

ORDINANCE 2021-38

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF WHITESTOWN, INDIANA, APPROVING AN INTERLOCAL AGREEMENT BETWEEN THE TOWN OF WHITESTOWN AND WORTH TOWNSHIP REGARDING FIRE PROTECTION AND EMERGENCY SERVICES

WHEREAS, Worth Township ("Township") and Town of Whitestown ("Town") have previously entered into an Interlocal Agreement for Fire Protection and Emergency Services dated as of February 27, 2009 ("2009 Agreement").

WHEREAS, the 2009 Agreement expires as of December 31, 2021; and

WHEREAS, it is in the best interest of the Town and Township to enter into an updated and continuing Interlocal Agreement for Fire Protection and Emergency Services ("Agreement"); and

WHEREAS, a form of such Agreement is attached hereto as Exhibit A.

NOW, THEREFORE, BE IT ORDAINED by the Town Council of the Town of Whitestown, Indiana, as follows:

1. Approval of Agreement. The Town Council of the Town of Whitestown ("Council") hereby finds and determines that it is appropriate for the Town to enter into the Agreement with the Township. When and if appropriate, the President of the Town Council is hereby authorized and directed to execute and deliver the Agreement in substantially the form that is attached hereto as Exhibit A, with such changes as may be approved by the President with the advice of counsel to the Town.

2. Recording and Filing of Agreement. Upon the execution of the Agreement by the President of the Town Council and by the duly authorized officers of the Township, the Clerk-Treasurer is hereby authorized and directed to arrange for the recording of the Agreement with the Boone County Recorder. Furthermore, not later than sixty (60) days after the Agreement is fully executed, the Clerk-Treasurer shall file the Agreement with the State Board of Accounts.

3. Effective Date. This Ordinance shall take effect on the date of its passage and upon compliance with I.C. § 36-5-2.

4. Prior Inconsistent Ordinances. To the extent that this Ordinance is determined to be valid and inconsistent with prior ordinances adopted by the Town, the provisions of this Ordinance are superseding and controlling.

Adopted by the Town Council of the Town of Whitestown, Indiana, on _____, 2021, by a vote of _____ in favor and _____ against.

THE TOWN COUNCIL OF THE
TOWN OF WHITESTOWN

Clinton Bohm, President

ATTEST:

Matt Sumner, Clerk-Treasurer
Town of Whitestown, Indiana

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. Stephen C. Unger

This Ordinance was prepared by Stephen C. Unger, Attorney at Law, Bose McKinney & Evans LLP, 111 Monument Circle, Suite 2700, Indianapolis, Indiana 4620

4268594

Exhibit A

**INTERLOCAL COOPERATION AGREEMENT
FOR FIRE PROTECTION AND EMERGENCY SERVICES
BY AND BETWEEN TOWN OF WHITESTOWN, BOONE COUNTY, INDIANA
AND WORTH TOWNSHIP, BOONE COUNTY, INDIANA**

THIS AGREEMENT (the “Agreement”) is entered into as of _____, 2021, by and between Worth Township of Boone County, Indiana (“Worth”) and Town of Whitestown of Boone County, Indiana (“Whitestown”), and shall be effective as of the Effective Date set forth below.

RECITALS

A. Worth and Whitestown are governmental entities and political subdivisions within Boone County, State of Indiana.

B. Worth and Whitestown each have responsibility for ensuring that adequate fire protection and emergency response services (“Emergency Services”) are provided in their respective jurisdictions.

C. Worth and Whitestown have previously entered into an Interlocal Cooperation Agreement for Fire Protection and Emergency Services dated as of February 27, 2009 (“Original Agreement”), recorded as Instrument No. 200900002081 in the Boone County, Indiana Recorder’s Office, as may be amended from time to time, providing in part for the provision of fire and emergency services in unincorporated Worth by the Whitestown Fire Department (“Town Department”) until December 31, 2021.

D. Worth and Whitestown desire to enter into an Interlocal Agreement pursuant to I.C. §36-1-7 for Whitestown to continue to provide Emergency Services in unincorporated Worth beyond the expiration of the Original Agreement.

NOW, THEREFORE, in consideration of the mutual covenants set forth below, and other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, the parties agree as follows:

**ARTICLE I
PURPOSE OF AGREEMENT**

Section 1.1. Purpose. The purpose of this Agreement is to plan for, coordinate, implement, and fund appropriate staffing and equipment so that Whitestown through the Town Department can provide, supplement, and enhance Emergency Services in Whitestown and the unincorporated areas of Worth Township.

