

ORDINANCE NO. 21-2023

AUTHORIZING THE VILLAGE ADMINISTRATOR TO ENTER INTO AN AGREEMENT WITH THE BOARD OF COMMISSIONERS OF HAMILTON COUNTY, OHIO FOR THE PURPOSE OF SELLING SURPLUS EQUIPMENT AND OTHER UNNEEDED PERSONAL PROPERTY AND DECLARING AN EMERGENCY

WHEREAS, from time-to-time, the Village of Fairfax, Ohio (the "Village") has surplus equipment or other personal property that is functional, yet obsolete and not needed for any municipal purpose; and

WHEREAS, the Administrative Services Division of Hamilton County, Ohio (together, with the Board of Commissioners of Hamilton County, Ohio, "Hamilton County") has an "Internet Surplus Auction process" through which it sells surplus equipment or personal property at auction in accordance with the laws and requirements of the State of Ohio; and

WHEREAS, pursuant to R.C. 307.15, the Village and Hamilton County may enter into an agreement for the sale of the Village's surplus equipment or other unneeded personal property through the Internet Surplus Auction process; and

WHEREAS, the Internet Surplus Auction process reaches a wide audience, and is more likely to result in successful sales of surplus or unneeded Village equipment and personal property, at lower cost to the Village, than the Village could achieve on its own; and

WHEREAS, it is, therefore, in the Village's best interest to participate in the Internet Surplus Auction process;

NOW, THEREFORE, BE IT ORDAINED by the Council of the Village of Fairfax, State of Ohio, that:

SECTION I: The Village Administrator is hereby authorized and directed to enter into an agreement with Hamilton County for the Village's participation in the Internet Surplus Auction process, in substantially the same form as attached hereto as Exhibit A, subject to such non-material changes as the Village Administrator finds appropriate.

SECTION II: Council hereby finds and determines that all formal actions relative to the passage of this Ordinance were taken in an open meeting of this Council, and that all deliberations of this Council and its committees, if any, that resulted in formal action were taken in meetings open to the public, in full compliance with applicable legal requirements, including Section 121.22 of the Revised Code, as amended by the emergency provisions of Ohio HB 197.

SECTION III: This Ordinance is hereby declared to be an emergency measure necessary for the preservation of the public peace, health, safety, and general welfare and shall be effective immediately. The reason for said declaration of emergency is the immediate need to dispose of obsolete and unneeded surplus equipment and personal property to maintain efficient operations within Village departments and maximize the chances of a successful return on anticipated sales.

Passed this 18th day of December, 2023.

Mayor

ATTEST:

Fiscal Officer

CERTIFICATE

I hereby certify this to be a true and correct copy of Ordinance No. 21-2023 adopted at a meeting of the Council of the Village of Fairfax on this 18th day of December, 2023.

Fiscal Officer

CONTRACT

This contract is entered into on January 1st, 2024, between the Board of County Commissioners of Hamilton County, Ohio on behalf of the Administrative Services Division (hereinafter referred to as "Hamilton County") and the Village of Fairfax with an office at **5903 Hawthorne Ave, Cincinnati Ohio 45227**.

I. TERM

This contract will be effective from January 1st, 2024, through December 31st, 2026, inclusive, unless otherwise terminated or extended by formal amendment.

II. SCOPE OF SERVICE

Subject to terms and conditions set forth in this contract and the attached Exhibit "A", (the exhibit is deemed to be a part of this contract as fully as if set forth herein), Hamilton County shall allow the Village of Fairfax access to its Internet Surplus Auction process to sell the Village's personal property which is not needed for public use, is obsolete, or is unfit for the use for which it was acquired (the "Property").

Hamilton County agrees to provide the following:

1. Upon receipt of the Village of Fairfax's Resolution authorizing the sale of the Property, Hamilton County will provide the Village of Fairfax with a username and password to allow the Village of Fairfax the ability to post Property on the Hamilton County Internet Surplus Auction web address www.HamiltonCountyOhioAuction.com for a minimum of fifteen (15) days.
2. Accept payment, in full, from the winning bidder within 7 business days of the sale of the Property and Hamilton County will issue a sales receipt to the winning bidder.
3. Visit the Village of Fairfax to take digital pictures of the Property if the Village of Fairfax does not have access to digital equipment.
4. Provide data entry services to accommodate the processing of the Property using the Hamilton County Internet Surplus Auction web address www.HamiltonCountyOhioAuction.com.
5. The auction will take place in accordance with the rules established by the Hamilton County Board of Commissioners as listed in the attached Exhibit A.

Village of Fairfax agrees:

To provide Hamilton County with a resolution adopted pursuant to Ohio Revised Code (ORC) 307.15 by the Village of Fairfax authorizing the sale of Property.

