

AGREEMENT FOR PURCHASE OF GOODS AND SERVICES

THIS AGREEMENT FOR PURCHASE OF GOODS AND SERVICES ("Agreement") is hereby entered into by and between the Town Council of Whitestown, Indiana, and Toric Engineering an entity duly authorized to do business in the State of Indiana ("Vendor").

TERMS AND CONDITIONS

1. **ACKNOWLEDGMENT, ACCEPTANCE:**

Vendor acknowledges that it has read and understands this Agreement, and agrees that its execution of same constitutes its acceptance of all of the Agreement's terms and conditions.

2. **PERFORMANCE:**

Town agrees to purchase the goods and/or services (the "Goods and Services") from Vendor using Town appropriated funds. Vendor agrees to provide the Goods and Services and to otherwise perform the requirements of this Agreement by applying at all times the highest technical and industry standards.

3. **PRICE AND PAYMENT TERMS:**

3.1 Vendor estimates that the total price for the Goods and Services to be provided to Town hereunder shall be no more than Nine Thousand Two Hundred Forty Eight Dollars (\$ \$9,248.00) (the "Estimate"). Vendor shall submit an invoice to Town no more than once every thirty (30) days detailing the Goods and Services provided to Town within such time period. Town shall pay Vendor for such Goods and Services within forty-five (45) days after the date of Town's receipt of Vendor's invoice detailing same, so long as and to the extent such Goods and Services are not disputed, are in conformance with the specifications set forth in Exhibit A, are submitted on an invoice that contains the information contained on attached Exhibit B, and Vendor has otherwise performed and satisfied all the terms and conditions of this Agreement.

3.2 Vendor agrees not to provide any Goods and Services to Town that would cause the total cost of the Goods and Services provided by Vendor to Town hereunder to exceed the Estimate, unless Town has previously agreed, in writing, to pay an amount in excess thereof.

4. **WARRANTY:**

Vendor expressly warrants that the Goods and Services covered by this Agreement will conform to those certain specifications, descriptions and/or quotations regarding same as were provided to Vendor by Town and/or by Vendor to and accepted by Town, all of which documents are incorporated herein by reference, and that the Goods and Services will be delivered in a timely, good and workmanlike manner and free from defect. Vendor acknowledges that it knows of Town's intended use and expressly warrants that the Goods and Services provided to Town pursuant to this Agreement have been selected by Vendor based upon Town's stated use and are fit and sufficient for their particular purpose.

5. TIME AND PERFORMANCE:

This Agreement shall become effective as of the last date on which a party hereto executes same ("Effective Date"), and both parties shall thereafter perform their obligations hereunder in a timely manner. Time is of the essence of this Agreement.

6. DISCLOSURE AND WARNINGS:

If requested by Town, Vendor shall promptly furnish to Town, in such form and detail as Town may direct, a list of all chemicals, materials, substances and items used in or during the provision of the Goods and Services provided hereunder, including the quantity, quality and concentration thereof and any other information relating thereto. At the time of the delivery of the Goods and Services provided hereunder, Vendor agrees to furnish to Town sufficient written warning and notice (including appropriate labels on containers and packing) of any hazardous material utilized in or that is a part of the Goods and Services.

7. LIENS:

Vendor shall not cause or permit the filing of any lien on any of Town's property. In the event any such lien is filed and Vendor fails to remove such lien within ten (10) days after the filing thereof, by payment or bonding, Town shall have the right to pay such lien or obtain such bond, all at Vendor's sole cost and expense.

8. DEFAULT:

In the event Vendor: (a) repudiates, breaches or defaults under any of the terms or conditions of this Agreement, including Vendor's warranties; (b) fails to provide the Goods and Services as specified herein; (c) fails to make progress so as to endanger timely and proper provision of the Goods and Services and does not correct such failure or breach within five (5) business days (or such shorter period of time as is commercially reasonable under the circumstances) after receipt of notice from Town specifying such failure or breach; or (d) becomes insolvent, is placed into receivership, makes a general assignment for the benefit of creditors or dissolves, each such event constituting an event of default hereunder, Town shall have the right to (1) terminate all or any parts of this Agreement, without liability to Vendor; and (2) exercise all other rights and remedies available to Town at law and/or in equity.

