of CCG Automation. **THE TERMS AND CONDITIONS SET FORTH HEREIN AND ON THE FACE SIDE OF THIS FORM CONSTITUTE THE COMPLETE AND EXCLUSIVE STATEMENT OF THE TERMS AND CONDITIONS OF THIS TRANSACTION. CCG AUTOMATION, INC. SPECIFICALLY OBJECTS TO THE INCLUSION OF ANY DIFFERENT OR ADDITIONAL TERMS AND CONDITIONS BY PURCHASER IN ACKNOWLEDGING AND ACCEPTING THIS PURCHASE ORDER.**

- 2.) **INVOICING AND PAYMENTS.** CCG Automation may invoice the Purchaser monthly for all materials delivered to the job site or to an off-site storage facility and for all Work performed on-site and off-site. An initial billing amount of fifteen percent (15%) may be included in CCG Automation's initial billing for the purposes of engineering, drafting and other mobilization costs which may occur prior to the actual implementation of the installation Work. Purchaser agrees to pay CCG Automation the amount invoiced upon request, as the Work progresses. No waivers of lien rights will be provided prior to receipt of payment of CCG Automation's invoices. Any invoices not paid within thirty days of issuance will be considered delinquent and subject to interest charges at the rate of 1-1/2% per month.
- 3.) **MATERIALS.** If delivery of any materials or equipment included as part of this proposal is delayed through no fault of CCG Automation, then the time for performance of the work shall be extended to the extent thereof. If any materials or equipment included in this proposal shall become permanently unavailable, then CCG Automation shall be released from any contractual obligation to provide the specified materials which are permanently unavailable and the Purchaser agrees to reimburse CCG Automation, Inc. for any difference between the cost of the permanently unavailable materials or equipment and the cost of any reasonably available substitute.
- 4.) **WARRANTY.** CCG Automation warrants that all work shall be completed in a workmanlike manner according to standard practices and shall be free from any defect caused by improper workmanship for a period of one (1) year from the date of substantial completion. CCG Automation assigns all warranties to the customer for all material and equipment provided. **THESE WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THOSE OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.** CCG Automation does not warrant the applicability of any products specified by others to perform the task which they were specified by others to perform. All warranties are void if the final invoice is not paid based upon the terms as listed above. If the final invoice is paid outside the terms listed above the warranty period is from the date of payment through one year of substantial completion. Labor warranty for defective labor is included on all quoted projects. Modifying programs or making hardware changes to accomplish additional control is not a warranty item and will be billed as time and material. Labor warranty is not estimated in any Time and Material projects or material only sales.
- 5.) **LIABILITY LIMITATION.** **CCG AUTOMATION, INC. IS NOT LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING IN ANY MANNER FROM THE EQUIPMENT OR MATERIALS FURNISHED OR THE WORK PERFORMED PURSUANT TO THIS AGREEMENT, WHETHER BASED ON BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY IN TORT OR OTHERWISE. NO ACTION OR SUIT TO ENFORCE RIGHTS OR REMEDIES ARISING FROM THIS TRANSACTION SHALL BE COMMENCED LATER THAN ONE YEAR FROM THE DATE OF COMPLETION.**
- 6.) **TAXES.** The price of this proposal does not include duties, sales, use or similar taxes unless required by federal, state or local law. Purchaser will pay, in addition to the stated price, all taxes not legally required to be paid by CCG Automation or, alternatively, will provide CCG Automation with legally executed tax-exemption certificates. CCG Automation shall provide Purchaser with any tax payment certificate upon request and after completion and acceptance of the Work being performed under this agreement.
- 7.) **TAX CREDITS.** The customer agrees to authorize all tax credits, if any, to CCG as the designer of record. This includes but is not limited to the energy credit placed into effect through the Energy Policy Act of 2005 (EPACT) - § 179D(c)(1) and (d) of the Internal Revenue Code.
- 8.) **REBATES/INCENTIVES/GRANTS.** The customer agrees to allow CCG Automation, Inc., on the owner's behalf, the first opportunity to apply for any incentives, rebates, or grants that may be or become available as it relates to the scope of this contract. The owner will have the option whether to use the money received from the incentives, rebates, or grants to reduce the cost of the project or accept a check; if allowable by the incentives, rebates, or grants.
- 9.) **DELAYS.** CCG Automation, Inc. is not responsible for any delay in the performance of the Work represented by this agreement resulting from or attributed to acts or circumstances beyond CCG Automation's control, including, but not limited to, acts of God, fire, riots, labor disputes, conditions of the premises, acts or omissions of the Purchaser, Owner, or other Contractors, or delays caused by suppliers or subcontractors of CCG Automation Inc.

