

RESOLUTION NO. 082-20

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A SUPPLEMENTAL AGREEMENT WITH EKOTON USA CORPORATION WITHOUT THE NECESSITY OF PUBLIC BIDDING, FURTHER AUTHORIZING THE EXPENDITURE OF FUNDS IN EXCESS OF TWENTY-FIVE THOUSAND DOLLARS (\$25,000); AND DECLARING AN EMERGENCY

WHEREAS, Council previously met on September 21, 2020 and awarded the procurement of volute presses for the Wastewater Treatment Plant to Ekoton USA Corporation; and,

WHEREAS, the volute presses are expected to be delivered in May 2021 and installed by January 2022; and,

WHEREAS, Ekoton USA Corporation currently has a unit available for rent, similar to the units being purchased; and,

WHEREAS, the City Manager and City Engineer have determined that renting this unit will provide significant advantages to the existing operation and overall construction project; and,

WHEREAS, this Council previously approved the expenditure of funds for this project; and,

WHEREAS, this matter is being brought before Council again to request additional funding regarding the Wastewater Improvement Project; and,

WHEREAS, that the additional cost of this project exceeds twenty-five thousand dollars (\$25,000); and,

WHEREAS, the City is a chartered municipality and is now exercising its Home Rule powers regarding such contracts; and,

WHEREAS, it is the opinion of this Council that it is in the best interest of the City of Napoleon to eliminate the necessity for competitive bidding in this instance, as permitted in Article VI, Section 6.05 of the Charter of the City of Napoleon and Napoleon Codified Ordinance 106.04; **Now Therefore**,

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF NAPOLEON, OHIO:

Section 1. That, notwithstanding any provision of law, resolution, or ordinance to the contrary, pursuant to Article VI, Section 6.05 of the Charter of the City of Napoleon and Napoleon Codified Ordinance 106.04, entering into a supplemental agreement with Ekoton USA Corporation is hereby authorized pursuant to the terms and conditions currently on file with the Clerk of Council, subject to any nonmaterial changes deemed necessary by the City Manager and approved as to form and correctness by the Law Director; moreover, the expenditure of funds is also authorized as a necessary proper public expenditure.

Section 2. That, the expenditure of funds in excess of twenty-five thousand dollars (\$25,000), for the Wastewater Improvements Project is hereby authorized as a necessary public expenditure.

Section 3. That, it is the finding of this Council that it is in the best interest of the City and its inhabitants to eliminate the necessity for public bidding for the reasons stated in attached Exhibit "A" and in the preamble of this Resolution.


Section 4. That, the City Manager is authorized and directed to enter into the aforementioned contract.

Section 5. That, it is found and determined that all formal actions of this City Council concerning and relating to the adoption of this Resolution were adopted in open meetings of this City Council, and that all deliberations of this City Council and any of its committees that resulted in such formal actions were in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code and the Codified Ordinances of Napoleon Ohio.

Section 6. That, if any other prior Ordinance or Resolution is found to be in conflict with this Resolution, then the provisions of this Resolution shall prevail. Further, if any portion of this Resolution is found to be invalid for any reason, such decision shall not affect the validity of the remaining portions of this Resolution or any part thereof.

Section 7. That, this Resolution is declared to be an emergency measure necessary for the immediate preservation of the public peace, health or safety of the City and its inhabitants, and for the further reason that this legislation must be in effect at the earliest possible time to allow for the timely processing of wastewater; therefore, provided it receives the required number of votes for passage as emergency legislation, it shall be in full force and effect immediately upon its passage; otherwise, it shall be in full force and effect at the earliest time permitted by law. Further, the Emergency Clause is necessary to begin the rental process in a timely manner, and for further reasons as stated in the Preamble hereof.