Provide Hamilton County with an accurate description of the Property.

To post accurate information for Property on the County's Internet auction site through use of username and password provided by Hamilton County. The Village of Fairfax shall be responsible for the accuracy of all information posted on the website.

To entertain ALL requests to view the Property during the Internet auction process.

Upon request, to provide potential bidders with maintenance records for the property.

To have personnel available to answer potential bidders questions.

To make all arrangements with the purchaser of the Property for pick up of the Property sold.

That the auction will take place in accordance with the rules established by Hamilton County, as listed in Exhibit A (attached).

III. BILLING AND PAYMENT

In consideration of granting the Village of Fairfax access to Hamilton County's internet auction website to sell the Village of Fairfax Property, the Village of Fairfax agrees to pay Hamilton County 8% of the final sale price for any and all Property sold. Within 30 days of the end of each month, a schedule of all sales of Village of Fairfax Property during the previous month will be forwarded to the Village of Fairfax and accompanied by a check that is the net of sales less the 8% service cost.

IV. CONFLICT OF INTEREST

The parties agree that there is no financial interest involved on the part of any Hamilton County officers or employees, Village of Fairfax or employees of the Village of Fairfax involved in the delivery of the services or the negotiation of this contract. The Village of Fairfax has no knowledge of any situation which would be a conflict of interest. It is understood that a conflict of interest occurs when an employee will gain financially or receive personal favors as a result of the signing or implementation of this contract.

The Village of Fairfax will report the discovery of any potential conflict of interest to Hamilton County. Should a conflict of interest be discovered during the term of this contract, Hamilton County may exercise any right under the contract, including termination of the contract.

V. GOVERNING LAW

This contract and any modification, amendments, or alterations, shall be governed, construed, and enforced under the laws of Ohio.

VI. INTEGRATION AND MODIFICATION

This instrument, including Exhibit A, embodies the entire contract of the parties. There are no promises, terms, conditions or obligations other than those contained herein; and this contract shall supersede all previous communications, representations or contracts, either written or oral, between the parties to this contract. Also, this contract shall not be modified in any manner except by an instrument, in writing, executed by the parties to this contract.

VII. SEVERABILITY

If any term or provision of this contract or the application thereof to any person or circumstance shall, to any extent be held invalid or unenforceable, the remainder of this contract or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term and provision of this contract shall be valid and enforced to the fullest extent permitted by law.

VIII. TERMINATION

This contract may be terminated at any time for any reason by either party upon 30 days prior written notice delivered to the other party.

IX. NON-DISCRIMINATION

Hamilton County and the Village of Fairfax certify that they are an equal opportunity employer and shall remain in compliance with state and federal civil rights and nondiscrimination laws and regulations including but not limited to Title VI, and Title VII of the Civil Rights Act of 1964 as amended, the Rehabilitation Act of 1973, the Americans with Disabilities Act, the Age Discrimination Act of 1975, the Age Discrimination in Employment Act, as amended, and the Ohio Civil Rights Law.

X. LIABILITY OF PARTIES

The Village of Fairfax is self-funded or has liability insurance for the defense and payment of actionable legal claims for liability or loss which are the result of injury to or death of any person, damage to property (including property of Hamilton County) caused by the negligent acts or omissions, or negligent conduct of the Village of Fairfax, to the extent permitted by law, in connection with the activities of this Agreement. Any claim the Village of Fairfax is legally liable to pay, will be funded out of the Village of Fairfax's funds in accordance with the Ohio Revised Code.

Furthermore, each party to this Agreement agrees to be liable for the negligent acts or negligent omissions by or through itself, its employees and agents. Each party further agrees to defend itself and themselves and pay any judgments and costs arising out of such negligent acts or omissions,

and nothing in this Agreement shall impute or transfer any such liability from one to the other.

XI. RELATIONSHIP

The relationship between the parties is fully defined in ORC Section 307.15 (505.101).

XII. DISCLOSURE

The Village of Fairfax hereby covenants that it has disclosed any information that it possesses about any business relationship or financial interest that it has with a county employee, employee's business, or any business relationship or financial interest that a county employee has with the Village of Fairfax.

XIII. LEGAL ACTION

Any legal action brought pursuant to the contract will be filed in the courts located in Hamilton County, Ohio and Ohio law will apply.

XIV. PUBLIC RECORDS

This contract is a matter of public record under the laws of the State of Ohio. The Village of Fairfax agrees to make copies of this contract promptly available to any requesting party.