- 10.) **COMPLIANCE WITH LAWS.** CCG Automation, Inc., shall comply with all applicable federal, state and local laws and regulations and will cause its subcontractors to obtain all necessary licenses and permits required for the prosecution of the Work.

- 11.) **ATTORNEY'S FEES.** - This article has been removed from this agreement.

- 12.) **INSURANCE.** CCG's standard insurance includes the following limits:
- 12.1 **WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY INSURANCE** in accordance with laws of the State in which Work is situated.
- 12.2 **COMPREHENSIVE GENERAL LIABILITY INSURANCE INCLUDING CONTRACTUAL LIABILITY INSURANCE AGAINST THE LIABILITY ASSUMED HEREINABOVE**, with Broad Form Property Damage Endorsement, deleting exclusions related to railroad property, products, completed, explosion, collapse and underground hazards and including CONTRACTORS' PROTECTIVE LIABILITY INSURANCE if CCG Automation sublets to another all or any portion of the Work, and including coverage of any stored material with the following minimum limits:
- 12.2.1 Bodily Injury (including death) \$1,000,000 per occurrence
- 12.2.2 Property Damage \$1,000,000 per occurrence /\$2,000,000 aggregate which includes coverage on a per project basis.
- 12.3 **COMPREHENSIVE AUTOMOBILE LIABILITY INSURANCE** covering all owned, non-owned and hired automobiles used in connection with the Work, with the following minimum limits:
- 12.3.1 Bodily Injury (including death) and Property Damage 1,000,000 per accident.

Insurance coverage in excess of CCG Automation's standard limits will be furnished when requested and required. The owner will be responsible for all additional premiums in excess of CCG Automation standard insurance. No credit will be given or premium paid by CCG Automation for insurance provided by others.

- 13.) **INDEMNITY.** - This article has been removed from this agreement.

- 14.) **OCCUPATIONAL SAFETY AND HEALTH.** The parties hereto agree to notify each other immediately upon becoming aware of an inspection under, or an alleged violation of, the Occupational Safety and Health Act relating in any way to the Work being performed as part of this agreement, both directly and indirectly.

- 15.) **DISPUTE RESOLUTION.** - This article has been removed from this agreement.

- 16.) **GOVERNING LAW AND CONSTRUCTION.** The captions of this Agreement do not form a part hereof and are solely for the convenience of the parties. This Agreement will be construed and legal relations between the parties arising out of this Agreement or performance or nonperformance of the construction of the Work will be determined in accordance with the laws of the State of Ohio, and the parties hereby submit themselves to the exclusive jurisdiction of the State and Federal Courts of Medina County, Ohio.

- 17.) **ENTIRE AGREEMENT.** **THIS PROPOSAL, UPON ACCEPTANCE, CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES AND SUPERSEDES ANY PRIOR REPRESENTATION OR UNDERSTANDINGS.**

- 18.) **CHANGES.** No change or modification of any of the terms and conditions stated herein shall be binding upon CCG Automation Inc. unless accepted by CCG Automation in writing.

- 19.) **TERM.** This proposal is valid for 10 days.

PROPOSED LEGISLATION



DATE: 10/23/2023

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. 90-2023** - An emergency resolution authorizing the City Manager to enter into an agreement with Cargill for the purchase 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 Magovac*)

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 Sourcewell purchasing program that Brunswick is a member of. The Sourcewell price is \$87.36 per ton. We are being offered this product 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) through the Sourcewell purchasing program. This provides an economy of scale that typically provides lower prices than the City can receive on its own and helps the City keep salt costs as low as possible. The City of Brunswick has participated in this program in the past years with benefit.

IMPLEMENTATION SCHEDULE: We want the option to begin ordering this material starting on January 1, 2024. Orders will be dictated on the severity of the winter season.

FINANCIAL INFORMATION: Sourcewell - 01/01/2024 - - 117-0420-55300 - - \$79,990

FINANCIAL SUMMARY: 01/01/2024-12/31/2024 salt purchase will be contingent upon the City Council's adoption of the 2024 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, 2024.

**ADDITIONAL
INFORMATION:**

CITY OF BRUNSWICK, OHIO
RESOLUTION NO. 90-2023

BY: Mr. Smith, Mr. Abella, and Mr. Kuczma

AN EMERGENCY RESOLUTION AUTHORIZING THE CITY MANAGER
TO ENTER INTO AN AGREEMENT WITH CARGILL FOR THE PURCHASE
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 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 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 2023-2024 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



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

Tuesday, July 25, 2023

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 2023/2024 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 July 25, 2023 through April 30, 2024. Notwithstanding the foregoing, the prices contained in this Price Quote Letter are contingent on Customer's 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, 2023, 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.

