

ORDINANCE NO. 9-2019

AN ORDINANCE AUTHORIZING THE MAYOR AND FISCAL OFFICER TO ENTER INTO A CONTRACT FOR THE CONSTRUCTION OF A NEW DIRECT SOURCE CAPTURE VEHICLE EXHAUST REMOVAL SYSTEM IN THE LOUDONVILLE FIRE DEPARTMENT AND DECLARING AN EMERGENCY.

WHEREAS, the Council of the Village of Loudonville desires to enter into an agreement for the construction of a new direct source capture vehicle exhaust removal system in the Loudonville Fire Department; and

WHEREAS, the Village of Loudonville has advertised for and accepted bids for said system as required by law; and

WHEREAS, Rossman Enterprises, Inc. has submitted a bid to carry out the required construction and the Council of the Village of Loudonville wishes to accept that bid believing that it is the lowest, best, and most responsive bid submitted;

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE VILLAGE OF LOUDONVILLE, STATE OF OHIO:

SECTION 1: That the Mayor and Fiscal Officer of the Village of Loudonville are hereby authorized and directed to enter into a contract with Rossman Enterprises, Inc. for the installation of a direct source capture vehicle exhaust removal system at a contract price of seventy-five thousand two hundred thirty-nine dollars (\$75,239.00) pursuant to the terms set forth on the attached Exhibit A and the bid specifications and related documentation of the Butler Street Resurfacing Project.

SECTION 2: The Village does hereby waive any bidding inconsistencies of Rossman Enterprises, Inc. bid submission and rejects all other bidders.

SECTION 3: That this Ordinance is hereby declared to be an emergency measure, necessary for the immediate preservation of the public peace, health and safety in the Village of Loudonville, for the reason that it is immediately necessary to provide a safer work environment for the firefighters and emergency medical staff of the Village of Loudonville for public safety, public accessibility, and preservation of health. This Ordinance shall therefore take effect and be in force immediately upon its passage and approval by the Mayor of the Village of Loudonville.

Dated: _____

Stephen Stricklen, Mayor

Attest:

Elaine Van Horn, Fiscal Officer

Thomas R. Gilman, Village Solicitor

EXHIBIT A

AGREEMENT FOR SOURCE CAPTURE EXHAUST REMOVAL SYSTEM

THIS AGREEMENT made this ____ day of _____, 2019 by and between the Village of Loudonville, Ohio, an Ohio municipal corporation, hereinafter referred to as the "VILLAGE", and Rossman Enterprises, Inc. (dba Clean Air Concepts), an Ohio corporation, hereinafter referred to as the "CONTRACTOR".

WITNESSETH:

WHEREAS, the VILLAGE invited the submission of bids for a direct source capture vehicle exhaust removal system to be constructed in the Loudonville Fire Department, hereinafter "the Project"; and

WHEREAS, the CONTRACTOR submitted a bid for the Project that the Village desires to accept and to enter into a contract with the CONTRACTOR.

NOW, THEREFORE, the VILLAGE and the CONTRACTOR agree as follows:

1. **CONTRACT DOCUMENTS.** The Contract Documents consist of this Agreement, the invitation for bids, the bid specifications, bid proposal of CONTRACTOR, performance bond of CONTRACTOR, and all other documentation referenced in or related to the bidding documentation. Said Contract Documents are hereby incorporated in this Agreement and the terms thereof constitute integral parts of this Agreement. Violation of the term of any of the Contract Documents constitutes a breach of this Agreement.

2. **SERVICES AND MATERIALS.** CONTRACTOR shall provide VILLAGE with all materials, equipment, engineering, tools, personnel, and labor to construct and install a direct source capture vehicle exhaust removal system consistent with that described in the Contract Documents, including all bid documents for the Project. Said project shall include the complete construction and installation of the exhaust removal system in two (2) areas of the Loudonville Fire Department, with six (6) removal hose units in six (6) bays of one area and two (2) removal hose units in two (2) bays of the other area, and additional equipment as provided for in the CONTRACTOR'S bid response.

3. **TIME OF COMPLETION.** CONTRACTOR shall fully complete the Project no later than 5:00 p.m. on the one hundred eightieth (180th) day after this agreement is signed by the second party to sign. In the event that the Contractor fails to complete the Project by that date, Contractor shall pay the Village liquidated damages in the amount of two hundred dollars (\$200.00) per day until the Project is complete.

