

RECORD OF ORDINANCES

Ordinance No. 2015-08

Passed APRIL 27 20 15

AN ORDINANCE AUTHORIZING THE VILLAGE ADMINISTRATOR AND FISCAL OFFICER TO ENTER INTO A CONTRACT WITH DOLL LAYMAN LTD. FOR THE WATER TREATMENT PLANT IMPROVEMENTS PROJECT, AND THE DECLARATION OF AN EMERGENCY

WHEREAS, the Village requested bids for the Water Treatment Plant Improvements Project; and,

WHEREAS, bids were received and reviewed, and the lowest and best bid was received by Doll Layman Ltd., 4195 Gibson Drive, Tipp City, Ohio 45371, to do the necessary work; and,

WHEREAS, the acceptance of any bid for this project by the Village is conditioned upon the Village being awarded a loan for the cost of the project through People's Bank; and,

WHEREAS, Finance Committee has reviewed the proposed bid information and recommends approval of this legislation; and,

WHEREAS, in order for equipment for the project to be manufactured and installed in a timely fashion before the onset of inclement winter weather, this ordinance must be passed on an emergency basis;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE VILLAGE OF BALTIMORE, FAIRFIELD COUNTY, OHIO, THREE-FOURTH'S (3/4'S) OF ITS MEMBERS CONCURRING:

SECTION 1: That the Administrator and Fiscal Officer are hereby authorized and directed to enter into a contract with Doll Layman Ltd., at a cost which is consistent with the attached bid price and which price shall not exceed \$1,677,000.00, conditioned upon the Village being awarded a loan through People's Bank for the cost of the project. A copy of the contract is attached hereto and incorporated herein.


SECTION 2: For the reasons noted in the preamble, this ordinance is declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety, morals, and welfare of the citizens of Baltimore, Ohio. This ordinance shall become effective upon its passage by Council.



Robert M. Kalish, Mayor

DATE OF PASSAGE: 4-27-2015

EFFECTIVE DATE: 4-27-2015

ATTEST:  for Florence Welker
Florence D. Welker, Fiscal Officer

SPONSOR: House

APPROVED AS TO FORM: 
Jeffrey Feyko, Village Solicitor

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CERTIFICATE OF AVAILABILITY OF FUNDS

It is hereby certified that the amount required to meet the contract agreement, obligation, payment, or expenditure for the above 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 appropriate fund, free from any obligation or certification now outstanding.

4/27/15
Date

[Signature] for Florence Welker
Florence D. Welker, Fiscal Officer

OWNER-CONTRACTOR AGREEMENTOWNER: VILLAGE OF BALTIMORECONTRACT: 2014 WATER TREATMENT PLANT
IMPROVEMENTSADDRESS: 103 MARKET STREET
BALTIMORE, OHIO 43105OWNER'S REPRESENTATIVE: Donald E. Morrison,
C.E.T., Manager, Village of Baltimore
Engineering GroupCONTRACTOR: DOLL LAYMAN LTD.PROJECT: 2014 WATER TREATMENT PLANT
IMPROVEMENTSADDRESS: 302 EAST NORTH STREET
BALTIMORE OHIO, 43105

This document is an agreement between the Owner and the Contractor for the Work described in the Contract Documents related to the Contract identified above for the Project defined above and is effective as of the date the Agreement is signed by the Owner.

The Owner and the Contractor agree as set forth in the following sections:

1. CONTRACT DOCUMENTS. The Contract Documents consist of the following documents:

- Legal Notice;
 - Instructions to Bidders;
 - General Contract Conditions;
 - Special Provisions;
 - Specifications;
 - Bid Forms;
 - Agreement Forms;
 - Construction Forms;
 - Drawings;
 - Supplemental Drawings;
 - Addenda's;
 - Contractor's Personal Property Tax Affidavit (O.R.C. 5719.042);
 - Statement of Claim Form; and
- Modifications issued after the execution of the contract, including:
- i. A written amendment to the Agreement signed by both parties;
 - ii. A Change Order;
 - iii. A Work Change Directive; or,
A written order for a minor change of the Work issued by the Design Professional in accordance with the General Conditions;

Note: Non-Contract Documents. The following are the reports and tests of subsurface conditions at or contiguous to the Site, if any, that the Design Professional has used in preparing the Contract Documents. These are not Contract Documents. The General Conditions, as modified, contain additional terms related to these reports and tests.

