**RESOLUTION 20-256**

A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF WOODBURN AUTHORIZING THE EXECUTION AND DELIVERY OF A MASTER TAX-EXEMPT LEASE/PURCHASE AGREEMENT WITH U.S. BANCORP GOVERNMENT LEASING AND FINANCE, INC., AS LESSOR, AND SEPARATE PROPERTY SCHEDULES THERETO FOR THE ACQUISITION, PURCHASE, FINANCING AND LEASING OF CERTAIN EQUIPMENT WITHIN THE TERMS HEREIN PROVIDED; AUTHORIZING THE EXECUTION AND DELIVERY OF OTHER DOCUMENTS REQUIRED IN CONNECTION THEREWITH; AND AUTHORIZING ALL OTHER ACTIONS NECESSARY TO THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED BY THIS RESOLUTION.

WHEREAS, the City of Woodburn (the “City” or “Lessee”), a body politic and corporate duly organized and existing as a political subdivision, municipal corporation or similar public entity of the State of Indiana is authorized by the laws of the State of Indiana to purchase, acquire and lease certain equipment and other property for the benefit of the City and its inhabitants and to enter into contracts with respect thereto; and

WHEREAS, the Board of Public Works of the City (the “Board of Works”) has determined that a true and very real need exists for the acquisition, purchase and financing of certain property consisting of a GLOBAL ENVIRONMENTAL PRODUCTS MODEL M3 STREET SWEEPER 130HP Cummins QSF 3.8" as described in vehicle quote #Q01813 (the “Equipment”) on the terms herein provided; and

WHEREAS, on October 19, 2020, the Board of Works received and approved a proposal submitted by BEC Enterprise, LLC (BEC), of 10603 Majic Port Lane, Fort Wayne, Indiana for the acquisition and purchase of the Equipment for the amount of Two Hundred Nineteen Thousand and 00/100 Dollars $219,000.00 (consisting of a $224,000.00 purchase price, less a $5,000.00 trade-in value for the City's existing 1994 Johnson street sweeper), including delivery and lifetime training for operators and mechanics, using the Sourcewell discounted pricing, as described in Exhibit A as prepared by the Board of Works and attached hereto and incorporated herein; and

WHEREAS, based upon the Special Findings in Exhibit A, the City desires to purchase the Equipment using a special purchase method under Indiana Code §5-22-10; and

WHEREAS, in order to acquire such Equipment, the Board of Works proposes the City enter into that certain Master Tax-Exempt Lease/Purchase Agreement (the “Master Agreement”) with U.S. Bancorp Government Leasing and Finance, Inc., as lessor (the “Lessor”), substantially in the proposed form presented to the Common Council (the “Council”) at this meeting, and separate Property Schedules thereto substantially in the form attached to the Master Agreement; and

WHEREAS, the Council deems it for the benefit of the City and the efficient and effective administration thereof to enter into the Master Agreement and the separate Property Schedules relating thereto from time to time as provided in the Master Agreement for the purchase, acquisition, financing and leasing of the Equipment to be therein more specifically described on the terms and conditions provided therein and herein;

NOW, THEREFORE, BE IT AND IT IS HERBY RESOLVED BY THE COMMON COUNCIL OF THE CITY OF WOODBURN, INDIANA AS FOLLOWS:

Section 1. The Council hereby adopts the Special Findings in Exhibit A, attached and incorporated by reference, as prepared by the Board of Works concerning the purchase of the Equipment using a special purchasing method authorized under Indiana Code §5-22-10. That the purchase of the Equipment for the amount of Two Hundred Nineteen Thousand and 00/100 Dollars $219,000.00 (consisting of a $224,000.00 purchase price, less a $5,000.00 trade-in value for the City's existing 1994 Johnson street sweeper), including delivery and lifetime training for operators and mechanics, by the Board of Works on behalf of the City and as set forth in the proposal submitted by BEC is hereby ratified and affirmed, subject to the execution of, and funding of the financing of the Equipment pursuant to, the Master Agreement with the Lessor.

Section 2. It is hereby found and determined that the terms of the Master Agreement (including the form of Property Schedule and Property Description and Payment Schedule attached thereto), in the form presented to this meeting, are in the best interests of the City for the acquisition, purchase, financing and leasing of the Equipment.

