



## MINUTES of November 9, 2020 Regular Meeting

### Board of Public Works & Safety and Stormwater Board

Held 2:00 p.m. Goshen Police & Court Building, 111 East Jefferson Street, Goshen, Indiana

Present: Chair Jeremy Stutsman, Member Mary Nichols, Member Mike Landis

Absent: None

Minutes of November 2 were presented

**Nichols/Landis moved to approve minutes of November 2 as presented. Passed 3-0**

**Nichols/Landis moved to add items #20 (Wheel Loader) and #21 (Public Notice for U.S. Hwy 33) to the agenda and to approve the agenda as amended. Passed 3-0**

#### Promotion of Four Members of the Goshen City Fire Department

Assistant Chief Anthony Powell presented the packet memos requesting the promotions of: Bruce Nethercutt to Assistant Chief, Patrick Linn to Fire Captain, Travis Peak to Fire Lieutenant and Andrew S Priem to Fire Sergeant.

**Nichols/Landis moved to approve the promotions of Bruce Nethercutt to Assistant Chief, Patrick Linn to Fire Captain, Travis Peak to Fire Lieutenant and Andrew Priem to Fire Sergeant effective as of Nov. 13, 2020. Passed 3-0**

Bruce Nethercutt and Patrick Linn were sworn in by Mayor Jeremy Stutsman.

*[Travis Peak and Andrew Priem were not present and will be sworn in at a later date.]*

#### Open Quotes for Patrol-rated Police Sedan Purchase

Mayor Stutsman opened the sealed quotes and read the following prices:

Lochmandy Motors - \$32,407 per car

Sorg Dodge - \$27,426 per car

Kelly Chevrolet - \$28,615 per car

**Stutsman/Nichols moved to refer quotes to Legal Dept. and Central Garage for review. Passed 3-0**



Advertising for 2021 Sidewalk Paving and 50/50 Program, PN: 2021-0001

Civil City Engineer Josh Corwin presented the packet memo.

Member Mike Landis asked to clarify when quotes were due. Corwin stated they were due Nov. 30, 2020.

**Nichols/Landis moved to approve 2021 Sidewalk Paving and 50/50 Program to be advertised Nov. 13 and 20, 2020. Passed 3-0**

Advertising for 2021 Concrete Paving Project, PN: 2021-0002

Corwin presented the packet memo.

**Nichols/Landis moved to approve 2021 Concrete Paving Project to be advertised on Nov. 13 and 20, 2020. Passed 3-0**

Advertising for 2021 Asphalt Paving Project, PN: 2021-0002

Corwin presented the packet memo.

**Nichols/Landis moved to approve 2021 Asphalt Paving Project to be advertised on Nov. 13 and 20, 2020. Passed 3-0**

2020 Bridge Inspection Report, JN: 2020-0015

Corwin presented the packet memo and made a presentation. *[PowerPoint file attached to PDF version of this document.]*

Landis asked if the Madison Street Bridge was a separate project. Corwin stated that this bridge is going to be replaced entirely.

Clerk-Treasurer Adam Scharf asked if the County instead of the City could take over the care of the Waverly Ave Bridge. Corwin state that this can be discussed with the County.

**Nichols/Landis moved to approve 2020 Bridge Inspection Report. Passed 3-0**



Advertising for 2021 Bridge Repair and Maintenance Project, PN: 2021-0010

Corwin presented the packet memo.

**Nichols/Landis moved to approve 2021 Bridge Inspection Repair and Maintenance Project to be advertised on Nov. 13 and 20, 2020. Passed 3-0**

Agreement for Plans and Specifications for Bridge Repair and Maintenance with DLZ Indiana, LLC

Legal Compliance Administrator Shannon Marks presented the packet memo.

**Nichols/Landis moved to approve and execute the agreement with DLZ Indiana, LLC for plans and specifications for bridge repair and maintenance. Passed 3-0**

Downtown ADA Evaluation by Abonmarche, JN: 2016-0038

Director of Public Works Dustin Sailor presented the packet memo.