Section 1.2. Emergency Services in Worth Township. Whitestown will continue to provide Emergency Services to all areas within Whitestown and the unincorporated areas of Worth. Whitestown will impose and collect taxes for such services from all property owners within the municipal limits of the Town. Worth shall impose and collect taxes from the property owners within the unincorporated areas of Worth that are in an amount sufficient to pay its obligation to Whitestown under this Agreement. Worth agrees to undertake any financing

procedures, including, but not limited to, issuing an emergency loan(s) if deemed necessary and approved by Worth to meet the payment obligations to Whitestown as set forth herein.

ARTICLE II

TERM AND DURATION

Section 2.1. Effective Date. This Agreement shall be in full force and effect upon adoption of an ordinance or resolution respectively by the parties, execution by both Worth and Whitestown, and recording as set forth herein. The parties anticipate that the Effective Date will be no later than January 1, 2022.

Section 2.2. Term of Agreement. Except as otherwise set forth herein, this Agreement shall continue in full force and effect until December 31, 2031, (“End Date”), provided that the Agreement shall automatically renew after the End Date for successive one (1) year periods until either party provides the other party with at least one (1) year advance notice of termination as set forth in Section 2.3.

Section 2.3. Termination. This Agreement may be terminated in calendar year 2022 by either party providing notice of such termination in writing prior to June 30, 2022 (“2022 Termination”), in which case such 2022 Termination will be effective December 31, 2022. Thereafter, this Agreement may be terminated as of December 31 of any calendar year before the End Date (or any extension thereto) by either party providing notice in writing at least one (1) year prior to June 30th of a respective year before the proposed December 31 date of termination (“Termination Date”). If so terminated by either party, Whitestown shall (subject to the fee provisions set forth in Sections 5.2 and 5.3 below) continue to furnish, and be the actual provider of, Emergency Services within unincorporated areas of Worth Township through the Termination Date (i.e., through December 31st of the next calendar year following the notice of termination), and Worth Township shall be obligated to pay the accrued fees set forth in this Agreement through the Termination Date. After the Termination, Worth (or its successor) may contract with Whitestown or any other entity for the provision of Emergency Services in unincorporated areas of Worth Township. Whitestown’s right to serve (and collect a fee) in unincorporated Worth until any Termination Date, shall be binding on any successor in interest to Worth regardless of whether Worth ceases to exist as a result of legislative pronouncement, consolidation, merger, or otherwise.

ARTICLE III

ESTABLISHMENT OF FIRE BOARD

Section 3.1. Establishment and Members of Fire Board. Worth and Whitestown hereby reaffirm the establishment of a Joint Fire Protection Board (the “Fire Board”) on the following terms. Worth and Whitestown agree that the Fire Board shall contain seven (7) members: five (5) voting and two (2) non-voting. The Whitestown Town Council President (“President”) shall: (i) appoint one (1) member of the Whitestown Town Council (“Council”) to serve as the Chairman of the Fire Board; and (ii) with the approval of the Council, appoint two (2) other members that are residents of Whitestown (who may but are not required to be members of Council) to serve on the Fire Board. The Worth Township Trustee (“Trustee”) shall: (i) serve as a member and Vice-Chairman of the Fire Board; and (ii) appoint one (1) additional member that is a resident of Worth to serve on the Fire Board. In addition to each appointing their respective voting members, the President (with Council approval) and the Trustee shall each appoint a

separate representative (i.e. one (1) each by President and Trustee) to serve as non-voting, advisory members to the Fire Board. The Fire Board may appoint one of its members or an employee of the Town Department to serve as secretary for the Fire Board.

Section 3.2. Role of Fire Board. Subject to the terms of this Agreement and applicable law, the Fire Board shall manage, coordinate, implement, and expand (if determined prudent and necessary) the provision of Emergency Services to Whitestown, unincorporated areas of Worth, and other areas as deemed appropriate (by the Fire Board). The Fire Board shall also be responsible for administering the terms of this Agreement.

