

CITY OF STRONGSVILLE, OHIO

ORDINANCE NO. 2024 – 139

By: Mayor Perciak and All Members of Council

**AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO A STATE OF OHIO ADMINISTRATIVE SERVICES CONTRACT FOR THE PURCHASE OF ONE (1) NEW SUTPHEN STOCK #568 CUSTOM PUMPER ON SUTPHEN MONARCH CHASSIS WITH RELATED VEHICLE MODIFICATIONS AND APPURTENANCES, FOR USE BY THE FIRE DEPARTMENT, AND DECLARING AN EMERGENCY.**

WHEREAS, Ohio Revised Code Section 5513.01(B) provides the opportunity for counties, townships and municipal corporations to participate in contracts of Ohio Department of Administrative Services for the purchase of vehicles, machinery, materials, supplies or other articles; and

WHEREAS, this Council wishes to take advantage of that opportunity to purchase one (1) new Sutphen Stock #568 Custom Pumper on Sutphen Monarch Chassis with related vehicle modifications and appurtenances (State Contract No. STS023111, Index No. STS618), for use by the Fire Department of the City.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF STRONGSVILLE, COUNTY OF CUYAHOGA AND STATE OF OHIO:

**Section 1.** That the Mayor accordingly be and is hereby authorized and directed to request authority in the name of the City of Strongsville to participate in an Ohio Department of Administrative Services contract with **SUTPHEN CORPORATION (through authorized dealer Herb Fire Equipment)** for the purchase of one (1) new Sutphen Stock #568 Custom Pumper on Sutphen Monarch Chassis with related vehicle modifications and appurtenances, in a total amount not to exceed \$995,300.00, as reflected in the Purchase Agreement attached hereto as Exhibit A and incorporated herein.

**Section 2.** That the City of Strongsville hereby agrees to be bound by the terms and conditions prescribed by the Director of Administrative Services for such purchases, and to directly pay the vendor, under each such contract of the Ohio Department of Administrative Services in which the City participates for items it receives pursuant to the contract.

**Section 3.** That the Mayor and Director of Finance be and are hereby authorized to enter into and execute such agreements and documents as may be necessary to participate in the Ohio Department of Administrative Services Office of Procurement Services Program.

**Section 4.** That the funds for the purposes of said purchase and Agreement have been appropriated and shall be paid from the Emergency Vehicle Fund.

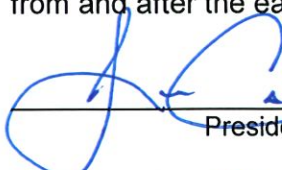
**Section 5.** That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council; and that all deliberations of this Council, and any of its committees, that resulted in such formal action were in meetings open to the public in compliance with all legal requirements.

CITY OF STRONGSVILLE, OHIO

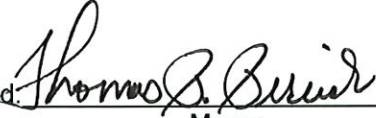
ORDINANCE NO. 2024 – 139

Page 2

Section 6. That this Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, property, health, safety and welfare of the City, and for the further reason that it is immediately necessary to enter into said contract to provide for the continuity of services and operation of the City of Strongsville Fire Department, to provide updated equipment for fire rescue services, to protect the lives of persons in the City of Strongsville, and conserve public funds. Therefore, provided this Ordinance receives the affirmative vote of two-thirds of all members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise from and after the earliest period allowed by law.

  
\_\_\_\_\_  
President of Council

Date Passed: 09 26 2024

Approved:   
\_\_\_\_\_  
Mayor

Date Approved: Sept 16, 2024

Attest:   
\_\_\_\_\_  
Clerk of Council

|          | Yea                                 | Nay                      |
|----------|-------------------------------------|--------------------------|
| Carbone  | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Clark    | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Kaminski | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Kosek    | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Roff     | <u>Absent</u>                       | <input type="checkbox"/> |
| Short    | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Spring   | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

Ord. No. 2024-139 Amended: \_\_\_\_\_  
1<sup>st</sup> Rdg. 09-16-24 Ref: \_\_\_\_\_  
2<sup>nd</sup> Rdg. Suspended Ref: \_\_\_\_\_  
3<sup>rd</sup> Rdg. Suspended Ref: \_\_\_\_\_