**Nichols/Landis moved to award the Downtown ADA Evaluation to Abonmarche Consulting in the amount of \$11,900. Passed 3-0**

Change Order 4: Police Training Facility, JN: 2018-0014

Sailor presented the packet memo.

**Nichols/Landis moved to approve Change Order 4 for the Goshen Police Department Shooting Range Training Center Contract for an increase of 5 days and \$12,598.50. Passed 3-0**

Agreement: Police Training Facility Audiovisual Installation, JN: 2018-0014

Sailor presented the packet memo.

**Nichols/Landis moved to approve a contract with Imagination Pro Media Inc. to install audiovisual equipment at the Goshen Police Department Training Facility for \$17,392.14. Passed 3-0**



Agreement: Fire Dept. Aerial Truck Corrosion Repair with Pierce Manufacturing, Inc.

Paralegal Carla Newcomer presented the packet memo.

Landis asked how a set price could be determined if the extent of the corrosion was unknown. Flier Manager Carl Gaines said the entire vehicle would have to be disassembled. Landis asked again how the price could be determined beforehand. Gaines said he wished it was not that way.

**Nichols/Landis moved to approve and execute the agreement with Pierce Manufacturing Inc. for corrosion repair on the Fire Department aerial truck. Passed 3-0**

Grant Agreement: Interfaith Hospitality Network for Warming Shelter

Mayor Stutsman presented the agreement, noting it was similar to the arrangement last year. Said it was his hope soon to participate to have an actual shelter built.

City Attorney Bodie Stegelmann said this year the warming shelter will be located on Eisenhower Dr.; City's funds will be matched by Community Foundation of Elkhart County and private contractors have reduced prices for some of their work.

**Nichols/Landis moved to approve the Grant Agreement with dollar amount of \$16,641.50 with Interfaith Hospitality Network. Passed 3-0**

Acceptance of Easement at 1001 W. Pike St.

Marks presented the packet memo.

**Nichols/Landis moved to accept the Easement of the Goshen City Utilities purposes from LV Goshen Holdings, LLC and authorize the Mayor to execute the acceptance. Passed 3-0**

Extension of Indiana Ave. and High St. Shoulder Work for Lassus Fuel, JN: 2019-2037

Sailor presented the packet memo.

**Nichols/Landis moved to approve an extension of the shoulder work on Indiana Ave. and High St. from U.S. Hwy 33 Pike St. to Wilkinson St. until Nov. 20, 2020. Passed 3-0**



Sidewalk Restriction for Painting at 108-110 N. Main St

Clerk-Treasurer Adam Scharf presented the packet memo.

**Nichols/Landis moved to approve the use of sidewalk at 108 and 110 N Main St. for façade painting work Nov. 5-9, 2020. Passed 3-0**

Compact Wheel Loader Bid

Carl Gaines presented the memo (attached as Exhibit A).

Gaines recommended that the board award the quote of \$46,984 to RPM Machinery.

**Nichols/Landis moved to award the quote for purchase of the Compact Wheel Loader and trade in 1987 Dresser Upgrade and 1993 Case Loader Model 821B for total purchase price of \$46,984 to RPM Machinery as the lowest responsive quote and also move to approve and execute the agreement with RPM Machinery for purchase of the Compact Wheel Loader and trade in the 1987 Dresser Upgrader and 1993 Case Loader Model 821B. Passed 3-0**

Public Notice for U.S. 33, JN: Streets

Sailor presented the memo (attached as Exhibit B).

Sailor explained that INDOT approved NIPSCO to shut down parts of U.S. 33 in four 30-minute increments to install new conductors.

*[Informational only; no action taken]*

PRIVELEGE OF THE FLOOR: No one spoke

**Stutsman/Landis moved to approve Civil City and Utility claims and to adjourn. Passed 3-0**

*Adjournment at 2:40 p.m.*



*Exhibit A: Award Quote for Compact Wheel Loader and Agreement with RPM Machinery (7 pgs)*

*Exhibit B: Public Notice: US Hwy 33 Traffic Congestion Nov. 12 (1 pg)*

APPROVED

A handwritten signature in black ink, appearing to be "J. Stutsman", written over a horizontal line.