NONE



Note: Non-Contract Documents. The following are those reports and drawings related to any Hazardous Conditions at the Site, if any. These are not Contract Documents. The General Conditions, as modified, contain additional terms related to these reports and drawings. (None if none are listed).

NONE

2. DESIGN PROFESSIONAL RELATIONSHIP. The Contract Documents shall not be construed to create a contractual relationship of any kind between the Design Professional and the Contractor or any Subcontractor or Material Supplier to the Project. The Design Professional, however, shall be entitled to performance of the obligations of the Contractor intended for its benefit and to enforcement of such obligations, but nothing contained herein shall be deemed to give the Contractor or any third party any claim or right of action against the Design Professional that does not otherwise exist without regard to this Contract. The Contractor and its Subcontractors shall not be deemed to be beneficiaries of any of the acts or services of the Design Professional that are performed for the sole benefit of the Owner. The Contractor shall forward all communications to the Owner through the Design Professional and hereby acknowledges and agrees that any instructions, reviews, advice, approvals, orders, or directives that are rendered to it by the Design Professional are specifically authorized and directed by the Owner to the Contractor through the Design Professional acting on behalf of the Owner.

2.1 The Design Professional (also called the "Engineer") is:

Name: Albert Siemer, P.E.

Address: Village of Baltimore
103 Market Street
Baltimore, Ohio 43105

3. TIME FOR COMPLETION AND PROJECT COORDINATION.

3.1 DATE FOR COMMENCEMENT. The date of commencement of the Work shall be the date as written, Notice to Proceed issued by the Owner, through the Design Professional, to the Contractor.

3.2 DATE FOR SUBSTANTIAL COMPLETION. The Project and Work for the Project consists of all labor, materials, equipment, and services necessary for construction of the Project, all in accordance with the Drawings and Specifications prepared by the Design Professional. The Project will be substantially complete within 365 calendar days of Owner's issuance of the Notice to Proceed.

3.2.1 Substantial Completion is the time at which the Work has progressed to the point where the Work is sufficiently complete, in accordance with the Contract Documents, so that the Work can be utilized for the purposes for which it is intended. Final Completion shall mean that the Work is complete in accordance with the Contract Documents and the Contractor has submitted to the Design Professional all documents required to be submitted to the Design Professional for final payment. A Claim is "Finally Resolved" when the claim process is complete and not subject to further proceedings.

3.2.2 DATE FOR FINAL COMPLETION. The Date for Final Completion shall be thirty (30) calendar days following the Date of Substantial Completion.

3.2.3 SHUTDOWN DATES. Due to events scheduled by the Owner and/or other Owner considerations, Contractor will not be able to perform Work on the Project on the following dates (there are no shutdown dates if none listed):

NONE

Contractor's Construction Schedule for performing the Work shall account for Contractor not being able to perform Work on these dates and the contractual dates for Substantial Completion and Final Completion will not be changed due to Contractor not being able to perform Work on these dates.

3.3 CONSTRUCTION SCHEDULE. The Construction Schedule shall be developed by the Contractor as provided in the Contract Documents.

3.4 COORDINATION. The Contractor will be responsible for the performance and coordination of any and all subcontractors and suppliers either directly or indirectly contracted with the Contractor.

3.5 LIQUIDATED DAMAGES. If the Contractor does not have its Work on the Project Substantially Complete by the specified Date for Substantial Completion or Finally Complete by the Date of Final Completion, the Contractor shall pay the Owner (and the Owner may set off from sums coming due the Contractor) Liquidated Damages in the per diem amounts as set forth in the following tables, whichever may be applicable. "Contract Amount" of the Work will be determined by totaling the cost of all line items of Work, as set forth in the Schedule of Values.