9. INSURANCE AND INDEMNIFICATION:

9.1 Vendor shall procure and maintain in full force and effect during the term of this Agreement, with an insurer licensed to do business in the State of Indiana, such insurance as is necessary for the protection of Town and Vendor from all claims for damages under any workers' compensation, occupational disease and/or unemployment compensation act; for bodily injuries including, but not limited to, personal injury, sickness, disease or death of or to any of Vendor's agents, officers, employees, contractors and subcontractors; and, for any injury to or destruction of property, including, but not limited to, any loss of use resulting therefrom. The coverage amounts shall be no less than those amounts set forth in attached Exhibit C. Vendor shall cause its insurers to name Town as an additional insured on all such insurance policies, shall promptly provide Town, upon request, with copies of all such policies, and shall provide that such insurance policies shall not be canceled without thirty (30) days prior notice to Town. Vendor shall indemnify and hold harmless Town from and against any and all liabilities, claims, demands or expenses (including, but not limited to, reasonable attorney fees) for injury, death and/or damages to any person or property arising from or in connection with Vendor's provision of Goods and Services pursuant to or under this Agreement or Vendor's use of Town property.

9.2 Vendor further agrees to indemnify, defend and hold harmless Town and its officers, officials, attorneys, agents and employees from all claims and suits of whatever type, including, but not limited to, all court costs, attorney fees, and other expenses, caused by any act or omission of Vendor and/or of any of Vendor's agents, officers, employees, contractors or subcontractors in the performance of this Agreement. These indemnification obligations shall survive the termination of this Agreement.

9.3 Any obligation TOWN has to indemnify Professional shall be limited by state and federal statutes and constitutional provisions designed to protect the exposure and liability of TOWN as an instrumentality of the State of Indiana or otherwise (e.g., actions and conditions as to which TOWN is immunized by the Indiana Tort Claims Act, dollar limits stated in such Act, exemption from punitive damages, the Eleventh Amendment, and the continued ability to defeat a claim by reason of contributory negligence or fault of a claimant), so that TOWN's liability to indemnify, defend, and hold harmless hereunder shall not in any case exceed what might have been its liability to a claimant had TOWN been sued directly by the claimant in Indiana and all appropriate defenses had been raised by TOWN, and provided further, in no event shall TOWN's obligation to indemnify hereunder exceed the value of the consideration paid by TOWN under this Agreement.

10. GOVERNMENT COMPLIANCE:

Vendor agrees to comply with all federal, state and local laws, executive orders, rules, regulations and codes which may be applicable to Vendor's performance of its obligations under this Agreement, and all relevant provisions thereof are incorporated herein by this reference. Vendor agrees to indemnify and hold harmless Town from any loss, damage and/or liability resulting from any such violation of such laws, orders, rules, regulations and codes. This indemnification obligation shall survive the termination of this Agreement.

11. NONDISCRIMINATION:

Vendor represents and warrants that it and all of its officers, employees, agents, contractors and subcontractors shall comply with all laws of the United States, the State of Indiana and Town prohibiting discrimination against any employee, applicant for employment or other person in the provision of any Goods and Services provided by this Agreement with respect to their hire, tenure, terms, conditions and privileges of employment and any other matter related to their employment or subcontracting, because of race, religion, color, sex, handicap, national origin, ancestry, age, disabled veteran status and/or Vietnam era veteran status.

12. E-VERIFY:

Pursuant to I.C. § 22-5-1.7 *et seq.*, as the same may be amended from time to time, and as is incorporated herein by this reference (the "Indiana E-Verify Law"), Vendor is required to enroll in and verify the work eligibility status of its newly-hired employees using the E-Verify program, and to execute the Affidavit attached herein as Exhibit D, affirming that it is enrolled and participating in the E-verify program and does not knowingly employ unauthorized aliens. In support of the Affidavit, **Vendor shall provide the Town with documentation indicating that it has enrolled and is participating in the E-Verify program.** Should Vendor subcontract for the performance of any work under and pursuant to this Agreement, it shall fully comply with the Indiana E-Verify Law as regards each such subcontractor. Should the Vendor or any subcontractor violate the Indiana E-Verify law, the Town may require a cure of such violation and thereafter, if no timely cure is performed, terminate this Agreement in accordance with either the provisions hereof or those set forth in the Indiana E-Verify Law. The requirements of this paragraph shall not apply should the E-Verify program cease to exist.