Jeremy Stutsman, Chair

A handwritten signature in black ink, appearing to be "Michael A. Landis", written over a horizontal line.

Michael Landis, Member

A handwritten signature in black ink, appearing to be "Mary Nichols", written over a horizontal line.

Mary Nichols, Member

ATTEST

A handwritten signature in black ink, appearing to be "Adam Scharf", written over a horizontal line.

Adam Scharf, Clerk-Treasurer

EXHIBIT A: 11-9-20 (7 Pgs)



**CITY OF GOSHEN LEGAL DEPARTMENT**

City Annex  
204 East Jefferson Street, Suite 2  
Goshen, Indiana 46528-3405

Phone (574) 537-3820 • Fax (574) 537-3817 • TDD (574) 534-3185  
www.goshenindiana.org

November 9, 2020

**To:** Board of Public Works and Safety  
**From:** Carla Newcomer  
**Subject:** Award Quote for Compact Wheel Loader and Agreement with RPM Machinery

The City solicited sealed quotes for a Compact Wheel Loader in accordance with IC 5-22-8-3. Below is a summary of the quotes submitted:

- |  |               |
|--|---------------|
| • RPM Machinery, 3911 Limestone Drive, Ft. Wayne, IN 46809 | \$77,984.00   |
| • Less trade in for Dresser Grader A-Model: 500E           | (\$10,000.00) |
| • Less trade in for Case Loader -Model: 821B               | (\$21,000.00) |

The Street Department would like to purchase the Compact Wheel Loader and trade-in the 1987 Dresser Grader and a 1993 Case Loader Model 821B for a total purchase price of \$46,984.00 to RPM Machinery as the lowest responsible and responsive quoter.

Suggested motions:

Move to award the quote for purchase of the compact wheel loader and trade-in the 1987 Dresser Grader and a 1993 Case Loader Model 821B for a total purchase price of \$46,984.00 to RPM Machinery as the lowest responsible and responsive quoter.

Move to approve and execute the Agreement with RPM Machinery for purchase of the Compact Wheel Loader and trade-in the 1987 Dresser Grader and the 1993 Case Loader Model 821B.

**CONTRACT**

**COMPACT WHEEL LOADER PURCHASE  
SOLICITATION NO. 2020-003**

THIS CONTRACT is made and entered into on this \_\_\_\_ day of \_\_\_\_\_, 2020, by and between the City of Goshen, Indiana by the Goshen Board of Public Works and Safety, hereinafter referred to as "City," and RPM Machinery, hereinafter referred to as "Supplier."

WITNESSETH, that the City and the Supplier mutually agree as follows:

**SCOPE OF PURCHASE**

The Supplier shall provide all labor, equipment, materials, tools, supplies, insurance, supervision, work and all other items necessary to perform and complete in a workmanlike manner the "Compact Wheel Loader Purchase, 2020-003" in accordance with and as described in further detail in this contract and in the Specification Documents the terms of which are incorporated by reference. The scope of the purchase shall include the purchase of:

- (1) 2020 Case 221F Wheel Loader, as specified by City and quoted by Supplier

In addition, Supplier shall also accept the City's trade-in of a 1993 Case Loader, Model: 821B, Serial# JK0024425 and a 1987 Dresser Grader A-500E, Serial # G81001U100233, and apply the trade-in allowance to the purchase price.

In the event of a conflict between a provision in the Specification Documents and the Supplier's quote, the Specification Documents shall control unless specifically modified by this contract.

Supplier shall obtain and maintain all required permits, licenses, registrations and approvals, as well as comply with all health, safety and environmental statutes, rules or regulations in the performance of the work for the City.

**DELIVERY**

The goods, materials and/or equipment to be purchased for this project shall be delivered by February 22, 2021.