Passed: December 21, 2020

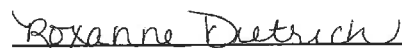

Joseph D. Bialorucki, Council President

Approved: December 21, 2020


Jason P. Maassel, Mayor

VOTE ON PASSAGE 6 Yea 0 Nay 0 Abstain

Attest:


Roxanne Dietrich, Clerk of Council

I, Roxanne Dietrich, Clerk of Council for the City of Napoleon, do hereby certify that the foregoing Resolution No. 082-20 was duly published in the Northwest Signal, a newspaper of general circulation in said City, on the _____ day of _____, 2020; & I further certify the compliance with rules established in Chapter 103 of the Codified Ordinances of Napoleon Ohio and the laws of the State of Ohio pertaining to Public Meetings.

Roxanne Dietrich, Clerk of Council



City of Napoleon, Ohio

Department of Public Works

255 West Riverview Avenue, P.O. Box 151

Napoleon, OH 43545

Chad E. Luffs, P.E., P.S., Director of Public Works

Telephone: (419) 592-4010 Fax: (419) 599-8393

www.napoleonohio.com

Memorandum

To: Joel L. Mazur, City Manager
From: Chad E. Luffs, P.E., P.S., Director of Public Works
cc: Billy Harmon, City Law Director
Kelly C. O'Boyle, City Finance Director
Dave Pike, WWTP Superintendent
Date: November 18, 2020
Subject: 2021 WWTP Improvements Project – Single Source
Rental of Belt Press

As part of the 2021 WWTP Improvements project, the City of Napoleon recently awarded the bid for the Volute Presses to Ekoton which are expected to be delivered in May 2021. These units will be installed as part of the WWTP project. It is expected that the units will be installed by January 2022. To install the presses, the existing digesters will need to have the sludge removed, pressed, and disposed.

Ekoton, the supplier of the presses that will be installed as part of the project, currently has a trailer-mounted press unit similar to the two being purchased through the Volute Press project. This unit is available for rental to the City at a cost of \$8,150 per month. Incorporating this unit into the existing WWTP operations would provide significant advantages to the existing sludge handling operations and overall construction project including:

- Reduced direct costs for sludge hauling and disposal of approximately \$5,200 per month
- Increased production of dewatered solids to reduce the costs of cleaning the existing digesters which was to be included in the 2021 WWTP Improvement project, as well as opening areas for construction staging and operations by eliminating exterior storage of poorly dewatered sludge throughout the WWTP site
- Increased flexibility of operation within the existing Dewatering Facility to simplify logistics and timing for modification of the building and processes that will result in time and cost savings during construction
- Reduced WWTP staff time allocated for additional sludge handling and dewatering prior to disposal, allowing time for other necessary tasks at the WWTP. **This will be extremely critical during the WWTP construction.**
- Opportunity for WWTP staff to become familiar with the volute press operations prior to the new presses being installed, resulting in further efficiency of operation

Based on the above information, I am recommending that it is in the best interest of the City, pursuant to Article VI, Section 6.05 of the Charter of the City of Napoleon and Napoleon Codified Ordinance 106.04, to eliminate the necessity for competitive bidding in this instance, and to enter

Resolution No. 082-20 Exhibit A

into a supplemental agreement with Baker & Associates to authorize rental of the trailer-mounted volute press unit commencing in December 2020 at a rate of \$8,150 per month, including mobilization/demobilization, startup assistance, and operator training. The costs of rental will be charged to the City through substantial completion of the Dewatering Facility portion of the 2021 WWTP Improvements, or for approximately 14 months. If the Contractor's timeline for completion of the Dewatering Facility goes beyond the interim milestone within the contract, liquidated damages equivalent to the rental rate will be applied to the contract.

Although this timeline could be reduced, we currently anticipate that the total rental charges to the City may reach \$114,100 if the full 14-month period is required. This cost will be directly offset with savings in disposal costs exceeding \$70,000 for the same period and will likely result in additional savings to the City for reduced labor, equipment and operational expenses related to dewatering, and for the construction contract far beyond the net \$44,000 remaining. We also believe that the overall construction timeline for the project may be reduced by utilizing the rental presses.

