

# **Town of Whitestown Uniform Contract for Services**

**O.W. Krohn & Associates LLP**  
**Service Provider**

**Financial Consulting**  
**Type of Service**

This Uniform Contract for Services (hereinafter referred to as "Agreement"), entered into by and between the Town of Whitestown, Indiana and/or Whitestown Municipal Utilities, (hereinafter referred to as "Whitestown"), and O.W. Krohn & Associates LLP (hereinafter referred to as "Contractor"), is executed pursuant to the terms and conditions set forth herein. In consideration of those mutual undertakings and covenants and other good and valuable consideration, the adequacy of which is mutually acknowledged, the parties agree as follows:

## **SECTION I. DUTIES OF CONTRACTOR.**

- 1.01 The Contractor shall provide the services as set forth or described in *Attachment A*, attached to and made a part of this Agreement. The Contractor agrees that the services shall be consistent with generally accepted commercial standards in the relevant trades or professions. To the extent *Attachment A* purports to incorporate contractual terms of service, any such terms are voidable at the option of Whitestown.

## **SECTION II. TERM.**

- 2.01 This Agreement shall be in effect until the services described in *Attachment A* are fully and satisfactorily performed and Whitestown has paid Contractor for applicable services, unless earlier terminated in accordance with this Agreement.
- 2.02 This Agreement may be renewed beyond the expiration by agreement of parties. The term of the renewal shall not be longer than the term of the original Agreement. A renewal shall be by written notice sent by either party and written acceptance by the other. All other terms and conditions of the Agreement shall remain the same as set forth herein and may be amended only by written instrument signed by both Whitestown and Contractor and attached hereto as an amendment, and following approval of such amendment by the Whitestown Town Council.

## **SECTION III. COMPENSATION OF THE CONTRACTOR.**

- 3.01 The Contractor shall furnish all labor, materials, supplies, and services in accordance with the conditions of this Agreement necessary to complete the services as defined in *Attachment A*.
- 3.02 Payment will be for the amount set forth in *Attachment A*. No payments will be provided prior to commencement of services, absent a performance bond from Contractor adequate to cover the cost of completing such services.
- 3.03 Contractor shall submit a properly itemized invoice referencing services performed and/or applicable expenses incurred under this Agreement. Contractor shall cooperate with and provide any other necessary information to Whitestown. Whitestown will pay Contractor within ninety (90) days after receipt of such properly itemized and legitimate claim forms under agreed schedules, and following approval of such claim(s) by the Whitestown Town Council as provided by law. All payments are further subject to appropriations as required by applicable law.

## **SECTION IV. GENERAL PROVISIONS.**

- 4.01 Independent Contractor. The parties agree that Contractor is an independent contractor as that term is commonly used and is not an employee of Whitestown. As such, Contractor is solely responsible for all taxes and none shall be withheld from the sums paid to Contractor. Contractor acknowledges that it is not

insured in any manner by Whitestown for any loss of any kind whatsoever. The Contractor has no authority, express or implied, to bind or obligate Whitestown in any way.

