

**ORDINANCE O-2019-14**

**AN ORDINANCE AUTHORIZING A CONTRACT WITH BARBICAS CONSTRUCTION COMPANY, INC. FOR THE VILLAGE OF WINDHAM, 2019 STREET RESURFACING PROJECT, IN PORTAGE COUNTY, OHIO AND DECLARING AN EMERGENCY**

**WHEREAS**, by the passage of Resolution 2018-31 the Council of the Village of Windham has previously applied for and received grants to accomplish the Village of Windham 2019 Street Resurfacing Project; and

**WHEREAS**, advertisements were made in the Youngstown Vindicator, a newspaper of general circulation within the Village of Windham, on June 1, 2019, June 17, 2019 and June 24, 2019, that sealed bids for the Village of Windham 2019 Street Resurfacing Project would be received at the Village Administrator's office within the Village of Windham until 2:00 p.m. on Monday, July 1, 2019; and

**WHEREAS**, sealed bids were received by the Village of Windham from four different contractors; and

**WHEREAS**, the sealed bid from Barbicas Construction Company, Inc. in the amount of One Hundred Ninety Eight Thousand One Hundred Sixty One Dollars & 75/100 (\$198,161.75) is the lowest bid that has been received; and

**WHEREAS**, the Village Project Manager has checked the references of Barbicas Construction Company, Inc., and has found that the references demonstrate that Barbicas Construction Company, Inc. to be a responsible and responsive company, capable of performing under the contract if the contract is awarded to them; and

**WHEREAS**, the Village Administrator and the Project Manager have recommended that Barbicas Construction Company, Inc. has submitted the lowest responsive and responsible bid and that the Windham 2019 Street Resurfacing Project contract be awarded to Barbicas Construction Company, Inc..

**NOW THEREFORE BE IT ORDAINED** by the Council of the Village of Windham, State of Ohio, two thirds or more of the members thereto concurring that:

**Section 1:** That the recommendation of the Village Administrator and the Project Manager are hereby accepted.

**Section 2:** That the bid submitted by Barbicas Construction Company, Inc. is declared to be the lowest responsive and responsible bid.

**Section 3:** That a contract, in substantial conformity with that attached hereto and marked for identification as Exhibit "A" between Barbicas Construction Company, Inc. and the Village of Windham, is hereby authorized. The Mayor and the Fiscal Officer are directed to execute said contract.

**Section 4:** It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were accepted in an open meeting of this Council, and that deliberations of this Council and any of its committees that resulted in such formal actions were in meetings open to the public, in compliance with Section 121.22 of the Ohio Revised Code.

**Section 5:** This Ordinance is hereby declared to be an emergency measure, becoming effective immediately on passage by Council and approval by the Mayor, in order to advance the health, safety and general welfare of the Village of Windham, and for the further reason that it is necessary to begin the Windham 2019 Street Resurfacing Project in the Village of Windham if at all possible before the beginning of the school year.

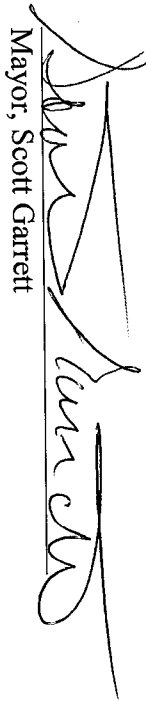
Passed in Council as an Emergency on this 30<sup>th</sup> day of July, 2019.

Vote of Council: Ayes: 5  
Nays: 0

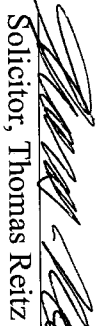
Attest:

  
Village Fiscal Officer, Cheree Taylor

Approved:

  
Mayor, Scott Garrett

Approved as to Legal Form:

  
Solicitor, Thomas Reitz

CONTRACT

WINDHAM 2019 STREET RESURFACING  
VILLAGE OF WINDHAM

THIS AGREEMENT, made and entered into at the Village of Windham, Ohio this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ by and between the Village of Windham, in that behalf duly authorized by Motion passed \_\_\_\_\_ by the Windham Village Council, and \_\_\_\_\_ a corporation/partnership/individual of \_\_\_\_\_ Contractor.

WITNESSETH: That the said CONTRACTOR has agreed and by these presents does agree with the VILLAGE, for the consideration hereinbefore mentioned and contained, and under penalty expressed in a bond hearing even date with these presents, and herein contained, or hereunto annexed, to furnish at his own cost and expense, the specified services associated with the above-referenced Contract.

Article 1. The Contractor agrees to perform the work within the time specified in the proposal from the date of written Notice to Proceed from the Village and to prosecute the same within reasonable speed and diligence so as to insure the completion of the work in accordance with the time stipulated in the Proposal and to the satisfaction of the Village.

Article 2. The Village agrees to pay, and the Contractor agrees to accept as full compensation the bid price for the work. Said payment shall be made in accordance with Sec. G.34 of The General Conditions.

Article 3. It is agreed that if the Contractor fails to perform the work within the specified time for substantial completion and/or acceptance, or before the time as either may be extended in accordance with the specifications, the Village shall deduct from the monies due or to become due to the Contractor under this contract, any damages, penalties, or other changes assessed against the Contractor under the terms of the Specifications. Should the aggregate of liquidated damages be greater than the monies due or to become due to the Contractor under this Contract, the Contractor shall be liable for payment of the difference upon demand of the Village.

Article 4. If the Contractor shall fail to comply with any of the terms, conditions or stipulations of this contract according to the true intent and meaning thereof, then the Village may avail itself of any or all remedies provided in that behalf in the contract, and shall have the right and power to proceed in accordance with the provisions thereof.