LIQUIDATED DAMAGES – DATE FOR SUBSTANTIAL COMPLETION

<u>Original Contract Amount</u>	<u>Dollars Per Day</u>
\$1.00 to \$500,000.00	\$ 750.00
\$500,000.01 to \$2,000,000.00	\$ 1,000.00
\$2,000,000.01 to \$10,000,000.00	\$ 1,300.00
\$10,000,000.01 to \$50,000,000.00	\$ 2,000.00
\$50,000,000.01 and greater	\$ 2,500.00

LIQUIDATED DAMAGES – FINAL COMPLETION

<u>Original Contract Amount</u>	<u>Dollars Per Day</u>
\$1.00 to \$500,000.00	\$ 200.00
\$500,000.01 to \$2,000,000.00	\$ 250.00
\$2,000,000.01 to \$10,000,000.00	\$ 325.00
\$10,000,000.01 to \$50,000,000.00	\$ 500.00
\$50,000,000.01 and greater	\$ 625.00

The Contractor acknowledges that such amounts of Liquidated Damages represent a reasonable estimate of the actual damages for loss of or interference with the intended use of the Project that the Owner would incur if the Contractor's Work is not Substantially Complete by its Date for Substantial Completion or Finally Complete by the required date for Final Completion.

4. CONTRACT SUM (also called Contract Price). The Contract Sum to be paid by the Owner to the Contractor, as provided herein, for the satisfactory performance and completion of the Work and all of the duties, obligations, and responsibilities of the Contractor under this Agreement and the other Contract Documents is One Million, Six Hundred Seventy Seven Thousand Dollars (\$1,677,000.00), subject to adjustment as set forth in the Contract Documents. The Contract Sum includes all federal, state, county, municipal, and other taxes imposed by law, including but not limited to any sales, use, commercial activity, and personal property taxes payable by or levied against the Contractor on account of the Work or the materials incorporated into the Work. The Contractor will pay any such taxes. The Contract Sum includes the following:

Base Bid Amount: **\$1,677,000.00**
(Lump Sum Items, Alternates, Allowances, Unit Price Extensions, and 3 O&M Manuals)

Base Bid:

The Base Bid includes all bid items, unit price items, approved alternates, allowances, lump sum items, and (3) sets of O&M manuals.

If after Substantial Completion of its Work, the Contractor fails to submit its final payment application with all the documents required to be submitted with such application within ninety (90) days after written notice to do so from the Owner and without prejudice to any other rights and remedies the Owner may have available to it, the balance of the Contract Sum shall become the Owner's sole and exclusive property, and the Contractor shall have no further interest in or right to such balance.

5. RETAINAGE. Retainage applicable to the Contract by Ohio Revised Code Sections 153.12, .13, and .14 will be withheld as defined in the Modified General Conditions. The Contractor agrees that the financial institution selected by the Owner for deposit of retained funds is acceptable to the Contractor and will sign any documents requested related to said account.

6. (Reserved.)

7. GENERAL.

7.1 MODIFICATION. No modification or waiver of any of the terms of this Agreement or of any other Contract Documents will be effective against a party unless set forth in writing and signed by or on behalf of a party. In the case of the Owner, the person executing the modification or waiver must have express authority to execute the Modification on behalf of the Owner pursuant to a resolution that is duly adopted by the Owner. Under no circumstances will forbearance, including the failure or repeated failure to insist upon compliance with the terms of the Contract Documents, constitute the waiver or modification of any such terms. The parties acknowledge that no person has authority to modify this Agreement or the other Contract Documents or to waive any of its or their terms, except as expressly provided in this section.

7.2 ASSIGNMENT. The Contractor may not assign this Agreement without the written consent of the Owner, which the Owner may withhold in its sole discretion.

7.3 LAW AND JURISDICTION. All questions regarding the validity, intention, or meaning of this Agreement or any modifications of it relating to the rights and obligation of the parties will be construed and resolved under the laws of the State of Ohio. Any suit, which may be brought to enforce any provision of this Agreement or any remedy with respect hereto, shall be brought in the Common Pleas Court of Fairfield County, Ohio and each party hereby expressly consents to the exclusive jurisdiction of such court to the exclusion of any other court, including any U.S. District Court or any other federal court.

7.4 CONSTRUCTION. The parties acknowledge that each party has reviewed this Agreement and the other Contract Documents and entered into this Agreement as a free and voluntary act. Accordingly, the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party will not be employed in the interpretation of this Agreement, the other Contract Documents, or any amendments or exhibits to it or them.

7.5 APPROVALS. Except as expressly provided herein, the approvals and determinations of the Owner and Design Professional will be subject to the sole discretion of the respective party and be valid and binding on the Contractor, provided only that they be made in good faith, i.e., honestly. If the Contractor challenges any such approval or determination, the Contractor has the burden of proving that it was not made in good faith by clear and convincing evidence.