- 4.02 Subcontracting. The parties agree that Contractor shall not subcontract, assign or delegate any responsibility to perform services to be performed pursuant to this Agreement without prior written approval of the Town Manager of Whitestown or his/her designee. In the event that Whitestown approves of any such subcontracting, assignment or delegation, Contractor shall remain responsible for managing, directing and paying the person or persons to whom such responsibilities or obligations are sublet, assigned or delegated. Whitestown shall have no obligation whatsoever toward such persons. Contractor shall take sole responsibility for the quality and quantity of any services rendered by such persons. Any consent given in accordance with this provision shall not be construed to relieve Contractor of any responsibility for performing under this Agreement. Contractor shall be responsible for a background, criminal history, and e-verify check on any additional person involved in performing services pursuant to this Agreement, and the Contractor and any additional persons shall have the duty to report an arrest or the filing of criminal charges against them in writing to the Town Manager of Whitestown.
- 4.03 Necessary Qualifications. Contractor certifies that it will furnish to Whitestown, if requested, any and all documentation, certification, authorization, license, permit, or registration required by the laws or rules and regulations of Whitestown, other units of local government, the State of Indiana, and the United States. Contractor further certifies that it is now and will remain in good standing with such governmental agencies and that it is now and will maintain all licenses, permits, registrations, authorizations, or certifications, as applicable to the services in force during the term of this Agreement.
- 4.04 Confidentiality of Whitestown Information. Contractor understands that the information provided to it or obtained from Whitestown during the performance of its services may be confidential and may not, without prior written consent of Whitestown, be disclosed to a person not in Whitestown's employ except to employees or agents of Contractor who have a need to know in order to provide the services. Further, Contractor's Work Product generated during the performance of this Agreement is confidential to Whitestown. The obligations of this section shall survive the termination of this Agreement and shall be applicable to the full extent permissible under statutes governing access to public records. Confidential information shall not include information, that is required to be disclosed pursuant to governmental authority, law, regulation, duly authorized subpoena, or court order whereupon Contractor shall provide notice to Whitestown prior to such disclosure. Contractor shall not, under any circumstances, release information provided to it by, or on behalf of, Whitestown that is required to be kept confidential by Whitestown pursuant to Indiana law, except as contemplated by this section.
- 4.05 Records; Audit. Contractor shall maintain books, records, documents and other evidence directly pertinent to performance of services under this Agreement. Contractor shall make such materials available at its offices at all reasonable times during the Agreement period and for three (3) years from termination or the date of final payment under this Agreement for inspection by Whitestown or any other authorized representative of Whitestown. Copies thereof, if requested, shall be furnished at no cost to Whitestown.
- 4.06 Ownership of Documents and Materials. All documents, including records, programs, data, film, tape, articles, memos, and other materials, created or developed under this Agreement, shall be considered "work for hire" and the Contractor transfers any ownership claim to Whitestown and all such matters will be the property of Whitestown. Use of these materials, other than related to contract performance by the Contractor, without the prior written consent of Whitestown, is prohibited. During the performance of the services specified herein, the Contractor shall be responsible for any loss or damage to these materials developed for or supplied by Whitestown and used to develop or assist in the services provided herein while the materials are in the possession of the Contractor. Any loss or damage thereto shall be restored at the Contractor's expense. Full, immediate, and unrestricted access to the work product of the Contractor during the term of this Agreement shall be available to Whitestown. Notwithstanding the foregoing, Contractor shall be entitled to retain a set of its work papers in accordance with professional standards.

In the event the Whitestown subsequently uses the documents or materials without retaining the services of Contractor, Whitestown releases the Contractor only from claims and causes of action arising from such subsequent use, but not under the services of this Agreement. Whitestown, to the extent permitted by law,

further agrees to indemnify and hold harmless the Contractor from claims and causes of action asserted by any third person or entity to the extent such arises from the Whitestown's subsequent use of the documents or materials under this Section.

Notwithstanding the foregoing, it is understood and agreed that Contractor shall retain all of its rights in its proprietary information including, without limitation, methodologies and methods of analysis, ideas, concepts, expressions, know how, methods, techniques, skills, knowledge and experience possessed by Contractor prior to, or acquired by Contractor during the performance of this Agreement and the same shall not be deemed to be Work Product or Work For Hire and Contractor shall not be restricted in anyway with respect thereto.

4.07 Termination for Cause or Convenience.

4.07.1 If Contractor becomes insolvent, or if it refuses or fails to perform the work and services provided by this Agreement, or if it refuses to perform disputed work or services as directed pending resolution of such dispute, or if it fails to make payments to subcontractors or consultants employed by it, or if it otherwise violates or fails to perform any term, covenant or provision of this Agreement, then Whitestown may, without prejudice to any other right or remedy, terminate this Agreement in whole or in part, in writing. In determining the amount of final payment to be made to Contractor upon such termination for default, if any, no amount shall be allowed for anticipated profit on unperformed services or other work; furthermore, an adjustment shall be made to the extent of any additional costs incurred or reasonably foreseen by Whitestown to be incurred by reason of Contractor's default.