**COMPENSATION, BASIS AND METHOD OF PAYMENT**

The City agrees to compensate Supplier for the goods, materials and/or equipment provided, including the trade-in allowance, provided in this contract in accordance with the Supplier's itemized quote as shown below for the sum of Forty-Six Thousand Nine Hundred Eighty-Four Dollars (\$46984.00)

2020 Compact Wheel Loader	\$77,984.00
Trade-in Allowance for 1993 Case Loader	(\$21,000.00)
Trade-in Allowance for 1987 Dresser Grader A-500E	(\$10,000.00)
Total Purchase Price	<u>\$46,984.00</u>



Payment to the Supplier for the purchase under this contract shall be made upon acceptance of the delivery of the equipment. The Supplier shall submit a detailed invoice based on established contract price to the following address for payment:

City of Goshen, Indiana  
c/o Goshen Street Department  
475 Steury Avenue  
Goshen, IN 46528

Supplier is required to have a current W9 Form on file with the City before the City will issue any payment. Payment will be made within forty-five (45) calendar days of the receipt of a detailed invoice, provided all invoiced items are received and satisfactory performance of the Supplier has been attained. Payment is deemed to be made on the date of mailing the check. Any payment made by the City before final acceptance of the goods, supplies, materials and/or equipment shall not affect the obligation of the Supplier to repair or replace any defective parts.

### **LIQUIDATED DAMAGES**

It is agreed by the parties that time is of essence. In the event delivery of the goods, materials and/or equipment is not made within the time set forth in this contract, damage will be sustained by the City. The parties further agree that it is and will be impractical and extremely difficult to ascertain and determine the actual damage which the City will sustain in the event of and by reason of such delay. Therefore, it is agreed that the Supplier shall pay to the City of Goshen, as fixed and liquidated damages, and not as a penalty, One Hundred Dollars (\$100.00) per calendar day for each and every calendar day's delay in making delivery in excess of the time specified. It is further agreed that in the event such damages are sustained by the City, the City may deduct the amount of the liquidated damages from any moneys due or that may become due to the Supplier under this contract.

### **INDEPENDENT CONTRACTOR STATUS**

Supplier shall be deemed an independent contractor operating as a separate entity from the City of Goshen. The City shall not be responsible for injury, including death, to any persons or damages to any property arising out of the acts or omissions of the Supplier or its agents, employees, or subcontractors of the Supplier.

### **NON-DISCRIMINATION**

The Supplier agrees that it will comply with all federal and Indiana civil rights laws, including, but not limited to Indiana Code 22-9-1-10. The Supplier agrees the Supplier or any subcontractors, or any other person acting on behalf of the Supplier or their subcontractor, shall not discriminate against any employee or applicant for employment to be employed in the performance of a contract with respect to the employee's hire, tenure, terms, conditions, or privileges of employment or any other matter directly or indirectly related to employment because of the employee's or applicant's race, religion, color, sex, disability, national origin, or ancestry. Breach of this covenant will be a material breach of the contract.

### **INDEMNIFICATION**

The Supplier agrees to indemnify and hold harmless the City of Goshen, its agents, officers, and employees from any and all liability, obligations, claims, and suits, including court costs, attorney's fees, and other expenses, caused by an act or omission of the Supplier and its agents, officers, and employees or resulting from or related to the Supplier's performance or failure to perform as specified in this contract.

## **FORCE MAJEURE**

Except for payment of sums due, neither party shall be liable to the other or deemed in default under this contract if and to the extent that such party's performance under this contract is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the party and could not have been avoided by exercising reasonable diligence such as natural disaster or decrees of governmental bodies not the fault of the affected party.

If either party is delayed by force majeure, the party affected shall provide written notification to the other party immediately, but shall do everything possible to resume performance. The notification shall provide evidence of the force majeure event to the satisfaction of the other party. If the period of non-performance exceeds thirty (30) calendar days, the party whose ability to perform has not been affected may, by giving written notice, terminate the contract and the other party shall have no recourse.