Section 3.3. Term of Fire Board Members. Members of the Fire Board shall serve at the pleasure of their respective appointing authorities for a term not to exceed four (4) years. Whitestown and/or Worth may, in their sole discretion: (i) remove their respective appointees to the Fire Board prior to expiration of the Board Members' term; and/or (ii) appoint members for less than a four (4) year term. The Fire Board will be dissolved without any further action of the parties at the earlier of the End Date or Termination Date.

Section 3.4. Bond for and Salary of Fire Board Members. Each Fire Board Member that is not a member of the Town Council shall give a bond in the penal sum of Five Thousand Dollars (\$5,000) payable to the State and conditioned upon the faithful and honest discharge of his/her duties. The bond is conditioned upon approval and payment by the Town Council. The Town Council shall also fix the salary of the Fire Board Members; provided, however, that a Fire Board Member who is also a member of the Town Council or a member of Worth's Board (or its Trustee) shall not receive compensation as a Fire Board Member.

Section 3.5. Schedule for Meetings. The Fire Board shall, subject to approval by the Town Council, establish a regular meeting schedule for the calendar year. Special meetings of the Fire Board may be called at any time by the Chairman or by any two (2) members of the Fire Board. Public notice of the date, time, and place of all regular or special meetings, executive sessions, or any rescheduled or reconvened meetings of the Fire Board shall be given at least forty-eighty (48) hours (excluding Saturdays, Sundays and legal holidays) before the meeting. The provisions of the Indiana Open Door Law, Ind. Code §5-14-1.5 *et seq.* shall apply to all meetings of the Fire Board and compliance therewith shall be sufficient to satisfy all notice or other legal requirements under this Agreement.

Section 3.6. Agenda for Meetings. A written agenda may be established by the member(s) of the Fire Board responsible for calling the meeting. If an agenda is used, it shall be posted at the meeting place at the time of the meeting. At any meeting of the Fire Board, the presence (in person or remote, as permitted by applicable law) of at least three (3) voting members shall be necessary to constitute a quorum. Action by the Fire Board shall be authorized by the affirmative vote of no less than three (3) voting members acting at a properly called meeting at which a quorum is present.

Section 3.7. Minutes for Meetings. An official record of all meetings of the Fire Board shall be maintained by the Secretary of the Fire Board. Accurate memoranda of all meetings shall be kept in accordance with I.C. 5-14-1.5-4(b) and (c) and shall be available for public inspection during normal business hours.

Section 3.8. Board as Appointing Authority. The Fire Board will act as the appointing authority and safety board for all statutory purposes related to the delivery of Emergency Services pursuant to the terms of this Agreement.

Section 3.9. Dissolution of Fire Board. If Worth ceases to exist as a result of legislative pronouncement, consolidation, merger, or otherwise (and/or is no longer responsible for the provision of Emergency Services), this Agreement shall terminate, the Fire Board shall be dissolved (without any further action of the parties), and the duties of the Fire Board shall be assumed by the Town Council for Whitestown.

ARTICLE IV **FIRE CHIEF AND EMPLOYEES**

Section 4.1. Appointment of Fire Chief. A Fire Chief designated to assume the duties set forth herein shall be appointed, and may be removed, by a majority vote of the Whitestown Town Council.

Section 4.2. Duties of Fire Chief. In addition to the duties of Fire Chief established by the Board from time to time, the Fire Chief shall:

- (i) work with the Fire Board to prepare and implement a re-structuring plan for the delivery of Emergency Services based on a new regional organization in accordance with policies and resolutions adopted by the Fire Board, utilizing the provisions for regional Emergency Services contained in the Indiana Code;
- (ii) provide regular status and performance reports, run data, staffing reports, hours of service provided, special events staffed, and such other reports and information as are deemed appropriate or requested from time to time by Worth and Whitestown, either through the Fire Board or to the entities individually, not less frequently than quarterly;
- (iii) attend as many regular meetings of the Fire Board as practical and any other special meetings upon request of the Fire Board;
- (iv) comply with and follow Whitestown personnel policies and all procedures and directives established by the Fire Board; and
- (v) be evaluated no less than annually by the Fire Board.

Section 4.3. Employees of Town. Whitestown will furnish, and be the actual provider of, Emergency Services to Whitestown and all of the unincorporated areas of Worth. The Fire Chief and employees of the Town Department will be employees of Whitestown and Whitestown shall be responsible for all salaries, benefits, insurance requirements, and liabilities related thereto.