Section 3. The form, terms and provisions of the Master Agreement (including the form of Property Schedule and Property Description and Payment Schedule attached thereto) are hereby approved in the forms presented at this meeting, with such insertions, omissions and changes as shall be approved by the Mayor and Clerk-Treasurer of the City (the “Authorized Officers”) executing the same, the execution of such documents being conclusive evidence of such approval. The Authorized Officers of the Lessee are each hereby authorized and directed to sign and deliver the Master Agreement, each Property Schedule thereto, each Property Description and Payment Schedule relating thereto and any related exhibits attached thereto if and when required; provided, however, that, without further authorization from the governing body of the Lessee, (a) the aggregate principal component of Rent Payments under all Leases entered into pursuant to the Master Agreement shall not exceed $224,000.00; (b) the maximum term under any Lease entered into pursuant to the Master Agreement shall not exceed five (5) years; and (c) the maximum interest rate used to determine the interest component of Rent Payments under each Lease shall not exceed the lesser of the maximum rate permitted by law or 1.184% per annum. The Authorized Officers may sign and deliver such documents as said Authorized Officers deem necessary to consummate the transactions set forth in this Resolution to the Lessor on behalf of the Lessee pursuant to the Master Agreement on such terms and conditions as they shall determine are in the best interests of the Lessee up to the maximum aggregate principal component, maximum term and maximum interest rate provided above.

Section 4. The Authorized Officers and other officers and employees of the Lessee shall take all action necessary or reasonably required to carry out, give effect to and consummate the transactions contemplated by the Master Agreement and each Property Schedule (including, but not limited to, the execution and delivery of the certificates contemplated therein, including appropriate arbitrage certifications) and to take all action necessary in conformity therewith, including, without limitation, the execution and delivery of any closing and other documents required to be delivered in connection with the Master Agreement and each Property Schedule.

Section 5. Lessee hereby designates the Property Schedule as a "qualified tax-exempt obligation" as defined in Section 265(b)(3)(B) of the Internal revenue Code of 1986, as amended (the “Code”). Lessee reasonably anticipates issuing tax-exempt obligations (excluding private activity bonds other than qualified 501(c)(3) bonds and including all tax-exempt obligations of subordinate entities of the Lessee) during the calendar year in which the Commencement Date (as defined in the Master Agreement) falls, in an amount not exceeding $10,000,000.

Section 6. Lessee will comply with all applicable provisions of the Code, including Sections 103 and 148 thereof, and the regulations of the Treasury Department thereunder, from time to time proposed or in effect, in order to maintain the excludability from gross income for federal income tax purposes of the interest component of lease payments under the Property Schedule and will not use or permit the use of the Equipment in such a manner as to cause a Property Schedule to be a "private activity bond" under Section 141(a) of the Code. Lessee covenants and agrees that it will use the proceeds of the Property Schedule as soon as practicable and with all reasonable dispatch for the purpose for which the Property Schedule has been entered into, and that no part of the proceeds of the Property Schedule shall be invested in any securities, obligations or other investments except for the temporary period pending such use nor used, at any time, directly or indirectly, in a manner which, if such use had been reasonably anticipated on the date of issuance of the Master Agreement, would have caused any portion of the Property Schedule to be or become "arbitrage bonds" within the meaning of Section 103(b)(2) or Section 148 of the Code and the regulations of the Treasury Department thereunder proposed or in effect at the time of such use and applicable to obligations issued on the date of issuance of the Property Schedule. Pursuant to Treasury Regulations Section 1.148-7(d), the gross proceeds of the Property Schedule will be expended for the governmental purposes for which this Property Schedule was entered into, as follows: at least 15% within six months after the Commencement Date, at least 60% within 12 months after the Commencement Date, and 100% within 18 months after the Commencement Date. If Lessee is unable to comply with Section 1.148-7(d) of the Treasury Regulations, Lessee shall compute rebatable arbitrage on the Master Agreement and pay rebatable arbitrage to the United States at least once every five years, and within 60 days after payment of the final lease payment due under the Master Agreement.