4.07.2 This Agreement may be terminated in whole or in part in writing by Whitestown for Whitestown's convenience. If Whitestown effects termination for convenience, Contractor's compensation shall be equitably adjusted.

4.07.3 Upon receipt of a termination action for default or for Whitestown's convenience, Contractor shall (a) promptly discontinue all services affected, unless the termination notice directs otherwise, and (b) deliver or otherwise make available to Whitestown all data, drawings, specifications, reports, estimates, summaries, and such other information, materials or documents as may have been accumulated by Contractor in performing this Agreement, whether completed or in process.

4.07.4 If, after termination for Contractor's default, it is determined that Contractor was not in default, the termination shall be deemed to have been effected for the convenience of Whitestown. In such event, adjustment of the price provided for in this Agreement shall be made as provided in Paragraph 4.07.2 and the recovery of such price adjustment shall be Contractor's sole remedy and recovery.

4.08 Termination for Failure of Funding. Notwithstanding any other provision of this Agreement and pursuant to Indiana law, if funds for the continued fulfillment of this Agreement by Whitestown are at any time insufficient or not forthcoming through failure of any entity to appropriate funds or otherwise, then Whitestown shall have the right to terminate this Agreement without penalty by giving written notice documenting the lack of funding, in which instance unless otherwise agreed to by the parties, this Agreement shall terminate and become null and void.

4.09 Remedies. Following the occurrence of any default, breach, or other failure to perform requisite services, or an act of negligence or misconduct causing damage to Whitestown, by contractor or any of its employees, agents, or subcontractors, Whitestown shall have every remedy now or hereafter existing at law or in equity or by statute or otherwise which may be available to Whitestown. This provision shall survive any termination of this Agreement.

4.10 Indemnification. Contractor agrees to indemnify, defend (except in the case of a professional liability claim to the extent prohibited by I.C. § 26-2-5-4), and hold harmless Whitestown and its officers, agents, officials, and employees for any and all third party claims, actions, causes of action, judgments and liens to the extent they arise out of any negligent act or omission, error or omission of, or by any recklessness or misconduct by, Contractor or any of its officers, agents, employees or subcontractors. Such indemnity shall include attorney's fees and all costs and other expenses arising therefrom or incurred in connection

therewith and shall not be limited by reason of the enumeration of any insurance coverage. Whitestown will not provide such indemnification to the Contractor. This provision shall survive any termination of this Agreement.

- 4.11 Notice. Any notice or other correspondence required to be sent under this Agreement shall be sent to:

To Contractor:

O.W. Krohn & Associates LLP  
231 East Main Street  
Westfield, IN 46074

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To Whitestown:

Town of Whitestown  
Whitestown Municipal Complex  
6210 S 700 E  
Whitestown, IN 46075  
Attn: Town Manager