Section 4.4. Removal of Fire Chief and Employees. Except for the Fire Chief, the employees of the Town Department may, subject to all statutory procedures, be removed by the Fire Chief or a majority vote of the Fire Board. The Fire Chief may only be removed by the Whitestown Town Council.

ARTICLE V

FIRE BUDGET AND FINANCE MATTERS

Section 5.1. Budget for Emergency Services. Not later than August 31 of each year, the Fire Board shall establish a budget for the following calendar year providing the necessary funds to meet the costs related to the Fire Chief and any additional paid firefighting staff approved by the Fire Board, including all wages, benefits and taxes, and all other fees, supplies, contingencies, professional fees, and all other costs of operating, maintaining and acquiring equipment for the provision of Emergency Services (collectively, “Fire Expenses”). After estimating all Fire Expenses and establishing an appropriate budget for the following year (“Approved Budget”), the Fire Board shall present the Approved Budget to the Town Council for consideration and approval. Worth and Whitestown agree to use their best efforts to seek approval from the DLGF to obtain the funds necessary to fund the Approved Budget as ultimately approved by the Town Council.

Section 5.2. Fee for Services to Unincorporated Areas of Worth. For services to the unincorporated areas of Worth, Worth will annually pay to Whitestown the sum of Whitestown’s previous year DLGF certified property tax rate for fire protection and fire debt multiplied by Worth’s previous year DLGF certified assessed value (for unincorporated areas of Worth), divided by 100. In addition, Worth will annually pay all Financial Institutions, Auto and Aircraft Excise, and Commercial Vehicle Excise Taxes created by the imposition of the fire levies. Further, Worth will annually pay all County Option Income Tax (“COIT”) to Whitestown, except for the amount necessary to fund the Township General and Township Assistance Fund with minimal operating balances.

Section 5.3. Payments from Worth. On an annual basis, Worth shall pay its fee as established under the preceding section in two equal installments on June 30, and December 31. If Worth fails to pay, Whitestown shall be entitled to all remedies available at law, including, but not limited to, injunctive relief, specified performances, and the recovery of all collection costs, including all accounting, legal, and court costs.

Section 5.4. Funds for Emergency Services. All funds paid pursuant to this Agreement shall be received, maintained, and disbursed by the Whitestown Clerk-Treasurer (“Clerk-Treasurer”).

Section 5.5. Restriction on Use of Funds. No amounts paid pursuant to this Agreement may be used for payment of fees or expenses related to termination of this Agreement.

Section 5.6. Issuance of Debt, Budgets, and Final Employment Decisions. For the issuance of debt, final approval of budgets, and the hiring of additional employees, the Fire Board must obtain approval from the Town Council.

ARTICLE VI

FIRE ASSETS

Section 6.1. Fire Assets. To adequately equip the Town Department with the equipment necessary to provide Emergency Services, Whitestown will own and maintain any and all assets used by the Department in providing Emergency Services (“Fire Assets”). For purposes of this Agreement, the Fire Assets shall include all permits, certificates, licenses, land, buildings, improvements, fixtures, easements, machinery, equipment, vehicles, tools, supplies, warranties, maintenance records, files, books, drawings, blueprints, operating manuals, maps, contracts, and/or any other documents used by, related to, and/or in any way arising out of the provision of Emergency Services.

Section 6.2. Operation and Maintenance of Equipment During Agreement. Whitestown will operate, maintain, and insure the Fire Assets, and Whitestown may undertake any modifications on the equipment (such as painting or identification).

ARTICLE VII

MISCELLANEOUS PROVISIONS

Section 7.1. Timeliness of Payment Obligations. As taxing entities that receive disbursements from unrelated third parties (e.g. Boone County and/or the State of Indiana), the parties’ ability to make their respective payments on the dates set forth in this Agreement are contingent upon the parties receiving their allotted disbursements within the time necessary to make the required payment. To the extent either party fails to timely receive its disbursement of tax monies, the parties agree to cooperate and work in good faith to make the required payment within seven (7) days of receiving its distribution of tax monies. Provided payment was not made solely as a result of either party’s failure to timely receive the allotted amount of tax monies, the failure to timely pay will not be considered a default as long as payment is made within seven (7) days after receipt of distribution of tax monies.