PROPOSED LEGISLATION



DATE: 10/23/2023

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. 91-2023** - An emergency resolution authorizing the City Manager to enter into an agreement with Konstruction King, Inc. for the provision of emergency concrete road repairs in an amount not to exceed \$47,400.00. - **1st Reading** (To be brought from Services, Utilities, Technology & Cable Committee, *Administration/Paul Magovac*)

BACKGROUND: On Sunday, January 15, 2023, a water line break occurred at 46 West 130th. The water line break caused the concrete roadway to rise four plus(4+) inches in the southbound lane. The pavement needs to be removed and replaced. The replacement of pavement is being scheduled after a Columbia Gas project installs a new gas line in the area of the water line break. This gas line placement is an active project and will necessitate the removal of pavement in this location.

PURPOSE AND EXPLANATION: Quotes were obtained by three(3) local companies. Konstruction King was the lowest and best at \$47,400.00. Concrete will be removed and replaced along with a catch basin.

IMPLEMENTATION SCHEDULE: Work is expected to occur in late November after the new gas line is installed.

FINANCIAL INFORMATION:

FINANCIAL SUMMARY: \$47,400.00 333-0474-56870

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, that this project may commence and be substantially completed in 2023.

**ADDITIONAL
INFORMATION:**

CITY OF BRUNSWICK, OHIO
RESOLUTION NO. 91-2023

BY: Mr. Smith, Mr. Abella, and Mr. Kuczma

AN EMERGENCY RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH KONSTRUCTION KING, INC. FOR THE PROVISION OF EMERGENCY CONCRETE ROAD REPAIRS IN AN AMOUNT NOT TO EXCEED \$47,400.00.

WHEREAS: Three (3) quotes were obtained to provide emergency concrete road repairs, with Konstruction King, Inc. determined to be the lowest and best bidder.

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

SECTION 1: That the City Manager, with the approval of the Law Director, is hereby authorized and directed to enter into an Agreement with Konstruction King, Inc. to provide emergency concrete road repairs in an amount not to exceed \$47,400.00.

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 complete emergency concrete road repairs as soon as possible. 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



QUOTE

1270 W130th St. Suite #300
Brunswick, OH 44212
Phone: (330) 273-5747

DATE: 10/02/2023

PROJECT: CITY OF BRUNSWICK
W130TH ST.

ITEM NO.	DESCRIPTION	EST. QTY.	UNIT	UNIT PRICE	TOTAL
1	CONCRETE REPAIR ON W 130TH ST.	300.00	SY	\$ 158.00	\$ 47,400.00
TOTAL					\$ 47,400.00



Proposal Clarification for #40 W.130th St.

Mr. Paul J. Magovac

On October 2nd, 2023 Konstruction King, Inc. sent a quote for the proposed work at #40 W.130 St Brunswick, Ohio. To clarify the sent proposal it was and is Konstruction King's intent to perform any and all work necessary to complete the job for one lump sum price of \$47,400.00.

The following items below are included in this cost:

- Remove and Replace approximately 150 feet by 18 feet of 9 inch concrete pavement according to provided specifications.
- Any work required to Adjust/Rebuild/Replace existing Catch Basin.
 - Including Additional pipe as directed.
 - Including the use of LSM as directed.
- Coordinating with the on going gas line project to set up detour signage and scheduling of work.

Best regards,

Nic Furio
Vice President
Konstruction King, Inc.

1270 W130TH ST. SUITE #300
BRUNSWICK, OH 44212
(330) 273-5747

Quotes for West 130th Street Road Repair Due to Water Line Break
40 West 130th Street (Near Boston Road)

Contractor	Concrete Removal and Replacement and Traffic control	Alternate Items					Total Cost of Concrete, Traffic, New Basin and Pipe
		New Catch Basin	Low Strength Mortar/ Cu. Yd.	Low Strength Mortar Cost at 4 Cu. Yd.	Pipe Cost per foot	Cost for 5' of Pipe	
880 Construction 965 Marks Rd. Valley City, Oh 44280	\$49,900.00	\$4,400.00	\$210.00	\$840.00	\$130.00	\$650.00	\$54,950.00
Konstruktion King 1270 W, 130th Street, Suite #300 Brunswick, Ohio 44212	\$47,400.00	included	Included	Included	Included	Included	\$47,400.00
Set In Stone 2350 Pearl Road, Brunswick, Ohio 44212	\$47,200.00	\$4,100.00	\$200.00	\$800.00	\$125.00	\$625.00	\$51,925.00

The water main break that occurred raised the pavement that is being replaced and there is an existing catch basin that was undermined when the repair was done. The Alternate items are for use as field conditions dictate once the excavation is started. With Konstruktion King's quote being all inclusive, we will perform the most conservative repair and the existing catch basin will be replaced and will not be supported by Low Stength Mortar backfill.

By P. Magovac 10/12/2023