- 4.12 Disputes. Contractor shall carry on all work required under this Agreement and maintain the schedule for services during all disputes or disagreements with Whitestown. No work shall be delayed or postponed pending resolution of any disputes or disagreements except as Contractor and Whitestown may otherwise agree in writing. Should the Contractor fail to continue to perform its responsibilities as regards all non-disputed work without delay, any additional costs incurred by Whitestown or the Contractor as a result of such failure to proceed shall be borne by the Contractor, and the Contractor shall make no claim against Whitestown for such costs. Whitestown may withhold payments on disputed items pending resolution of the dispute.
- 4.13 Non-discrimination. Contractor and its subcontractors shall not discriminate against any employee or applicant for employment to be employed in the performance of this Agreement, with respect to her or his hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment, because of her or his race, religion, color, sex, sexual orientation, handicap, disability, national origin, ancestry, disabled veteran status, or Vietnam-era veteran status. Breach of this section shall be regarded as a material breach of this Agreement.
- 4.14 Conflict of Interest. Contractor certifies and warrants to Whitestown that neither it nor any of its agents, representatives or employees who will participate in the performance of any services required by this Agreement has or will have any conflict of interest, direct or indirect, with Whitestown.
- 4.15 Force Majeure. In the event that either party is unable to perform any of its obligations under this Agreement – or to enjoy any of its benefits – because of natural disaster or decrees of governmental bodies not the fault of the affected party (hereinafter referred to as Force Majeure Event), the party who has been so affected shall immediately give notice to the other and shall take commercially reasonable actions to resume performance. Upon receipt of such notice, all obligations under this Agreement shall be immediately suspended except for payment obligations with respect to service already provided. If the period of nonperformance exceeds one hundred eighty (180) days from the receipt of the Force Majeure Event, the party whose ability to perform has not been so affected may, by giving written notice, terminate this Agreement.
- 4.16 Applicable Laws; Forum. The Contractor agrees to comply with all applicable federal, state and local laws, rules, regulations or ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. The enactment of any state or federal statute or the promulgation of regulations thereunder after execution of this Agreement shall be reviewed by Whitestown and the Contractor to determine whether the provisions of the Agreement require formal modification.

This Agreement shall be construed in accordance with the laws of the State of Indiana, and by all applicable Municipal Ordinances, Resolutions, Rules, Regulations, or Codes of Whitestown. Suit, if any, shall be brought in the State of Indiana, County of Boone.

- 4.17 Waiver. Whitestown's delay or inaction in pursuing its remedies set forth in this Agreement, or available by law, shall not operate as a waiver of any of Whitestown's rights or remedies.

- 4.18 Severability. If any provision of this Agreement is held to be invalid, illegal, or unenforceable by a court of competent jurisdiction, the provision shall be stricken, and all other provisions of this Agreement which can operate independently of such stricken provisions shall continue in full force and effect.
- 4.19 Attorneys' Fees. Contractor shall be liable to Whitestown for reasonable attorneys' fees incurred by Whitestown in connection with the collection or attempt to collect, any damages arising from the negligent or wrongful act or omission of Contractor from Contractor's breach of any provision of this Agreement, from Contractor's indemnity obligation, or from Contractor's failure to fulfill any provisions or responsibility provided herein. This provision shall survive any termination of this Agreement.
- 4.20 Whitestown Officials. No official, director, officer, employee, or agent of Whitestown shall be charged personally by Contractor, its employees, or agents with any liabilities or expenses, or be held personally liable to Contractor under any term or provision or because of the execution of any agreement, or because of any default by Whitestown. This provision shall survive any termination of this Agreement.
- 4.21 Successors and Assigns. Whitestown and Contractor each binds itself and its partners, successors, executors, administrators and assigns to the other party of this Agreement and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement; except as otherwise provided herein, Contractor shall not assign, sublet, or transfer its interest in this Agreement without the written consent of Whitestown. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of Whitestown.
- 4.22 Authority to Bind Contractor. Notwithstanding anything in this Agreement to the contrary, the signatory for the Contractor represents that he/she has been duly authorized to execute agreements on behalf of the Contractor designated above, and has obtained all necessary or applicable approval from the offices of the Contractor to make this Agreement fully binding upon the Contractor when his/her signature is affixed and accepted by Whitestown.
- 4.23 E-Verify. Contractor shall enroll in and verify the eligibility status of all newly hired employees of Contractor through the E-Verify program as outlined in I.C. § 22-5-1.7; however, Contractor shall not be required to verify the work eligibility status of all newly hired employees of Contractor through the E-Verify program if the E-Verify program no longer exists. CONTRACTOR AFFIRMS, UNDER THE PENALTIES OF PERJURY, THAT CONTRACTOR DOES NOT KNOWINGLY EMPLOY AN UNAUTHORIZED ALIEN.