Section 7. No part of this Resolution shall be interpreted to conflict with any local, state or federal laws, and all reasonable efforts should be made to harmonize the same. Should any section or part thereof of the Resolution be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the Resolution as a whole, or any other portion thereof other than that portion so declared to be invalid, and for this purpose the provisions of the Resolution are hereby declared severable.

Section 8. This Resolution shall be effective upon promulgation according to law.

Adopted and Resolved this 21st day of December, 2020.

***< SIGNATURES ON THE FOLLOWING PAGE >***

**COMMON COUNCIL OF THE CITY OF WOODBURN, INDIANA**

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ YEA\_\_\_\_\_ NAY\_\_\_\_\_ ABS\_\_\_\_\_

Michael Voirol, Councilman

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ YEA\_\_\_\_\_ NAY\_\_\_\_\_ ABS\_\_\_\_\_

Michael Martin, Councilman

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ YEA\_\_\_\_\_ NAY\_\_\_\_\_ ABS\_\_\_\_\_

Tonya Thompson, Councilman

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ YEA\_\_\_\_\_ NAY\_\_\_\_\_ ABS\_\_\_\_\_

Dean Gerig, Councilman

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ YEA\_\_\_\_\_ NAY\_\_\_\_\_ ABS\_\_\_\_\_

Daniel Watts, Councilman

ATTEST:

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

Timothy Cummins, Clerk-Treasurer

The foregoing resolution passed by the Council is signed and approved ( ) / not approved ( ) by me on the same date.

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

Joseph Kelsey, Mayor for the City of Woodburn

**EXHIBIT A**

**SPECIAL FINDINGS FOR PURCHASE OF STREET SWEEPER**

WHEREAS, the Board of Public Works and Safety ("Board") of the City of Woodburn, Indiana ("City") is the purchasing agency for the City pursuant to §33.04 of the Municipal Code of the City enacted pursuant to the authority of I.C. §5-22-4-5(a); and

WHEREAS, the Board, as the City's purchasing agency, has all of the powers and duties authorized under the laws of the State of Indiana governing purchasing under I.C. §5-22; and

WHEREAS, the City has previously purchased and owns a 1994 Johnson front steer, three wheel, street sweeper for use in the City, and has associated equipment, spare parts, and accessories compatible therewith; and

WHEREAS, the City has determined that due to the configuration and design of several of its streets, curbs, and alleys, a front steer, three wheel, street sweeper is the best type of street sweeper for the City's needs; and

WHEREAS, the City is in need of a new street sweeper and, in order to utilize the associated street sweeper equipment, spare parts, and accessories currently owned and maintained by the City, the City desires to secure a new front steer, three wheel, street sweeper compatible with said equipment, spare parts, and accessories currently owned and maintained by the City; and

WHEREAS, the M3, R3 and MX3 three wheel purpose built street sweeper built and manufactured by Global Sweeping Solutions, Inc. and Global Environmental Products, Inc. (GEP), is the only front steer, three wheel, sweeper on the market, and is sold exclusively through a single supplier in the State of Indiana, BEC Enterprise, LLC (BEC), of 10603 Majic Port Lane, Fort Wayne, Indiana; and

WHEREAS, the street sweepers offered by other manufacturers are not compatible with the existing street sweeper spare parts and accessories owned and retained by the City; and

WHEREAS, the City desires to purchase a "GLOBAL ENVIRONMENTAL PRODUCTS MODEL M3 STREET SWEEPER 130HP Cummins QSF 3.8" as described in vehicle quote #Q01813 provided to the City on 10/16/2020 in the amount of $219,000.00 (consisting of a $224,000.00 purchase price, less a $5,000.00 trade-in value for the City's existing 1994 Johnson street sweeper), including delivery and lifetime training for operators and mechanics; and

WHEREAS, the standard price offered the City by GEC for the desired street sweeper is $227,317.00 but is being offered to the City at a discounted special price of $224,000.00 if the City becomes a member of Sourcewell (formerly National Joint Powers Alliance (NJPA), a national government vendor organized as a service cooperative under the laws of Minnesota and governed by a board of various elected officials; and