4. **PAYMENT.** Village shall pay Contractor seventy-five thousand two hundred thirty-nine dollars (\$75,239.00) for full performance of this Agreement. Based upon applications for payment submitted to the Village by the Contractor, the Village shall make progress payments on account of the contract sum to the Contractor, to the extent the same are allowable by the Federal Emergency Management Agency (FEMA) grant providing funds for the Project. The periodic payments shall be for amounts commensurate to the work performed and materials and equipment provided at the time of any such payment. Village shall have the discretion to determine the appropriate amounts of any periodic payment. Final payment, constituting the

entire unpaid balance of the Contract Sum, shall be made by the Village to the Contractor when the Contractor has fully performed the Contract and the Village has been authorized to release final grant funds by FEMA.

6. LIABILITY OF THE VILLAGE. The VILLAGE's liability hereunder shall be to make all payments when they shall become due, including those due directly to the CONTRACTOR and those to subcontractors whom the CONTRACTOR may engage to complete relevant tasks. The VILLAGE shall be under no further obligation or liability. Nothing in this Agreement shall be construed to render the VILLAGE or any elected or appointed official or employee of the VILLAGE, or their successors in office, personally liable for any obligation under this Agreement.

7. INDEMNIFICATION. The CONTRACTOR shall indemnify, defend, and hold the VILLAGE harmless from and against any and all claims, demands, liabilities, actions, causes of actions, costs and expenses, including attorney's fees, arising out of the CONTRACTOR's breach of this Agreement or the negligence or misconduct of the CONTRACTOR, or the CONTRACTOR's agents or employees.

8. INSURANCE. The Contractor shall be liable to the Village or any third party for any property damage or bodily injury caused by it, any of its subcontractors, employees or agents in the performance of, or as a result of, the work under this Agreement. The Contractor and any subcontractors used hereby certify that they are insured for workers' compensation, property damage, personal and product liability.

9. ASSIGNMENT. The CONTRACTOR shall not assign, sublet or otherwise transfer this Agreement, in whole or in part, without the prior written consent of the VILLAGE, and shall not assign any of the moneys payable under this Agreement, except by and with the written consent of the VILLAGE.

10. TERMINATION. The Village may suspend or terminate this Agreement by providing the Contractor with ten (10) days written notice for the reasons outlined as follows:

1. Failure of the Contractor, for any reason, to fulfill in a timely and proper manner its obligations under this Agreement.
2. Violation of any of the provisions of this Agreement by the Contractor.
3. A determination by the Village that the Contractor has engaged in fraud, waste, mismanagement, misuse of funds, or criminal activity with any funds provided by this Agreement.
4. Violation of any term of the Contract Documents.
5. In the event that the Village loses its access or reasonably believes it will lose access to the full FEMA grant funds expected by the Village for payment for the Project.
6. In the event that the Village reasonably believes it will lose FEMA grant funding before the date on which the project will be completed.

11. COMPLIANCE WITH LAWS. The CONTRACTOR shall comply with all Federal, State and local laws, rules, regulations and orders applicable to the work provided pursuant to this Agreement, such provisions being incorporated herein by reference, and shall be responsible for obtaining all necessary licenses, permits, and approvals required for the performance of such work.

12. WAIVERS. The provisions of this contract can be waived only by written agreement, except where otherwise stated herein. Forbearance or indulgence by a party shall not be construed as a waiver, nor in any way limit the legal or equitable remedies available to that party. No waiver by either party of any default or breach shall constitute a waiver of any subsequent default or breach.

13. SEVERABILITY. If any term or condition of this Agreement or any application thereof shall to any extent be held invalid, illegal or unenforceable by the court of competent jurisdiction, the validity, legality, and enforceability of the remaining terms and conditions of this Agreement shall not be deemed affected thereby unless one or both parties would be substantially or materially prejudiced.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

VILLAGE OF LOUDONVILLE

ROSSMAN ENTERPRISES, INC.

By: _____

By: _____

Title: _____

Title: _____

By: _____

Title: _____

Approved as to form:

Thomas R. Gilman, Loudonville Solicitor