13. NO IMPLIED WAIVER:

The failure of either party to require performance by the other of any provision of this Agreement shall not affect the right of such party to require such performance at any time thereafter, nor shall the waiver by any party of a breach of any provision of this Agreement constitute a waiver of any succeeding breach of the same or any other provision hereof.

14. NON-ASSIGNMENT:

Vendor shall not assign or pledge this Agreement, whether as collateral for a loan or otherwise, and shall not delegate its obligations under this Agreement without Town's prior written consent.

15. RELATIONSHIP OF PARTIES:

The relationship of the parties hereto shall be as provided for in this Agreement, and neither Vendor nor any of its officers, employees, contractors, subcontractors and agents are employees of Town. The contract price set forth herein shall be the full and maximum compensation and monies required of Town to be paid to Vendor under or pursuant to this Agreement

16. GOVERNING LAW; LAWSUITS:

This Agreement is to be construed in accordance with and governed by the laws of the State of Indiana, except for its conflict of laws provisions. The parties agree that, in the event a lawsuit is filed hereunder, they waive their right to a jury trial, agree to file any such lawsuit in an appropriate court in Boone County, Indiana only, and agree that such court is the appropriate venue for and has jurisdiction over same.

17. SEVERABILITY:

If any term of this Agreement is invalid or unenforceable under any statute, regulation, ordinance, executive order or other rule of law, such term shall be deemed reformed or deleted, but only to the extent necessary to comply with same, and the remaining provisions of this Agreement shall remain in full force and effect.

18. NOTICE:

Any notice provided for in this Agreement will be sufficient if it is in writing and is delivered by postage prepaid U.S. certified mail, return receipt requested, to the party to be notified at the address specified herein:

If to Town:	Town of Whitestown Town Manager Whitestown Municipal Complex 6210 Veterans Drive Whitestown, Indiana 46075 Katie Barr kbarr@whitestown.in.gov	AND	Ashley Ulbricht Town Attorney Taft Law One Indiana Square- Suite 3500 Indianapolis, Indiana 446204 aulbricht@taftlaw.com
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If to Vendor:

<u>Toric Engineering</u> <u>150 W. Clinton St.</u> <u>Danville IN 46122</u> <u>swalts@toriceng.com</u>

Notwithstanding the above, notice of termination under paragraph 19 hereinbelow shall be effective if given orally, as long as written notice is then provided as set forth hereinabove within five (5) business days from the date of such oral notice.

19. TERMINATION:

19.1 Notwithstanding anything to the contrary contained in this Agreement, Town may, upon notice to Vendor, immediately terminate this Agreement for cause, in the event of a default hereunder by Vendor and/or if

sufficient funds are not appropriated or encumbered to pay for the Goods and Services to be provided hereunder. In the event of such termination, Vendor shall be entitled to receive only payment for the undisputed invoice amount representing conforming Goods and Services delivered as of the date of termination, except that such payment amount shall not exceed the Estimate amount in effect at the time of termination, unless the parties have previously agreed in writing to a greater amount.

19.2 Town may terminate this Agreement at any time upon thirty (30) days prior notice to Vendor. In the event of such termination, Vendor shall be entitled to receive only payment for the undisputed invoice amount of conforming Goods and Services delivered as of the date of termination, except that such payment amount shall not exceed the Estimate amount in effect at the time of termination, unless the parties have previously agreed in writing to a greater amount.

19.3 The Town may terminate this Agreement pursuant to Paragraph 11 hereof, as appropriate.

20. REPRESENTATIONS AND WARRANTIES

The parties represent and warrant that they are authorized to enter into this Agreement and that the persons executing this Agreement have the authority to bind the party which they represent.

21. ADDITIONAL GOODS AND SERVICES

Vendor understands and agrees that Town may, from time to time, request Vendor to provide additional goods and services to Town. When Town desires additional goods and services from Vendor, the Town shall notify Vendor of such additional goods and services desired, as well as the time frame in which same are to be provided. Only after Town has approved Vendor's time and cost estimate for the provision of such additional goods and services, has encumbered sufficient monies to pay for same, and has authorized Vendor, in writing, to provide such additional goods and services, shall such goods and services be provided by Vendor to Town. A copy of the Town's authorization documents for the purchase of additional goods and services shall be numbered and attached hereto in the order in which they are approved by Town.

