

Town of Whitestown
Uniform Contract for Services

Waggoner, Irwin, Scheele & Associates INC. (Service Provider)

Human Resources 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 Waggoner, Irwin, Scheele & Associates INC. (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: (a) was known by Contractor at the time it was received; (b) is, as of the time of its disclosure or thereafter becomes, part of the public domain through a source other than Contractor; (c) is made known to Contractor by a third person who does not impose any obligation of confidence on Contractor with respect to such information; (d) 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; or (e) information that is independently developed by Contractor without references to the confidential information. 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, clause (d).
- 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 3 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, provided that Contractor shall be given, except in the case of emergencies, (a) not less than ten (10) calendar days' notice of Whitestown's intent to terminate, and (b) an opportunity for consultation with Whitestown prior to termination. 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; provided that Contractor is given (a) not less than thirty (30) calendar days' notice of intent to terminate and (b) an opportunity for consultation with Whitestown prior to termination. 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 5.07.2 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 4 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, regardless of whether or not it is caused in part by the negligence of a party indemnified hereunder. 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:

Waggoner, Irwin, Scheele & Associates INC.

118 South Franklin Street

To Whitestown:

Town of Whitestown

Whitestown Municipal Complex

6210 Veterans Drive

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 nondisputed 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 5 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 EMPLOYEE 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 6 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")

By: _____

Printed: _____

Title: _____

Date: _____

("Contractor")

By:  _____

Printed: R. Kent Irwin

Title: President

Date: December 14, 2021