## **SECTION V. INTERPRETATION AND INTENT.**

- 5.01 This Agreement constitutes the entire agreement between the parties and supersedes all prior agreements, written or verbal, between Whitestown and Contractor. No statements, promises or agreements whatsoever, in writing or verbal, in conflict with the terms of the Agreement have been made by Whitestown or Contractor which in any way modify, vary, alter, enlarge or invalidate any of the provisions and obligations herein stated. This Agreement may be amended and modified only in writing signed by both Whitestown and Contractor, and following approval of such amended or modified terms by the Whitestown Town Council.
- 5.02 In resolving conflicts, errors, discrepancies and disputes concerning the scope of the work or services to be performed by Contractor or other rights or obligations of Whitestown or Contractor, the document or provision thereof imposing the greater obligation upon Contractor and affording the greater right or remedy to Whitestown, shall govern.
- 5.03 Any interpretation applied to this Agreement, by the parties hereto, by an arbitrator, court of law, or by any other third party, shall not be made against Whitestown solely by virtue of Whitestown or Whitestown's representatives having drafted all or any portion of this Agreement.
- 5.04 This Agreement shall include, and incorporate by reference, any provision, covenant or condition required or provided by law or by regulation of any state or federal regulatory or funding agency.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates subscribed below.

Town of Whitestown, Indiana and/or  
Whitestown Municipal Utilities ("Whitestown")

("Contractor")

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

Printed: \_\_\_\_\_

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

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

4168942

By: James W. Trout

Printed: James W. Trout

Title: Partner

Date: 9/7/2021

September 1, 2021

Mr. Jason Lawson, Town Manager  
Town of Whitestown  
Whitestown Municipal Complex  
6210 S 700 E  
Whitestown, Indiana 46075

Re: Proposed Accounting and Financial Consulting Services

Thank you for requesting that O.W. Krohn & Associates LLP (the “Municipal Advisor”) provide a proposal and agreement for the Town of Whitestown (the “Town”) relative to accounting and municipal advisory services more fully described below and as set forth in Exhibit A (the “Scope of Services”).

Fees and Invoicing

Fees charged for work performed are generally based on hourly rates, as set forth in Exhibit B, for the time expended unless other arrangements are mutually agreed upon. Hourly rates for work performed by our professionals vary by individual and reflect the complexity of the engagement. Invoices are generally submitted monthly describing the services provided, time logs and a current billing amount. As always, should any questions arise regarding invoice amounts and service descriptions, please do not hesitate to call.

Termination

Both the Town and the Municipal Advisor have the right to terminate the engagement at any time after reasonable written notice is provided. On termination, the Municipal Advisor shall be compensated for fees and charges incurred prior to termination.

Accountant’s Opinion

The responsibility for auditing the records of the Town rests with the Indiana State Board of Accounts and the work performed by the Municipal Advisor shall not include an audit or review of the records or the expression of an opinion on financial data.

Additional Services

Exhibit A sets forth the scope of the Services to be provided by the Municipal Advisor. From time to time, additional services may be requested by the Town beyond the scope of Exhibit A. The Municipal Advisor may provide these additional services upon request, subject to the Municipal Advisor's customary fees and costs for such services. In the alternative, the Municipal Advisor and the Town may complete a revised agreement or addendum to Exhibit A to set forth the additional services (including revised fees and costs, as needed) to be provided. In either event, the terms and conditions of this letter shall remain in effect.

E -Verify Program

The Municipal Advisor participates in the E-Verify program. For the purpose of this paragraph, the E-Verify program means the electronic verification of the work authorization program of the Illegal Immigration Reform and Immigration Responsibility Act of 1996 (P.L. 104-208), Division C, Title IV, s.401(a), as amended, operated by the United States Department of Homeland Security or a successor work authorization program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work authorization status of newly hired employees under the Immigration Reform and Control Act of 1986 (P.L. 99-603). The Municipal Advisor does not employ any "unauthorized aliens" as that term is defined in 8 U.S.C. 1324a(h)(3).