Public Hrg. \_\_\_\_\_ Ref: \_\_\_\_\_  
Adopted: 09-16-24 Defeated: \_\_\_\_\_



## PURCHASE AGREEMENT

### FOR SUTPHEN FIRE APPARATUS

THIS AGREEMENT made and entered into this 16 day of September, 2024 by and between THE SUTPHEN CORPORATION, an Ohio Corporation, of Dublin, Ohio, hereinafter called "SUTPHEN" and the City of Strongsville of Strongsville, OH, hereinafter called "PURCHASER", sets forth the terms whereby Purchaser agrees to purchase a fire apparatus from Sutphen pursuant to the terms contained herein.

1. **PURCHASE**: Purchaser hereby agrees to buy and Sutphen hereby agrees to sell and furnish to Purchaser the apparatus and equipment according to the Sutphen Proposal dated 9/11/24 and made a part hereof, and the Proposal Price Page with the Sutphen Terms and Conditions also made part of this Agreement as attached hereto ("Proposal").
2. **PURCHASE PRICE**: Purchaser agrees to pay for said apparatus and equipment the total Purchase Price of Nine Hundred Ninety Five Thousand Three Hundred & 0/100 (\$ 995,300.00).

Changes to National Fire Protection Association ("NFPA") 1900, Environmental Protection Agency ("EPA") or changes legislated by Federal, State or Local Governments or changes in part availability or vendor relationships that impact the cost to manufacture the truck may incur additional charges which shall be borne by the purchaser. These may include but are not limited to changes that affect the major vendors of the fire apparatus industry such as pump manufacturers, seat manufacturers, electrical power supplies (generators) and powertrain (engine & transmission). Sutphen shall provide written notice to the Purchaser as soon as it reasonably believes any provision may be invoked. Sutphen shall provide, upon written request, documentation of such changes and increases.

Any such changes shall be documented on a change order executed by both Sutphen and Purchaser.

3. **PAYMENT**: Final payment shall be made at the time of final inspection at the factory as per Sutphen Proposal Terms and Conditions. Should payment be delayed, Sutphen reserves the right to charge interest at the rate of one and one-half percent (1.5%) per month, beginning on the day after payment is due.

4. **FINAL COMPLETION:** The apparatus and equipment being purchased hereunder shall be completed within approximately February 2025 months after the receipt and acceptance of this agreement at Sutphen's office as per Sutphen Proposal, provided that such delivery date shall be automatically extended for delays beyond Sutphen's control, including, without limitation, strikes, labor disputes, riots, civil unrest, pandemics, war or other military actions, sabotage, government regulations or controls, fire or other casualty, or inability to obtain materials or services. If such delay occurs, Sutphen shall give notice of delay to Purchaser. Purchaser shall not be entitled to any discount or reduction in price for such delay and Sutphen shall not be liable for any damages (compensatory, incidental, consequential or otherwise) related to such delay.
5. **MANUFACTURER'S CERTIFICATE OF ORIGIN:** Delivery, payment, and transfer of the Manufacturer's Certificate of Origin (MCO) shall take place at Sutphen during final inspection, and upon payment in full in accordance with the terms of this Agreement. Sutphen reserves the right to withhold delivery of the MCO until payment in full is received. If Purchaser requires any third-party equipment mounting, the apparatus shall be moved to the third-party facility by the dealer or Purchaser for such mounting. Such third-party work shall not delay or offset payment to Sutphen.
6. **SUTPHEN WARRANTIES:** Sutphen warrants to Purchaser that all goods and services furnished hereunder will conform in all respects to the terms of this order, including any applicable change orders, drawings, specifications, or standards incorporated herein, and/or shall be free of defects in materials, workmanship, and free from such defects in design. In addition, Sutphen warrants that the goods and services are suitable for and will perform in accordance with the purposes for which they were intended, for a period of one year from the Warranty Registration Date, unless an extended warranty is purchased.
7. **SHORTAGES AND OMISSIONS:** The apparatus shall be tested per NFPA #1900 at Sutphen's manufacturing facility. Purchaser agrees that the apparatus and equipment being purchased hereunder shall not be driven or used in any manner until it is paid for in full. In the event there are any shortages or omissions with the apparatus at time of completion, Purchaser may withhold a sum equivalent to the price of any such shortages as determined by Sutphen.

