

FIRST READING: 11.6.17

SECOND READING: 11.13.17

THIRD READING:

ORDINANCE NO. 96-17

BY: CHRISTOPHER J. KLYM

AN EMERGENCY ORDINANCE AUTHORIZING THE MAYOR AND THE
DIRECTOR OF PUBLIC SAFETY SERVICE TO PAY GARDINER SERVICE
COMPANY THE COST FOR REPLACING TWO (2) HVAC ROOFTOP UNITS
AT THE HAMILTON ICE ARENA FOR AN AMOUNT NOT TO EXCEED
\$56,828.00

WHEREAS: on October 20, 2017 the heating and ventilation rooftop units failed at the ice arena, creating an emergency. Heating Ventilation and Air Conditioning (HVAC) units provide required indoor air quality for the public and program participants in the lobby and south locker room/shower areas. In addition, HVAC rooftops provide freeze protection for the plumbing fixtures located in the locker room showers and restrooms.

WHEREAS: as provided for in Article VII, Section 4 of the City of Rocky River Charter, which states that Council may authorize expenditures without public bidding for product, services and emergency repair including labor and material; and

WHEREAS: if further lack of heating and ventilation occur, operation of the Hamilton Ice Arena said secondary heating and ventilation - jeopardizes the safety and operations of the ice arena; therefore immediate steps to provide necessary heating and ventilation be provided and to be serviced by Gardiner Service Company; and

WHEREAS: the Rocky River Ice Arena requires the replacement of two (2) heating and ventilation rooftop units, with installation and labor provided by Gardiner Service Company, who has the unique and specialized labor and equipment to rectify this emergency and to prevent failure of operations due to potential loss of heating and ventilation.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF ROCKY RIVER, COUNTY OF CUYAHOGA, STATE OF OHIO:

SECTION 1. That the Mayor and the Director of Public Safety-Service are hereby authorized to pay Gardiner Service Company, 31200 Bainbridge Road, Solon, Ohio, 44139 for the replacement and necessary repairs to the HVAC units at the Rocky River Ice Arena for an amount not to exceed Fifty Six Thousand Eight Hundred Twenty Eight Dollars and 00/100 (\$56,828.00), according to Exhibit A attached.

SECTION 2. Payment for these emergency repairs shall be made from the Capital Fund – 490-491-525610 Account. Rink Improvements

SECTION 3. That this Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of public peace, health and safety and that these repairs must begin as soon as possible due to the potential, results of a potential heating and ventilation failure provided it receives the affirmative vote of two-thirds (2/3) of all members elected to Council, it shall

I, the undersigned clerk of council of the city of Rocky River, State of Ohio, do hereby certify that publication of the foregoing ordinance was duly made by posting a true copy thereof in the lobby of the Rocky River City Hall, in accordance with the charter of Rocky River, commencing on the 13th day of November, 20 17.



Clerk of Council of the City of Rocky River, Ohio

take effect and be in force immediately upon its passage and approval by the Mayor; otherwise, it shall take effect and be in force from and after the earliest period allowed by law.

PASSED: November 13th, 2017


JAMES W. MORAN
President of Council

PRESENTED

TO MAYOR: November 13th, 2017 APPROVED: November 13th, 2017

ATTEST:


SUSAN G. PEASE
Clerk of Council


PAMELA E. BOBST
Mayor

It is hereby certified that the amount required for the execution of this Ordinance has been lawfully appropriated or authorized or directed for such purpose and is in the treasury or in the process of collection to the credit of the fund described herein free from any obligation or certification now outstanding.


MICHAEL THOMAS, CPA
Director of Finance

City of Rocky River }
County of Cuyahoga } ss

THE UNDERSIGNED CLERK OF THE COUNCIL OF THE CITY OF ROCKY RIVER, OHIO DOES HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF ORDINANCE NO. 96-17 ADOPTED BY THE COUNCIL OF SAID CITY ON THE 13th DAY OF November, 20 17 THAT THE PUBLICATION OF SUCH ORDINANCE HAS BEEN MADE AND CERTIFIED OF RECORD ACCORDING TO LAW; THAT NO PROCEEDINGS LOOKING TO A REFERENDUM UPON SUCH ORDINANCE HAVE BEEN TAKEN; THAT SUCH ORDINANCE AND THE CERTIFICATE OF PUBLICATION THEREOF, ARE OF RECORD IN ORDINANCE RECORD NO. 96-17

IN WITNESS WHEREOF, I HAVE HEREUNTO SUBSCRIBED MY NAME AND AFFIXED MY OFFICIAL SEAL THIS 13th DAY OF November, 20 17.