Municipal Advisor Registration

The Municipal Advisor is registered with the Securities and Exchange Commission and the Municipal Securities Rulemaking Board. The Municipal Advisor understands that providing a false certification could result in the fines, penalties, and civil action listed in I.C. 5-22-16.5-14.

The offer and sale of any Bonds shall be made by the Town, in the sole discretion of the Town, and under its control and supervision. The Town agrees that the Municipal Advisor does not undertake to sell or attempt to sell the Bonds and will take no part in the sale thereof.

If the foregoing accurately represents the basis upon which we may provide Services to the Town, we ask that you execute this letter, in the space provided below setting forth your agreement. Execution of this letter can be performed in counterparts each of which will be deemed an original and all of which together will constitute the same document.

If you have any questions, please let us know. We appreciate this opportunity to be of service to you and the Town of Whitestown.

Very truly yours,

O. W. Krohn & Associates LLP

*O.W. Krohn & Associates LLP*

The undersigned hereby acknowledges and agrees to the foregoing letter of engagement on this \_\_\_\_ day of \_\_\_\_\_, 2021.

Town of Whitestown

By: \_\_\_\_\_  
Authorized Representative



## EXHIBIT A

### SCOPE OF SERVICES

- Provide ongoing accounting and financial support to the Town, including, but not limited to:
  - Assistance with SBOA Annual Financial Reports for Town department funds and enterprise funds.
  - Assistance with year-end requirements including 100R compensation reporting.
  - Assistance with monthly bank reconciliations and monthly upload requirements.
  - Assistance with annual DLGF Budgets including budget workshops, Gateway form preparation, public hearings and consultations with Town Officials and Department Heads.
  - Assistance with annexation processes including preparation of Fiscal Plans.
  - Assistance with day-to-day fund accounting procedures and requirements.
  - Assistance with Gateway uploading requirements on an ongoing basis.
  - Assistance with evaluating options or alternatives with respect to new or refunding of existing debt including preparation of offering documents, coordination with Bond Counsel, Town Officials and project teams, assistance with Bond closing and after sale activities.
  - Participate in monthly roundtable meetings with Town Management to discuss current observations and recommendations related to the Towns financial status.
  - Develop comprehensive Capital Improvement Plan.
  - Prepare quarterly debt management report for Council.
- Provide ongoing accounting and financial support to the Utilities, including, but not limited to:
  - Prepare quarterly and annual financial reports.
  - Periodically prepare Utility rate studies including determination of capital needs and rate amendment calculations.
  - Assistance with amended rate ordinances and attendance at public hearings regarding Utility matters.
- Provide ongoing accounting and financial support to the Redevelopment Commission, including, but not limited to:
  - Assistance with RDC activities – Annual Report, Excess TIF Declaration, Developer Agreements and Annual Overlapping Taxing Units Meeting.
  - Assistance with creating and/or amending a TIF Area including preparation of a Tax Impact Statement, review of developer proposals and coordination of public hearing notices.
  - Assistance with reporting requirements on the Gateway system.

## EXHIBIT B

### Fees – Billing Rates

The Municipal Advisor's fees for the services described above shall be based upon actual time charges and out of pocket expenses. Our professional staff billing rates are noted below:

#### Standard Hourly Rates / Staff Classifications

Partners	\$255.00
Municipal Advisors	220.00
Sr. Consultants/Project Managers	200.00
Sr. Staff Accountants	155.00
Support Personnel	100.00

- *Billing rates are subject to change periodically due to changing requirements and economic conditions. However, the rates above will not be changed prior to December 31st, 2022. Monthly invoices will be based upon the actual time expended, required experience of the staff assigned and complexity of the engagement.*