7.6 PARTIAL INVALIDITY. If any term or provision of this Agreement is found to be illegal, unenforceable, or in violation of any laws, statutes, ordinances, or regulations of any public authority having jurisdiction, then, notwithstanding such term or provision, this Agreement will remain in full force and effect and such term will be deemed stricken; provided this Agreement will be interpreted, when possible, so as to reflect the intentions of the parties as indicated by any such stricken term or provision.

7.7 COMPLIANCE WITH LAWS AND REGULATIONS. The Contractor, at its expense, will comply with all applicable federal, state, and local laws, rules, and regulations applicable to the Work, including but not limited to Chapter 4115 of the Ohio Revised Code and Sections 153.59 and 153.60 of the Ohio Revised Code, which prohibit discrimination in the hiring and treatment of employees, with respect to which the Contractor agrees to comply and to require its subcontractors to comply.

7.7.1 NON-DISCRIMINATION. Contractor agrees:

- .1 That in the hiring of employees for the performance of Work under this Agreement or in any subcontract, neither the Contractor, subcontractor, or any person acting on behalf of either of them, shall by reason of race, creed, sex, disability as defined in Section 4112.01 of the Ohio Revised Code, or color discriminate against any citizen of the state in the employment of labor or workers who are qualified and available to perform the Work to which the employment relates.
- .2 That neither the Contractor, subcontractor, nor any person acting on behalf of either of them shall, in any manner, discriminate against or intimidate any employee hired for the performance of Work under this Agreement on account of race, creed, sex, disability as defined in Section 4112.01 of the Ohio Revised Code, or color.
- .3 That there shall be deducted from the amount payable to the Contractor by the Owner under this Agreement a forfeiture of twenty-five dollars (\$25.00) as required by Ohio Revised Code Section 153.60 for each person who is discriminated against or intimidated in violation of this Agreement.
- .4 That this Agreement may be canceled or terminated by the Owner and all money to become due hereunder may be forfeited for a second or subsequent violation of the terms of this section of this Agreement.

7.7.2 PREVAILING WAGE RATES. The Contractor and its subcontractors, regardless of tier, shall strictly comply with their obligation to pay their employees working on the Project site at the applicable prevailing wage rates for the type of work, including any changes thereto, pursuant to Ohio Revised Code Chapter 4115.

7.7.3 ETHICS. By signing and entering into this agreement with the Owner, the Contractor represents that it is familiar with all applicable ethics law requirements, including without limitation Sections 102.04 and 3517.13 of the Ohio Revised Code, and certifies that it is in compliance with such requirements. The Contractor understands that failure to comply with the ethics laws is, in itself, grounds for termination of this contract and may result in the loss of other contracts with the Owner.

7.8 JOB MEETINGS. The Contractor or one of its representatives with authority to bind the Contractor will attend all job meetings. The Owner anticipates that job meetings will be scheduled on a weekly basis during construction or as needed. The Contractor will ensure that its Subcontractors also hold regular job meetings at which safety issues and job matters are discussed as these relate to the Work being performed. Job meetings include, but are not limited to, pre-construction meetings, weekly job meetings, weekly safety tool box meetings, and monthly safety meetings.

7.9 PROPERTY TAX AFFIDAVIT. The Contractor's affidavit given under Section 5719.024, Ohio Revised Code, is incorporated herein.

7.10 PARTNERING. Contractor agrees that it will participate, as part of the Contract Sum, in any partnering sessions scheduled by Owner.

7.11 ENTIRE AGREEMENT. This Agreement and the other Contract Documents constitute the entire agreement among the parties with respect to their subject matter and will supersede all prior and contemporaneous, oral or written, agreements, negotiations, communications, representations, and understandings with respect to such subject matter, and no person is justified in relying on such agreements, negotiations, communications, representations, or understandings.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their properly authorized representatives and agree that this Agreement is effective as of the date first set forth above.

Owner: Village of Baltimore

Contractor: Doll Layman Ltd.

By: _____

By: _____

Name: Scott Brown

Name: _____

Title: Village Administrator

Title: _____

Date: _____

Date: _____

Witness: _____

Witness: _____