Section 7.2. Application of Indiana Law. This Agreement and the respective rights and responsibilities of the participating units, the Fire Board and employees and members of the fire service provided for herein shall be subject to all laws applicable to the delivery of Emergency Services. The respective rights and responsibilities of each of the foregoing shall be supplemented by any such applicable laws, and to the fullest extent possible, the terms of this Agreement shall be given full force and effect. The laws of the state of Indiana shall govern the interpretation, validity, and performance of this Agreement.

Section 7.3. Severability Provision. If any provision of this Agreement shall be held to be invalid or unenforceable by any court of competent jurisdiction, such provisions shall be severed from the remainder of this Agreement and the validity and enforceability of the remaining provisions of this Agreement shall not be affected thereby.

Section 7.4. Effective Date. This Agreement shall be approved upon the adoption by the Township Board of Worth and the Town Council of an appropriate ordinance or resolution approving and ratifying this Agreement, and the approval and execution of this Agreement by the executive of each unit. After approval and execution, this Agreement shall be recorded with the Boone County Recorder, and the Effective Date of this Agreement shall be the date of recordation.

Within sixty (60) days of the Effective Date, this Agreement shall be recorded with the Indiana State Board of Accounts for audit purposes as required by I.C. §36-1-7-6.

Section 7.5. Modification in Writing. The parties hereto may, from time to time, alter, change or amend the terms and conditions of this Agreement by an amendment in writing making specific reference to the document as an amendment to this Agreement, approved and executed by each of the parties hereto in the same manner as this Agreement. Any amendment or modification of this Agreement shall take effect immediately upon the approval of the last unit to approve such amendment or modification, or at such other time as is specifically designated in the amendment or modification.

Section 7.6. Execution and Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which shall constitute one and the same instrument.

Section 7.7. Entire Agreement. This Agreement sets forth the entire Agreement between the parties hereto, and fully supersedes any prior agreements or understandings, including but not limited to the Original Agreement, between the parties pertaining to the subject matter hereof.

Section 7.8. Authority of Parties. Each party and signatory hereto has the authority to enter into this Agreement and at all times has full authority to perform this Agreement. No further approval or consent by any other person or authority is required.

Section 7.9. Captions. The captions to this Agreement are for convenience of reference only and shall not be given any affect in the interpretation of this Agreement.

Section 7.10. Notices. All notices, consents, and other communications (collectively, “Notices”) shall be given to Worth or Whitestown in writing to the addresses set forth below:

Whitestown:	Town of Whitestown Attn: Town Council President Whitestown Municipal Complex 6210 Veterans Drive Whitestown, IN 46075
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Worth:	Worth Township Attn: Trustee 8 South Main Street, Suite 102 Whitestown, IN 46075
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Either party may change its address for Notices by given written notice to the other party in accordance with this provision.

Section 7.11. Incorporation of Recitals. The Recitals are hereby incorporated into this Agreement.

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IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed in their respective units by the duly authorized signatories below.

**TOWN OF WHITESTOWN,
BOONE COUNTY, INDIANA**

By: _____
Clinton Bohm, President,
Whitestown Town Council

STATE OF INDIANA)
)SS:
COUNTY OF _____)

Before me, a Notary Public in and for said County and State, personally appeared Clinton Bohm, Whitestown Town Council President, who acknowledged the execution of the foregoing "Interlocal Cooperation Agreement" on behalf of said entity.

WITNESS my hand and Notarial Seal this _____ day of _____, 202__.

Notary Public

(Printed Signature)

My Commission Expires:

My County of Residence:

Date approved by Town Council:
_____, 202__.

Attest: _____
Matt Sumner, Clerk-Treasurer

**WORTH TOWNSHIP OF
BOONE COUNTY, INDIANA**

By: _____
James D. Baldwin, Trustee

STATE OF INDIANA)
)SS:
COUNTY OF _____)

Before me, a Notary Public in and for said County and State, personally appeared James D. Baldwin, Worth Township Trustee, who acknowledged the execution of the foregoing "Interlocal Cooperation Agreement" on behalf of said entity.

WITNESS my hand and Notarial Seal this _____ day of _____, 202__.

Notary Public

(Printed Signature)

My Commission Expires:

My County of Residence:

Date approved by Township Board:

_____, 202__.

Attest: _____
President, Township Board

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law.

Stephen C. Unger

This document was prepared by Stephen C. Unger, Bose McKinney & Evans LLP, 111 Monument Circle, Ste. 2700, Indianapolis, IN 46204.