22. TERM

Unless otherwise terminated in accordance with the termination provisions set forth in Paragraph 19 hereinabove, this Agreement shall be in effect from the Effective Date through December 31, 2024, and shall, on the first day of each January thereafter, automatically renew for a period of one (1) calendar year, unless otherwise agreed by the parties hereto.

23. HEADINGS

All heading and sections of this Agreement are inserted for convenience only and do not form a part of this Agreement nor limit, expand or otherwise alter the meaning of any provision hereof.

24. BINDING EFFECT

The parties, and their respective officers, officials, agents, partners, successors, assigns and legal representatives, are bound to the other with respect to all of the covenants, terms, warranties and obligations set forth in Agreement.

25. NO THIRD PARTY BENEFICIARIES

This Agreement gives no rights or benefits to anyone other than Town and Vendor.

26. DEBARMENT AND SUSPENSION

26.1 The Vendor certifies by entering into his Agreement that neither it nor its principals nor any of its subcontractors are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from entering into this Agreement by any federal agency or by any department, agency or political subdivision of the State of Indiana. The term "principal" for purposes of this Agreement means an officer, director, owner, partner, key employee or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the Vendor.

26.2 The Vendor certifies that it has verified the state and federal suspension and debarment status for all subcontractors receiving funds under this Agreement and shall be solely responsible for any recoupment, penalties or costs that might arise from use of a suspended or debarred subcontractor. The Vendor shall immediately notify the City if any subcontractor becomes debarred or suspended and shall, at the City's request, take all steps required by the City to terminate its contractual relationship with the subcontractor for work to be performed under this Agreement.

27. IRAN CERTIFICATION:

Pursuant to I.C. § 5-22-16.5, the Vendor shall certify that, in signing this document, it does not engage in investment activities within the Country of Iran.

28. ADVICE OF COUNSEL:

The parties warrant that they have read this Agreement and understand it, have had the opportunity to obtain legal advice and assistance of counsel throughout the negotiation of this Agreement, and enter into same freely, voluntarily, and without any duress, undue influence or coercion.

29. ENTIRE AGREEMENT:

This Agreement, together with any exhibits attached hereto or referenced herein, constitutes the entire agreement between Vendor and Town with respect to the subject matter hereof, and supersedes all prior oral or written representations and agreements regarding same. Notwithstanding any other term or condition set forth herein, but subject to paragraph 16 hereof, to the extent any term or condition contained in any exhibit attached to this Agreement or in any document referenced herein conflicts with any term or condition contained in this Agreement, the term or condition contained in this Agreement shall govern and prevail. This Agreement may only be modified by written amendment executed by both parties hereto, or their successors in interest.

[THE REST OF THIS PAGE IS INTENTIONALLY LEFT, BLANK- SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement as follows:

Toric Engineering

BY: 

Authorized Signature

Printed Name: Shannon B. Walts

Title: COO

FID/TIN: 11-3653660

Last Four of SSN if Sole Proprietor: _____

Date: 7-1-24

APPROVED by the Town Council of the Town of Whitestown, Indiana, this ____ day of _____, 2024, by a vote of ____ in favor and ____ against.

THE TOWN COUNCIL OF THE TOWN OF WHITESTOWN, INDIANA

Dan Patterson, President

Tanya Sumner, Vice President

Cheryl Hancock

Tobe Thomas

Eric Nichols

ATTEST:

Matt Sumner, Clerk-Treasurer

EXHIBIT A

GOODS AND SERVICES SPECIFICATIONS/QUOTES



June 5, 2024

RE: Whitestown Lift Station

Dear Mr. Umbanhowar,

Thank you for the opportunity to quote the Replacement AC Unit on the Whitestown Royal Run Lift Station Control Panel. This quote is for hardware cost only. Installation will be billed at 192/hr.

Toric Engineering's price for this work is **\$7,712.00**. This price includes following:

- **Material:**
 - Air conditioner, type 4x, stainless steel
- **Engineering Services Includes:**
 - One (1) year warranty on parts and labor
- **Excludes the following items:**
 - Installation (by billed at T&M rate)

Sales tax not included. Please provide Tax Exempt Form.

Payment Terms: Net 30 days; equipment PO only

This quote is valid for 30 days.