8. **DEFAULT**: In the case of any default in payment hereunder or in the payment on any notes, negotiable paper, obligations or other instruments issued by Purchaser, Sutphen may take full possession of the apparatus and equipment or of the piece or pieces upon which default has been made, and any payments that have been made theretofore shall be applied as rent in full for the use of the apparatus and equipment up to the date of taking possession by Sutphen.
9. **PURCHASER GUARANTEES**: With the signing of this agreement, Purchaser attests that it has the full power and legal authority to enter into this agreement and guarantees that funds for its purchase are available or in the process of collection.
10. **ACCEPTANCE**: This agreement shall not be binding until it is signed and approved by an officer of the Sutphen Corporation.
11. **TAXES, ETC.**: The purchase price provided for herein does not include any federal, state or local sales tax, duties, imposts, revenues, excise or other taxes which may hereafter be imposed by governmental authority or otherwise and which are made applicable to the apparatus or equipment covered by the agreement. In the event that any such taxes are subsequently imposed and become applicable, the purchase price herein shall be increased by the amount of such taxes and such sum shall be immediately paid by Purchaser to Sutphen. To the extent applicable, the prices and deliveries set forth herein are subject to the Defense Production Act.
12. **INSURANCE**: Sutphen shall provide insurance insuring the apparatus and equipment against loss by fire, theft, or collision and insuring against property damage and personal injury through the completion of the apparatus and transfer of the Manufacturer's Certificate of Origin.
13. **TERMINATION**: After the execution of this Agreement, Purchaser shall have no right to terminate the Agreement. Sutphen may, in its absolute and sole discretion, accept Purchaser's request to terminate the Agreement. In the event Sutphen accepts Purchaser's request to terminate the Agreement, Sutphen may charge a cancellation fee. The following charge schedule based on costs incurred may be applied, at Sutphen's sole discretion: (a) 10% after order is accepted by Sutphen; (b) 30% of the Purchase Price after production has commenced. The cancellation fee may increase accordingly as costs are incurred as the order progresses through engineering and into manufacturing.
14. **GENERAL**: This agreement and the Sutphen Proposal provided herein take precedence over all previous negotiations, oral or written, and no representations or warranties are applicable except as specifically contained in this agreement or in the Sutphen Proposal. No alteration, modification, amendment or change of this Agreement shall be binding unless executed in writing by the parties. No waiver of any of the provisions of this Agreement shall be deemed a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. If a Purchase Order is also issued, this Agreement and the Sutphen Proposal Terms and Conditions shall supersede the terms in the Purchase Order where terms may be inconsistent. This Agreement may be signed in counterparts by the parties, each



of which shall be deemed an original, but all of which together shall be deemed to be one and the same Agreement. A signed copy of this Agreement delivered by facsimile, e-mail, or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement. This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each party hereto.

15. **GOVERNS:** This Agreement shall be governed and controlled as to interpretation, enforcement, validity, construction, effect and in all other respects by the laws, statutes and decisions of the State of Ohio. Exclusive jurisdiction and venue for any litigation at all related to this in the Franklin County Court of Common Pleas, Columbus, Ohio, and the parties hereto consent and submit to the general jurisdiction of this court. All of the terms and provisions of this Agreement shall be binding upon and inure to the benefit of and be enforceable by Sutphen, Purchaser, their successors and assigns.

**IN WITNESS WHEREOF**, the parties hereto have caused this agreement to be duly executed and attested by its duly authorized representatives, effective as of the date below when accepted at Sutphen Corporations offices.

**SALES REPRESENTATIVE OF  
THE SUTPHEN CORPORATION**

By \_\_\_\_\_  
Sales Representative

Accepted at offices of:  
The Sutphen Corporation  
6450 Eiterman Rd.  
Dublin, Ohio 43016

By \_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_\_\_\_

**PURCHASER  
City of Strongsville**

By Thomas P. Perciak  
Title Thomas P. Perciak, Mayor  
Date Sept 16, 2024

By \_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_\_\_\_