## **DEFAULT**

It shall be mutually agreed that if Supplier fails to perform the work, provide the goods, materials and/or equipment or comply with the provisions of this Contract and the Specification Documents or fails to fulfill any warranty, and Supplier is not able to correct the breach within fifteen (15) calendar days after the City provides written notice to Supplier of such breach, the City may provide or have provided alternative provisions to correct and/or complete the projects. Supplier shall be responsible for any and all costs that are incurred and such costs may be deducted from amounts owed to Supplier expenses to correct the breach or complete the project. If such costs exceed the amounts owed to Supplier, Supplier is liable to reimburse the City for such costs.

If Supplier fails to provide the goods, supplies, materials and/or equipment or comply with the provisions of this Contract, then Supplier may be considered in default.

Supplier may also be considered in default by the City if any of the following occur:

- (1) There is a substantive breach by Supplier of any obligation or duty owed under the provisions of this Contract.
- (2) Supplier is adjudged bankrupt or makes an assignment for the benefit of creditors.
- (3) Supplier becomes insolvent or in an unsound financial condition so as to endanger performance under the Contract.
- (4) Supplier becomes the subject of any proceeding under law relating to bankruptcy, insolvency or reorganization, or relief from creditors and/or debtors.
- (5) A receiver, trustee, or similar official is appointed for Supplier or any of Supplier's property.
- (6) Supplier is determined to be in violation of federal, state, or local laws or regulations and that such determination renders Supplier unable to provide the goods, supplies, materials and/or equipment under the contract.
- (7) The contract or any right, monies or claims are assigned by Supplier without the consent of the City.

## **TERMINATION**

The parties may terminate this contract under any of the following conditions:

- (1) The contract may be terminated in whole or in part, at any time, by mutual written consent of both parties. Supplier shall be paid for goods, materials and/or equipment provided and expenses reasonably incurred prior to notice of termination.

- (2) The City may terminate this contract, in whole or in part, in the event of default by Supplier. In such event, the City may issue a written notice of default and provide a period of time in which Supplier shall have the opportunity to cure. If the default is not cured within the time period allowed, the contract may be terminated by the City. In the event of default and failure to satisfactorily remedy the default after receipt of written notice, the City may otherwise secure similar goods, supplies, materials and/or equipment in any manner deemed proper by the City, and Supplier shall be liable to the City for any excess costs incurred.
- (3) The rights and remedies of the parties under this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

### **SUBCONTRACTING OR ASSIGNMENT OF CONTRACT**

Neither party shall subcontract or assign any right or interest under the contract, including the right to payment, without having prior written approval from the other. Such approval shall not be unreasonably withheld. Any attempt by either party to subcontract or assign any portion of the contract shall not be construed to relieve that party from any responsibility to fulfill all contractual obligations.

### **AMENDMENTS**

It is mutually understood and agreed that no alteration or variation of the terms in this contract including the scope of purchase, provision of the purchase and compensation, and that no alteration or variation of the conditions of this contract shall be binding unless specifically agreed to in writing by the parties and approved by Board of Public Works and Safety. Any modification or amendment to the terms and conditions of the contract shall not be binding unless made in writing and signed by both parties. Any verbal representations or modifications concerning the contract shall be of no force and effect.

### **WAIVER OF RIGHTS**

No right conferred on either party under this contract shall be deemed waived and no breach of this contract excused unless such waiver or excuse shall be in writing and signed by the party claimed to have waived such right.

### **NOTICES**

All written notices, properly addressed and sent by U.S. mail or delivered personally to the address provided below shall constitute sufficient notice whenever written notice is required for any purpose in this contract. Notice will be considered given three (3) days after the notice is deposited in the U.S. mail or when received at the appropriate address.

Address for notices to the City:

City of Goshen, Indiana  
Attention: Goshen Legal Department  
204 East Jefferson St., Suite 2  
Goshen, IN 46528

Address for notices to Supplier:

RPM Machinery  
3911 Limestone Drive  
Ft. Wayne, IN 46819

## **APPLICABLE LAWS**

The Supplier agrees to comply with all applicable federal, state, and local laws, rules, regulations, or ordinances. All contractual provisions legally required to be included are incorporated by reference.