CLERK OF COUNCIL OF THE CITY OF ROCKY RIVER, OHIO



November 1, 2017

City of Rocky River – Hamilton Ice Rink
21018 Hilliard Blvd.
Rocky River, OH 44116

Attention: Mr. Mike Balla

Quote: 60-5028R1

Re: Office Lobby and Locker Room HVAC Solution

Dear Mr. Balla,

As you requested, Gardiner has developed a proposal to furnish all engineering, supervision, labor and material to replace the (2) existing gas fired Heating and Ventilation rooftop units with (2) new packaged HVAC rooftop units. The new units will be designed to meet the HVAC requirements of the spaces each serve.

Installation Services:

Scope of work for this project will include the following:

- 1) Disconnect existing gas piping, electrical and control wiring from (2) existing units.
- 2) Demo (2) existing rooftop units and remove from site.
- 3) Rig and install (2) new HVAC units to set on new curb adapters. Rigging of new units and removal of existing units will require the use of a crane and will be done during normal working hours.
- 4) Rework and reconnect existing power wiring to (2) new units. All wiring will be done in accordance with State and Local codes.
- 5) Rework and reconnect existing gas piping to (2) new units.
- 6) Install (2) new space temperature sensors.
- 7) Tie (2) new HVAC units into existing Building Automation and Controls system.
- 8) Start-up, check and adjust new units for proper operation.
- 9) Provide a one year warranty for material and workmanship.

Price complete as noted: \$ 56,828

Notes:

- All labor proposed shall be performed during normal working hours (M-F; 07:00-16:00).
- This price includes provisions for safety under standard industry & Gardiner safety guidelines. Any special additional safety training, equipment, or processes required by your organization could affect the project scope and/or hours and may result in a price adjustment. If you have any specific safety practices or requirements, please alert your sales representative immediately so we ensure that our proposal fully meets your requirements.

*HVAC Equipment • Heating • Air Conditioning • Controls • Inlets & Exits • Refrigeration • Controls • HVAC
Parts & Supplies
www.WHGardiner.com*



Items excluded:

1. Repairs to existing system if required will be performed on a "Time and Material" basis.
2. Removal of hazardous materials.
3. Electrical power service upgrades (if necessary).
4. Structural review/reinforcements (if necessary).
5. Roofing work (if necessary).
6. Multiple rig mobilizations.
7. Any work not listed above.

We are prepared to order the equipment and material and schedule the installation immediately upon receipt of your authorization to proceed. The equipment is currently available on a 1-2 week ship cycle.

Our standard terms and conditions of sale as well as an acceptance are contained on the reverse side of the proposal.

Best regards,

GARDINER

Lora Atherton
Account Manager

Cc: Terrance Eakin

Standard Contract Terms and Conditions – City of Rocky River

Acceptance. If your order is an acceptance of a written proposal, on a form provided by Gardiner Service Company ("GSC"), without the addition of any other terms and conditions of sale or any other modification, this document shall be treated solely as an acknowledgment of such order, subject to credit approval. If your order is not such an acceptance, then this document is GSC's offer, subject to credit approval, to provide the goods and/or work solely in accordance with the following terms and conditions of sale. Customer's acceptance of goods and/or work by GSC on this order will in any event constitute an acceptance by Customer of these terms and conditions. This proposal shall remain valid for a period of 30 days from the date of proposal.

Payment Terms. Customer shall pay GSC's invoices within net thirty (30) days of invoice date. GSC will invoice Customer for all equipment or material furnished, whether delivered to the installation site or to an off-site storage facility and for all work performed on-site or off-site on a monthly basis. All amounts outstanding 10 days beyond the due date are subject to a service charge not to exceed 1.5% of the principal amount due or the maximum allowable legal interest rate, retroactive to the due date. Customer shall pay all costs (including attorneys' fees) incurred by GSC in attempting to collect amounts due.

Asbestos and Hazardous Materials. GSC's work and other services in connection with this Agreement expressly excludes any identification, abatement, cleanup, control, disposal, removal or other work connected with asbestos, polychlorinated biphenyl ("PCB"), or other hazardous materials (hereinafter, collectively, "Hazardous Materials").

Indemnification. GSC and Customer shall mutually, in proportion to their respective degree of fault, indemnify, defend and hold each other harmless from any and all claims, actions, costs, expenses, damages and liabilities, including reasonable attorneys' fees, resulting from death or bodily injury or damage to real or tangible personal property, to the extent caused by the negligence or misconduct of the indemnifying party, and /or its respective employees or agents. With respect to any claims based on facts or conditions that occurred prior to expiration or termination of this agreement, the duty to indemnify will continue in full force and effect notwithstanding expiration or early termination.