WHEREAS, pursuant to I.C. §5-22-10-8, the City can make a special purchase when: (1) the compatibility of equipment, accessories, or replacement parts is a substantial consideration in the purchase; and (2) only one (1) source meets the using agency’s reasonable requirements; and

WHEREAS, pursuant to I.C.IC §5-22-10-12, a City may make a special purchase when the market structure is based on price but the governmental body is able to receive a dollar or percentage discount of the established price; and

WHEREAS, pursuant to I.C. §5-22-10-13, the City may award a contract for a supply when there is only one (1) source for the supply and the purchasing agent determines in writing that there is only one (1) source for the supply; and

WHEREAS, pursuant to I.C. §5-22-10-5, the City can make a special purchase when there exists a unique opportunity to obtain supplies at a substantial savings to the City; and

WHEREAS, because only the MODEL M3 STREET SWEEPER 130HP Cummins QSF 3.8" as described in vehicle quote #Q01813 is compatible with the existing street sweeper equipment, spare parts and accessories already owned and retained by the City; because there is a single source for the MODEL M3 STREET SWEEPER 130HP Cummins QSF 3.8" as described in vehicle quote #Q01813; and because the purchase of this type street sweeper at this time affords the City a unique opportunity to acquire this equipment at substantial savings, the Board has been advised that the purchase of the MODEL M3 STREET SWEEPER 130HP Cummins QSF 3.8" as described in vehicle quote #Q01813 should be made under the above described conditions; and

WHEREAS, the Board, having obtained the foregoing information, and desiring to authorize said special purchase now makes the following findings of fact.

a. Pursuant to an affidavit dated December 13, 2017, Global Environmental Products, Inc. (GEP) offers the only 3-wheel regenerative air sweeper in the world. GEP, through its authorized dealer Brown Equipment Company (“BEC”), is the only company that sells a front steer three-wheel sweeper on the market. BEC is the sole source in Indiana for said street sweeper. As such, the compatibility of the City's existing street sweeper equipment, accessories, or replacement parts is a substantial consideration in the purchase of the MODEL M3 STREET SWEEPER 130HP Cummins QSF 3.8" as described in vehicle quote #Q01813, and only BEC meets the City's reasonable requirements pursuant to LC. §5-22-10-8 and I.C. §5-22-10-13; and

b. A national market structure for street sweepers has been established by Sourcewell (formerly National Joint Powers Alliance (NJPA)). Sourcewell is a national government vendor organized as a service cooperative under the laws of Minnesota and governed by a board of various elected officials. The City has been made informed that after a competitive nationwide solicitation of cooperative quotes (those designed to be piggybacked by other government entities, schools, etc.), Sourcewell contracts with various sub-vendors to create a price ceiling, against which governmental agencies may offer even further contractual price discounts. On November 17, 2017, Sourcewell solicited competitive bidding for the procurement of sewer vacuum, hydro-excavation, and street sweeper equipment, with related accessories and supplies. 58 requests for proposals were sent to companies dealing with this set of products. 29 proposals were received and reviewed by an evaluation committee on a 1,000-point scale, with price being the predominant factor by a considerable margin. This established a market structure based on price. GEP finished third (but within 3 points of first), and was one of several companies allowed to contract with Sourcewell to offer discounts available only to Sourcewell members. The contract between GEP and Sourcewell forms a ceiling of terms, against which subsequent contracts between GEP and purchasing agents cannot violate, thus protecting the purchasing agents. The price offered to the City via Sourcewell's market structure provides an opportunity for the City to secure the MODEL M3 STREET SWEEPER 130HP Cummins QSF 3.8" as described in vehicle quote #Q01813 as a substantial savings. As such, the acquisition of the MODEL M3 STREET SWEEPER 130HP Cummins QSF 3.8" as described in vehicle quote #Q01813 under the terms set forth herein constitutes a unique opportunity to obtain said equipment at a substantial savings to the City pursuant to LC. §5-22-10-12.

Pursuant to the provisions of I.C. §5-22-10-1, et seq., the Clerk-Treasurer shall maintain for a minimum period of five (5) years, all pertinent contract records for the special purchase in a separate file. The findings and conclusions stated herein shall constitute the written determination of the Board of the City for this special purchase and the selection of a particular seller.