CEL



Ekoton USA Corporation

1460 Industrial Parkway, Akron, Ohio 44310
tel. +1 (646) 286 5512

www.ekoton.com

usa@ekoton.com

EQUIPMENT LEASE AGREEMENT

Lease Agreement made this _____ day of _____, _____ between Ekoton USA Corporation ("Lessor") with a place of business located at 1460 Industrial Parkway, Akron, OH 44310 and City of Napoleon ("Lessee") having its principal place of business located at 255 W Riverview Ave, Napoleon, OH 43545.

Lessee agrees to rent with / without (underline whatever is applicable) option to purchase the equipment listed below per the terms and conditions outlined.

LEASE AGREEMENT

Lessor hereby leases to Lessee and Lessee hereby leases from Lessor "Equipment", upon the terms and conditions set forth in this Lease, as supplemented by the terms and conditions set forth in the appropriate agreement. All terms and conditions of this Lease shall govern the rights and obligations of Lessor and Lessee except as specifically modified in writing.

EQUIPMENT

One (1) Trailer Mounted, self- contained MDQ 354CL Ekoton USA Corporation Screw Press which includes programmable Control System, Polymer Feeder and Raw Sludge Pump.

PROCESS PARAMETERS

INFLUENT FLOW RATE	up to 90gpm (depending on recycle flow & process)
INFLUENT SLUDGE PUMP	Submersible / progressive cavity depends on the application
POLYMER FEEDER	up to 230GPD of near polymer
POWER SUPPLY	480 Volt, 3 Phase, up to 35 Amp
FLUSHING WATER SUPPLY	at least 200GPH @ 60psi

AVAILABILITY

The pilot unit proposed is available on a first-come-first-served basis. Please respond in a timely manner in order to guarantee availability of an trailer mounted Unit MDQ 354CL and communicate your desired plan for lease of the equipment so that Lessor can properly coordinate scheduling of the proposed unit.

TERMS AND CONDITIONS

1. This Lease shall commence upon the written acceptance hereof by Lessor and shall end upon full performance and observance by Lessee of each and every term, condition and covenant set forth in this Lease and any extensions hereof.
2. The rental charge shall be **\$8,150.00** per month, plus **\$8,150.00** deposit. Startup and training services are free of charge, as stated in the **FIELD SERVICE**. Unnecessary damage less normal usage wear will be the responsibility of the Lessee. The rental shall begin upon receipt of the equipment at City of Napoleon



Ekoton USA Corporation

1460 Industrial Parkway, Akron, Ohio 44310
tel. +1 (646) 286 5512

www.ekoton.com

usa@ekoton.com

Wastewater Plant and shall continue until the date of receipt of equipment at our Akron Ohio facility; copy of the shipping manifest is to be submitted to Lessor and Lessee as proof of shipment to each location.

3. Starting date of first rental period is **January 11, 2021**. Minimum rental period is six (6) months. Maximum rental period is eighteen (18) months. Long term rental agreements (greater than 18 months) are possible with prior Lessor approval. Lessee has an option to purchase equipment, providing written notice of the purchase, that notice should be approved by Lessor. When purchase notice has been approved all rent paid shall be applied to the purchase price of the unit.
4. Fractional monthly rental charges are prorated on a daily basis.
5. Invoices are rendered monthly with lease charges payable in advance. Terms on all invoices shall be Net 45 days.
6. Title to rented equipment shall remain in the name of EKOTON USA Corporation unless equipment is purchased, and purchase payment arrangements are made for same.
7. The above rental price is firm for thirty (30) days. All local, state, Federal, sales, or manufacturer's taxes of any sort, and such taxes and/or charges pertaining there-to are to be borne by the Lessee.

INSTALLATION

Lessee agrees to install the equipment according to manufacturer instruction and Operation and Maintenance Manuals and to furnish all necessary labor. All piping and wiring connections are to be made by Lessee in accordance with instructions.

Lessee agrees to install the equipment according to Ekoton USA instruction and Operation and Maintenance Manuals and to furnish all necessary labor. All piping and wiring connections are to be made by Lessee in accordance with above mentioned instructions.