Please call with any questions or comments.

Sincerely,

A handwritten signature in black ink that reads "Nathan Burkhardt".

Nathan Burkhardt
Toric Engineering



ORDER ACKNOWLEDGEMENT		
DATE	NUMBER	PAGE
7/1/2024	0243239	1 of 1

B WHI004
 I WHITESTOWN
 L 6210 VETERANS DRIVE RM 300
 L WHITESTOWN, IN 46075
 T
 O

S
 H WHITESTOWN
 I 7728 S COUNTY RD 450 W
 P BROWNSBURG, IN 46112
 T
 O

INVOICES@WHITESTOWN.IN.GOV

CUSTOMER REF/PO#	SALES ORDER #	JOB TITLE	TERMS
DANNY POWERS	0243239	WHITESTOWN, IN AC REPL.	NET 30

LINE	QTY	PART NO.	DESCRIPTION	UNIT PRICE	EXTENDED
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EMAIL INVOICE TO invoices@whitestown.in.gov

001	8.00	SERVICE		\$192.00	\$1,536.00
			REASON FOR SERVICE CALL: Replace AC unit		
			SERVICE ENGINEER: Todd Metz		
			DATE:		
			WORK PERFORMED:		
002	1.00	MATERIAL	AC UNIT, TYPE 4X, STAINLESS ST	\$7,712.00	\$7,712.00

TERMS OF PAYMENT ARE NET 30 DAYS FROM DATE OF INVOICE.	SUBTOTAL:	\$9,248.00
	TAX:	
	TOTAL:	\$9,248.00

150 W Clinton St, Danville, IN 46122 - Phone: 317-718-1800

www.toriceng.com

EXHIBIT B Invoice

Date: _____

Name of Company: _____

Address & Zip: _____

Telephone No.: _____

Fax No.: _____

Project Name: _____

Invoice No. _____

Purchase Order No: _____

Person Providing Goods/Services	Date Goods/Service Provided	Goods/Services Provided (Describe each good/service separately and in detail)	Goods	Services	Total
			Cost Per Item	Hourly Rate/Hours Worked	
		<i>GRAND TOTAL</i>			

Signature

Printed Name

EXHIBIT C INSURANCE COVERAGES

Worker's Compensation & Disability

Statutory

Limits Employer's Liability:

Bodily Injury by Accident/Disease:	\$100,000 each employee
Bodily Injury by Accident/Disease:	\$250,000 each accident
Bodily Injury by Accident/Disease:	\$500,000 policy limit

Property damage, contractual liability,
products-completed operations:

General Aggregate Limit (other than Products/Completed Operations):	\$500,000
Products/Completed Operations:	\$500,000

Personal & Advertising Injury

Policy Limit:	\$500,000
Each Occurrence Limit:	\$250,000
Fire Damage (any one fire):	\$250,000
Medical Expense Limit (any one person):	\$ 50,000

Comprehensive Auto Liability (owned, hired and non-owned)

Bodily Single Limit:	\$500,000 each accident
Injury and property damage:	\$500,000 each accident
Policy Limit:	\$500,000

Umbrella Excess Liability

Each occurrence and aggregate:	\$500,000
Maximum deductible:	\$ 10,000

EXHIBIT D

AFFIDAVIT OF Toric Engineering

Shannon Walts being first duly sworn, deposes and says that he/she is familiar with and has personal knowledge of the facts herein and, if called as a witness in this matter, could testify as follows:

1. I am over eighteen (18) years of age and am competent to testify to the facts contained herein.
2. I am now and at all times relevant herein have been employed by Toric Engineering (the "Employer") in the position of the CoD.
3. I am familiar with the employment policies, practices, and procedures of the Employer and have the authority to act on behalf of the Employer.
4. The Employer is enrolled and participates in the federal E-Verify program and has provided documentation of such enrollment and participation to the Town of Cannel, Indiana. Company ID 696711
5. The Company does not knowingly employ any unauthorized aliens and/or undocumented persons.

FURTHER AFFIANT SAYETH NOT.

EXECUTED on the 1st day of July, 2024.

Printed: Jennifer K Clark

I certify under the penalties for perjury under the laws of the United States of America and the State of Indiana that the foregoing factual statements and representations are true and correct.

Shannon B. Sawyer
Printed: 7-1-24