XV. MEDIA RELATIONS, PUBLIC INFORMATION, AND OUTREACH

Although information about and generated under this contract may fall within the public domain, the Village of Fairfax will not release information about or related to this contract to the general public or media verbally, in writing, or by any electronic means without prior approval from Hamilton County, unless the Village of Fairfax is required to release requested information by law. Hamilton County reserves the right to announce to the general public and media: contract terms and conditions, scope of work under the contract, deliverables and results obtained under the contract, and the impact of contract activities. Except where approval has been granted in advance, the Village of Fairfax will not seek to publicize and will not respond to unsolicited media queries requesting: announcement of contract award, contract terms and conditions, or contract scope of work. If contacted by the media about this contract, the Village of Fairfax agrees to notify Hamilton County in lieu of responding immediately to media queries.

XVI. NO REPRESENTATIONS OR WARRANTIES

Hamilton County does not make any representations or warranties of any kind with respect to the subject matter of this contract, including, but not limited to, that the Property will meet the minimum bid or sell while posted on Hamilton County’s internet website. Hamilton County reserves the right in its sole discretion to cancel any auction involving the Property.

XVII. SIGNATURES

The Village of Fairfax hereby acknowledges that the original copy of this contract must be signed and returned to by the Village of Fairfax within ten (10) days of receipt of said contract for signature or this contract may be canceled and voided.

The terms of this contract are hereby agreed to by both parties, as shown by the signatures of representatives of each.

IN WITNESS WHEREOF, the parties hereto have caused this contract to be executed as of the day and year written above.

Village of Fairfax

Approved as to form:

Village of Fairfax. Legal Counsel

Board of County Commissioners
Hamilton County, Ohio

Chief Purchasing Agent
Hamilton County, Ohio

Approved as to form:

By:_____.

Prosecutor’s Office
Hamilton County, Ohio

EXHIBIT A

General Terms and Conditions for the Sale of Unneeded, Obsolete or Unfit County Personal Property (the “Property”) by Internet Auction

1. All auctions shall be conducted on a continuous basis through the Hamilton County, Ohio website which can be located at <http://www.hamilton-co.org/> or <http://www.hamiltoncountyohioauction.com/PS/>
2. All Property auctions will be conducted in such a manner that the highest bid for the Property shall prevail. However, the Board of County Commissioners, Hamilton County, Ohio (the “Board”) reserves the right for its representative to cancel bids in an auction of an individual item or group of items if one or more of the following circumstances apply:
 - a. It is determined that an auction shall be canceled or terminated early,
 - b. A bidder requests permission to back out of a bid,
 - c. The identity of a bidder cannot be verified or
 - d. It is determined that a bidder is purchasing the Property for a use contrary to the health, welfare or safety of Hamilton County, Ohio or the general public.
3. **All Property auctions will accept bidding by proxy. If a bidder elects to utilize proxy bidding, the bidder must establish a maximum bid amount and permit the Internet auction system to incrementally increase the bidder’s initial bid until the maximum bid amount is reached, if necessary.**
4. The number of days of bidding on the Property involved, as specified in *O.R.C. 307.12*, will be at least 15 days, including Saturdays, Sundays and legal holidays.
5. The Board reserves the right, at a later date, through its representative, to establish the minimum prices that may be accepted for any Property that is the subject of the Internet auction, the terms and conditions of any particular sale that may occur, including but not limited to requirements for pick up and/or delivery of the Property, method of payment, and payment of sales tax in accordance with applicable laws.
6. The information described in Paragraph 4 above will be provided on the Internet at the time of the auction itself, or will be provided before that time, upon request, if the Board or its representative has determined the terms and conditions.

7. **ANY PROPERTY LISTED AND SOLD BY INTERNET AUCTION SHALL BE ON AN “AS IS” AND “WHERE IS” BASIS. REGARDING ANY PROPERTY WHICH IS LISTED OR PURCHASED BY INTERNET AUCTION, THE BOARD EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. THE BIDDER PURCHASES THE PROPERTY AT THEIR SOLE RISK.**

8. **LIMITATION OF LIABILITY. IN NO EVENT SHALL HAMILTON COUNTY, OHIO, ITS BOARD OF COUNTY COMMISSIONERS, ITS OFFICERS, EMPLOYEES OR AGENTS BE LIABLE TO A BIDDER OR ANY OTHER PERSON OR ENTITY FOR ANY CLAIM, DAMAGE OR LOSS WHATSOEVER, INCLUDING WITHOUT LIMITATION, DIRECT, SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES ARISING OUT OF THE SALE OF THE PROPERTY OR THE USE OF THE PROPERTY, HOWEVER CAUSED, WHETHER FOR BREACH OF CONTRACT, TORT, NEGLIGENCE OR UNDER ANY OTHER LEGAL THEORY, WHETHER FORESEEABLE OR NOT.**