Article 5. It is further mutually agreed by the parties hereto that the Contract Documents as included in the specifications, applicable to the work of this contract are those enumerated below:

- Notice to Bidders
- Instructions to Bidders
- Bid Forms
- Contract Forms
- Performance Bond
- Specifications, General Conditions
- Specifications, Supplementary Conditions
- Special Specifications
- Addendum No. 1 Date \_\_\_\_\_
- 2 Date \_\_\_\_\_
- 3 Date \_\_\_\_\_

which documents form a part of this contract and the provisions thereof are as binding on the parties to this contract as if they were fully set forth or repeated herein.

IN WITNESS WHEREOF, the parties hereto have executed this agreement the day and year first above mentioned

VILLAGE OF WINDHAM

DATE: \_\_\_\_\_

\_\_\_\_\_  
Mayor

ATTEST: \_\_\_\_\_

\_\_\_\_\_  
Fiscal Officer

CONTRACTOR:

\_\_\_\_\_  
Name of Contractor

BY: \_\_\_\_\_  
Signatory Representative

ATTEST: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
LEGAL COUNSEL

LEGISLATIVE CERTIFICATION

I hereby certify that the Village of Windham, Ohio, did by the passage of Ordinance No.

\_\_\_\_\_ on \_\_\_\_\_ authorize the advertisement for bids and to enter into contract for the project herein described.

\_\_\_\_\_  
Village Fiscal Officer

PAYMENT BOND

Know all men by these presents, that we, \_\_\_\_\_, as PRINCIPAL, and \_\_\_\_\_, as sureties are held and firmly bound unto the **Village of Windham** its certain attorney, successors, or assigns (hereinafter called the OBLIGEE) in the sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) lawful money of the United State, for the payment of which sum will and truly to be made, we bind ourselves, our heirs, personal representatives, successors, and assigns, jointly and severally firmly by these presents:

WHEREAS, said PRINCIPAL has entered into a certain contract with said OBLIGEE, dated \_\_\_\_\_ 20\_\_\_\_, hereinafter called the Contract) for **WINDHAM 2019 STREET RESURFACING** which contract and the specifications for said Work shall be deemed a part thereof as fully as if set out herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH that if said PRINCIPAL and all subcontractors to whom any portion of the work provided for in said contract is sublet and all assignees of said PRINCIPAL and of such subcontractors shall promptly make payment for all material furnished, labor supplied or performed, rental for equipment employed, and services rendered by public utilities in or in connection with the prosecution of the work, whether or not the said material, labor, equipment, or services enter into and become component parts of the work or improvement contemplated in said contract, of in any amendment or extension of or addition to said Contract, then the above obligation shall be void; otherwise to remain in full force and effect, PROVIDED, however, that this bond is subject to the following conditions and limitations:

- (a) All persons who have performed labor, rendered services or furnished materials or machinery, shall have a direct right of action against the PRINCIPAL and surety on this bond, which right of action shall be asserted in proceedings instituted in the State in which labor was performed, services rendered of materials furnished under said contract in more than one state, then in any such state). Insofar as permitted by laws of such state, such right of action shall be asserted in a proceeding instituted in the name of the OBLIGEE to the right and benefit of the person instituting such action and any or all other persons having claims hereunder, and any other person having a claim hereunder shall have the right to be made a party to such proceedings (but not later than 2 years after the complete performance of said Contract and final settlement thereof) and to have such claim adjudicated in such action and judgment rendered thereon.
- (b) The surety shall not be liable hereunder for any damages or compensation recoverable under any workmen's compensation or employer's liability statute.
- (c) In no event shall the surety be liable for a greater sum than the penalty of this bond, or subject to any suit, action or proceeding thereon that is instituted later than 2 years after the complete performance of said Contract and final settlement thereof.
- (d) As used herein: The term "person" refers to any individual, firm or corporation who have furnished materials or machinery or public utility services to be used on or incorporated in the work or the prosecution thereof provided for in said Contract or in any amendment or extension of or addition to said Contract, and/or to any person engaged in the prosecution of the work provided for in said Contract of in any amendment or extension of or addition to said Contract who is an agent, servant or employee of the PRINCIPAL or of any subcontractor, or of any assignee of said PRINCIPAL, or any subcontractor, or any assignee of said principal or of said subcontractor, and such labor or mechanic, but shall not include office employees not regularly stationed at the site of the work.

The said surety, for value received, hereby stipulates and agrees that no charge, extension of time, alteration or addition to the terms of the Contract, or to the work to be performed thereunder or the Specifications accompanying the same, shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time alteration of addition to the terms of the Contract or to the work or to the Specifications.

SIGNED, SEALED AND DELIVERED IN \_\_\_\_\_ ORIGINAL COUNTERPARTS THIS \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

(Individual Principals sign here)

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_ (SEAL)

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_ (SEAL)

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_ (SEAL)

(Corporate Principal sign here)

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_ (SEAL)

(Surety Sign Here)

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_ (SEAL)

Attest:

By: \_\_\_\_\_

Title: \_\_\_\_\_

Attest:

By: \_\_\_\_\_

Title: \_\_\_\_\_

The rate of premium charges is \$ \_\_\_\_\_ per thousand.

The total amount of the premium charged \$ \_\_\_\_\_.

(The above must be filled in by the Corporate Surety.)

NOTE: Date of Bond must not be prior to date of NOTICE OF AWARD. If CONTRACTOR is Partnership, all partners should execute Bond.

**Surety companies executing Bonds must appear on the Treasury Department's most current list (Circular 70 as amended) and be authorized to transact business in the State where the Project is located.**