Lessee should provide:

- Room to store equipment under roof or otherwise sheltered when not in use
- Room for unit installation with enough space to place equipment inside, under roof or otherwise sheltered
- Keep temperature inside of the hood higher than 45F° when operating equipment (inside or outside under roof/shelter)
- Prior to outside storage in freezing temperature, Lessee shall drain all equipment and piping sufficiently to prevent damage to equipment from freezing.

MAINTENANCE

The Lessee is required to provide adequate supervision, maintenance, repairs, grease and oil, etc., as may be necessary or required by Operation and Maintenance Manual.

FIELD SERVICE

The startup and training include up to 5 days of the field service. This service is to verify that the equipment has been set up correctly, and to train the operating personnel in operations and maintenance of the equipment. Additional field service can be negotiated as part of the rental agreement (dependent upon the amount of time required or requested, air fare, expenses etc.) and is available for **\$500.00** per day plus normal expenses.



Ekoton USA Corporation

1460 Industrial Parkway, Akron, Ohio 44310

tel. +1 (646) 286 5512

www.ekoton.com

usa@ekoton.com

TEST PROGRAM AND RESULTS

All test, operation, sampling, maintenance, installation, chemicals, and other labor are part of the Lessee's cost and responsibility unless otherwise agreed upon. All parties' access to the test program results will be discussed and agreed upon at the execution of this contract.

Lessor will be pleased to review and evaluate the results of the test program with the Lessee (purchaser) with respect to design and specification of full-scale equipment.

RENTAL RETURN

Upon return of the equipment, we reserve the right to invoice for major repairs, other than normal wear, and for any cleaning cost over the deposit amount necessary to return the equipment to the condition at which it was received at the Lessee's plant. To avoid unnecessary cleaning charges, we ask that the Lessee make sure that the unit is cleaned and functional before returning it.

Major repairs or unnecessary damage shall include but not be limited to: damage of any part of the unit due to external action, including piping and controls; damage due to the influence of strong acids or other chemicals, which can destroy stainless steel; damage of the positive displacement pump due to entering of the extraneous body into the pump, damage of the dewatering drum and rings due to entering of the extraneous body into the dewatering drum, damage of the control system parts due to the over voltage or lightning.

SERVICE CHARGES; INTEREST

If Lessor does not receive any payment required by this Lease within ten (10) days of the due date thereof, or such greater time period as required by applicable law, Lessee shall pay to Lessor, as a charge for servicing of a delinquent account and not as a penalty, a charge of ten percent (10%) of the amount due. No more than one such service charge shall be made on any delinquent payment regardless of the length of the delinquency. In addition, Lessee shall pay to Lessor any actual additional expenses incurred by Lessor in collection efforts, including but not limited to long-distance telephone charges and travel expenses.

LOSS AND DAMAGE

In the event of damage to any item of Equipment that is directly caused by the Lessee while the Equipment is on-site and in the possession of the Lessee, Lessee shall immediately place the same in good repair at Lessee's expense. If any item of Equipment is lost, stolen, destroyed or damaged beyond repair while the Equipment is on-site and in the possession of the Lessee, Lessee shall at Lessee's option do one of the following:

- (a) Replace the same with like Equipment in good repair, acceptable to Lessor, or
- (b) Pay Lessor cost of equipment replacement and labor cost.

INSURANCE; LIENS; TAXES

Lessee shall provide and maintain insurance against loss, theft, damage or destruction of the Equipment in an amount not less than the full replacement value of the Equipment, with loss payable to Lessor. Lessee shall also provide and maintain comprehensive general all-risk liability insurance, including but not limited to product liability coverage, insuring Lessor and Lessee with a severability of interest endorsement or its equivalent, against any and



Ekoton USA Corporation

1460 Industrial Parkway, Akron, Ohio 44310
tel. +1 (646) 286 5512

www.ekoton.com

usa@ekoton.com

all loss or liability for damages either to persons or property or otherwise, which might result from or happen in connection with the condition, use or operation of the Equipment, with such limits and with an insurer as are satisfactory to Lessor. Each policy shall expressly provide that said insurance as to Lessor and its assigns shall not be invalidated by any act, omission or neglect of Lessee and cannot be canceled without 30 days written notice to Lessor. Lessor shall have no obligation to ascertain the existence or adequacy of insurance, or to provide any insurance coverage for the Equipment or for Lessee's benefit.