## **MISCELLANEOUS**

Any provision of this contract or incorporated documents shall be interpreted in such a way that they are consistent with all provisions required by law to be inserted into the contract.

In the event of a conflict between these contract documents and applicable laws, rules, regulations or ordinances, the most stringent or legally binding requirement shall govern. Any special conditions included with this Contract which varies from these General Terms and Conditions shall have precedence.

This contract shall be construed in accordance with and governed by the laws of the State of Indiana and any suit must be brought in a court of competent jurisdiction in Elkhart County, Indiana.

In the event legal action is brought to enforce or interpret the terms and conditions of this contract, the non-prevailing party will pay all costs and expenses expended or incurred by the prevailing party including reasonable attorney's fees.

## **CONTRACTING WITH RELATIVES**

Pursuant to IC 36-1-21, Supplier who is an individual who is a relative of an elected official of the City of Goshen or a business entity that is wholly or partially owned by a relative of an elected official of the City of Goshen hereby certifies that they have notified in writing both the elected official of the City of Goshen and the City's legal department prior to entering into this contract.

## **SEVERABILITY**

In the event that any provision of the contract is found to be invalid or unenforceable, then such provision shall be reformed in accordance with applicable law. The invalidity or unenforceability of any provision of the contract shall not affect the validity or enforceability of any other provision of the contract.

## **AUTHORITY TO BIND SUPPLIER**

Notwithstanding anything in the contract to the contrary, the signatory for the company/business represents that he or she has been duly authorized to execute contracts on behalf of the company/business and has obtained all necessary or applicable approvals to make this contract fully binding upon the company/business when his or her signature is affixed and is not subject to further acceptance

## **BINDING EFFECT**

All provisions, covenants, terms and conditions of the contract apply to bind the parties and their legal heirs, representatives, successors and assigns.

## **ENTIRE AGREEMENT**

This contract constitutes the entire agreement between the parties and supersedes all other agreements or understandings between City and Supplier.

IN WITNESS WHEREOF, the parties have executed this Contract on the dates as set forth below.

**City of Goshen, Indiana**  
**Goshen Board of Public Works and Safety**

**RPM MACHINERY**

\_\_\_\_\_  
Jeremy P. Stutsman, Mayor

\_\_\_\_\_  
Kevin Knuth, Sales Representative

Date: \_\_\_\_\_

\_\_\_\_\_  
Michael Landis, Member

\_\_\_\_\_  
Mary Nichols, Member

Date: November 9, 2020



EXHIBIT B; 11-9-20 (1 pg)

Engineering Department  
CITY OF GOSHEN

204 East Jefferson Street, Suite 1 • Goshen, IN 46528-3405

Phone (574) 534-2201 • Fax (574) 533-8626 • TDD (574) 534-3185  
engineering@goshencity.com • www.goshenindiana.org

## MEMORANDUM

TO: Board of Works and Safety and Stormwater Board

FROM: Dustin Sailor, P.E., Director of Public Works

RE: **PUBLIC NOTICE – US HWY 33 – TRAFFIC CONGESTION, NOVEMBER 12  
(JN: STREETS)**

DATE: November 09, 2020

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On Monday, November 9, 2020, the City received notice from INDOT about short-term road closures that will occur along US Hwy 33 at College Avenue. NIPSCO has requested to close US Hwy 33 to install conductors (i.e., wires) across the road. The road closure will begin on the evening of November 12, starting at 7:00 pm. NIPSCO will shutdown traffic on US Hwy 33, for 30-minute periods. NIPSCO anticipates four (4) shutdowns will be necessary.

INDOT has approved NIPSCO's requested, but has requested east/west traffic on College Avenue remain open during temporary shutdowns on US Hwy 33, and has requested that backed up traffic on US Hwy 33 be cleared between each shutdown.