No-Hire; No-Solicitation. Customer hereby covenants and agrees that, without the prior written consent of the Company, he/it will not, directly or indirectly (including, without limitation, through any affiliate or related party), (for a period of two (2) years after the date hereof solicit the employment of, offer employment to or hire, any employee of the Company, or any individual whose employment with the Company ended less than one hundred eighty (180) days prior to such solicitation or offer. Customer acknowledges that in the event of a violation of the covenants contained in this Section, the Company's damages will be difficult to ascertain and the Company's remedies at law will be inadequate. Accordingly, the Customer agrees that, in addition to such remedies as the Company may have at law, the Company shall be entitled to specific performance of such covenants and to an injunction to prevent any continuing violation thereof.

Warranty. GSC guarantees service work and all materials of GSC's manufacture against defects in workmanship for 365 days from date of completion of work and will repair or replace such products or components as GSC finds defective. This warranty does not include cost of handling, shipping or transportation involved in supplying replacements for defective components. This warranty does not include the replacement of refrigerant lost from the system. On machinery and materials furnished by GSC, but manufactured by others, the only warranty provided is that of the manufacturer. **THE WARRANTY AND LIABILITY SET FORTH IN THE PRECEDING PARAGRAPH ARE IN LIEU OF ALL OTHER WARRANTIES AND LIABILITIES, WHETHER IN CONTRACT OR IN NEGLIGENCE, EXPRESS OR IMPLIED, IN LAW OR IN FACT, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR USE OR FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL GSC BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES.**

Limitation of Liability. All claims, causes of action or legal proceedings against GSC arising from GSC performance under this contract must be commenced by Customer within the express warranty period specified above. Failure to commence any such claim, cause of action or legal proceeding within such period shall constitute a voluntary and knowing waiver thereof of Customer. **IN NO EVENT SHALL GSC'S LIABILITY FOR DIRECT OR COMPENSATORY DAMAGES EXCEED THE PAYMENTS RECEIVED BY GSC FROM CUSTOMER UNDER THIS CONTRACT, NOR SHALL GSC BE LIABLE FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES. THESE LIMITATIONS ON DAMAGES SHALL APPLY UNDER ALL THEORIES OF LIABILITY OR CAUSES OF ACTION, INCLUDING BUT NOT LIMITED TO, CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER LEGAL THEORY. GSC DISCLAIMS ANY LIABILITY FOR DAMAGES OR ANY KIND ARISING FROM MOLD, FUNGUS, BACTERIA, MICROBIAL GROWTH, OR ANY OTHER CONTAMINATES.**

Disputes and Choice of Laws. This contract shall be deemed to have been entered into and shall be governed by the laws of the State of Ohio. All claims, disputes, and controversies arising out of or relating to this contract, shall be submitted to mediation, pursuant to the Commercial Dispute Resolution Procedures ("CDRP") of the American Arbitration Association. The mediation shall take place in Cleveland, Ohio within thirty (30) days of the date the dispute arises. If mediation is unsuccessful, the dispute shall proceed to binding arbitration, pursuant to the CDRP, in Cleveland, Ohio, no later than sixty (60) days after the mediation is concluded. Any judgement upon the arbitration award may be confirmed in any court having jurisdiction thereof. The parties agree that any party to the arbitration shall be entitled to discovery from the other party as provided by the Ohio Rules of Civil Procedure. All discovery shall be completed within (4) months from the date the Demand for Arbitration is filed with the American Arbitration Association. Unless otherwise agreed, the arbitration shall be completed no later than six (6) months after the arbitration commenced.

Entire Agreement. These terms and conditions, and the terms and conditions on the reverse side hereof, constitute the entire agreement between GSC and Customer. If there is a conflict with any other terms and conditions, these terms and conditions, together with those on the reverse side hereof, shall control. No course of dealing or performance, or prior, concurrent or subsequent understanding, agreements or representations become part of this contract unless expressly agreed to in writing by an authorized representative of GSC.

Contract Amount: \$56,828.00 _____

Assignment. Neither GSC nor Customer may assign, transfer, or convey this Agreement, or any part hereof, or its right, title or interest herein, without the written consent of the other party.

Customer Signature of Acceptance: _____

Date: _____

GSC Representative: _____

Date: _____