Lessee shall keep the Equipment free and clear of all levies, liens, and encumbrances. Lessee shall be responsible for all taxes and fees (local, state and federal) which may now or hereafter be placed on the leasing, rental, sale, possession or use of the Equipment.

If Lessee fails to procure or maintain said insurance or to pay said charges or taxes, Lessor shall have the right, but shall not be obligated, to effect such insurance, or pay such charges or taxes. In that event, Lessor shall notify Lessee of such payment and Lessee shall repay to Lessor the cost thereof within 15 days after such notice is mailed to Lessee.

DEFAULT

Lessee shall be in default of this Lease if:

- (a) Lessee shall fail to make any payment due under the terms of this Lease for a period of 90 days from the due date thereof; or
- (b) Lessee shall fail to observe, keep or perform any other provision of this Lease, and such failure shall continue for a period of 15 days; or
- (c) The Equipment or any part thereof shall be subject to any lien, levy, seizure, assignment, transfer, bulk transfer, encumbrance, application, attachment, execution, sublease, or sale without prior written consent of Lessor, or if Lessee shall abandon the Equipment or permit any other entity or person to use the Equipment without the prior written consent of Lessor; or
- (d) Lessee changes its name, state of incorporation, chief executive officer and/or place of residence without providing Lessor with 30 days written notice of such change.

REMEDIES

If Lessee is in default, Lessor, with or without notice to Lessee, shall have the right to exercise any one or more of the following remedies, concurrently or separately and without any election of remedies being deemed to have been made;

- (a) Lessor may require Lessee, at its expense, to return the Equipment in good repair, ordinary wear and tear resulting from proper use thereof alone excepted, by delivering it, packed and ready for shipment, to Lessor place of business ;
- (b) Lessor may cancel or terminate this Lease and may retain any and all prior payments paid by Lessee;
- (c) Lessor may declare all sums due and to become due under this Lease immediately due and payable, including as to any or all items of Equipment, without notice or demand to Lessee;
- (d) Lessor may sue for and recover from Lessee the sum of all unpaid rents and other payments due under this Lease.
- (e) To pursue any other remedy available at law, by statute or equity.



Ekoton USA Corporation

1460 Industrial Parkway, Akron, Ohio 44310
tel. +1 (646) 286 5512

www.ekoton.com

usa@ekoton.com

EXPENSE OF ENFORCEMENT

In the event of any legal action with respect to this Lease, the prevailing party in any such action shall be entitled to reasonable attorney fees, including attorney fees incurred at the trial level, including action in bankruptcy court, on appeal or review, or incurred without action, suits or proceedings, together with all costs and expenses incurred in pursuit thereof.

MISCELLANEOUS TERMS

Capitalized terms not otherwise defined in this Agreement will have the meanings ascribed to them in the Contract. Headings are inserted for the convenience of the parties only and are not to be considered when interpreting this Agreement. Words in the singular mean and include the plural and vice versa. Words in the masculine include the feminine and vice versa. No regard for gender is intended by the language in this Agreement.

SEVERABILITY

This Lease is intended to constitute a valid and enforceable legal instrument. In the event any provision hereof is declared invalid, such provision will be deemed severable from the remaining provisions of this Lease, all of which will remain in full force and effect.

GOVERNING LAW

Subject to the terms of the Contract, it is the intention of the Parties that this Agreement, and all suits and special proceedings under this Agreement, be construed in accordance with and governed, to the exclusion of the law of any other forum, by the laws of the State of Ohio, without regard to the jurisdiction in which any action or special proceeding may be instituted.

LESSOR

Ekoton USA Corporation

Sergiy Pesin VP

Signed by

Signature

LESSEE

City of Napoleon

Signed by

Signature