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**AGREEMENT FOR PROFESSIONAL SERVICES**

THIS AGREEMENT FOR PROFESSIONAL SERVICES (“Agreement”) is hereby made and entered into by and between the Town of Whitestown, Indiana, by and through its Town Council (hereinafter "TOWN"), and \_\_\_\_\_ (hereinafter "Professional").

RECITALS

WHEREAS the Town owns and is responsible for the operation and maintenance of its property, personnel, public works and infrastructure; and

WHEREAS, from time to time, TOWN needs professional assistance in fulfilling its foregoing responsibilities; and

WHEREAS, Professional is experienced in providing and desires to provide to TOWN the professional services (“Services”) referenced herein; and

WHEREAS, TOWN desires to engage Professional as an independent contractor for the purpose of providing to TOWN the Services referenced herein;

NOW, THEREFORE, in consideration of the foregoing recitals and the covenants and conditions set forth herein, TOWN and Professional mutually agree as follows:

SECTION 1.            INCORPORATION OF RECITALS

The foregoing Recitals are hereby incorporated into this Agreement and made a part hereof.

SECTION 2.            SCOPE OF SERVICES

- 2.1 TOWN desires to engage Professional as an independent contractor for the Services set forth in attached Exhibit A, incorporated herein by this reference.
- 2.2 Professional understands and agrees that TOWN may, from time to time, request Professional to provide additional or modified Services to TOWN. When TOWN desires additional Services from Professional, the TOWN shall notify Professional of such additional Services desired, as well as the time frame in which same are to be provided. Only after TOWN has approved Professional’s time and cost estimate for the provision of such additional Services, has encumbered sufficient monies to pay for same, and has authorized Professional, in writing, to provide such additional Services, shall such Services be provided by Professional to TOWN. A copy of the TOWN’s authorization documents for the purchase of additional Services shall be numbered and attached hereto in the order in which they are approved by TOWN.
- 2.3 Time is of the essence of this Agreement.

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**SECTION 3. TOWN RESPONSIBILITIES**

- 3.1 TOWN shall provide such information as is reasonably necessary for Professional to understand the Services requested.
- 3.2 TOWN shall provide all data required for provision of Services. Professional may assume that all data so provided is correct and complete.
- 3.3. TOWN shall arrange for Professional to enter upon public and private property as reasonably required for Professional to perform the Services.
- 3.4 TOWN shall designate payment of the Services from appropriate TOWN budget appropriation funds.
- 3.5 TOWN shall designate its Town Council President or his duly authorized representative to act on TOWN's behalf on all matters regarding the Services.

**SECTION 4. PROFESSIONAL'S RESPONSIBILITIES**

- 4.1 Professional shall perform the Services pursuant to the terms of this Agreement and within any applicable time and cost estimate.
- 4.2 Professional shall coordinate with TOWN its performance of the Services.
- 4.3 Professional shall provide the Services by following and applying at all times reasonable and lawful standards as accepted in the industry.

**SECTION 5. COMPENSATION**

- 5.1 Professional estimates that the total price for the Services to be provided to TOWN hereunder shall be no more than \_\_\_\_\_ Dollars (\$\_\_\_\_\_) (the "Estimate"). Professional shall submit an invoice to TOWN no more than once every thirty (30) days for Services provided TOWN during the time period encompassed by such invoice. Invoices shall be submitted on a form containing the same information as that contained on the Professional Services Invoice attached hereto as Exhibit B, incorporated herein by this reference. TOWN shall pay Professional for all undisputed Services rendered and stated on such invoice within sixty (60) days from the date of TOWN's receipt of same. Town shall not be subject to any late fees, service charges, or interest if payment is not made within sixty (60) days. 7
- 5.2 Professional agrees not to provide any Services to TOWN that would cause the total cost of same to exceed the Estimate, without TOWN's prior written consent.

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**SECTION 6.**            **TERM**

Unless otherwise terminated in accordance with the termination provisions set forth in Section 7.1 hereinbelow, 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.

**SECTION 7.**            **MISCELLANEOUS**

**7.1 Termination.**

7.1.1 The obligation to provide all or any portion of the Services under this Agreement may be terminated by TOWN or Professional, without cause, upon thirty (30) days' notice.

7.1.2 The obligation to provide all or any portion of the Services under this Agreement may be terminated by TOWN, for cause, immediately upon Professional's receipt of TOWN's "Notice To Cease Services."

7.1.3 In the event of full or partial Agreement termination, and as full and complete compensation hereunder, Professional shall be paid for all such Services rendered and expenses incurred as of the date of termination that are not in dispute, except that such payment amount shall not exceed the Estimate. Disputed compensation amounts shall be resolved as allowed by law.

**7.2 Binding Effect.**

TOWN and Professional, and their respective officers, officials, agents, partners and successors in interest are bound to the other as to all Agreement terms, conditions and obligations.

**7.3 No Third Party Beneficiaries.**

Nothing contained herein shall be construed to give rights or benefits to anyone other than the parties hereto.

**7.4 Relationship.**

The relationship of the parties hereto shall be as provided for in this Agreement, and neither Professional nor any of its agents, employees or contractors are TOWN employees. Professional shall have the sole responsibility to pay to or for its agents, employees and contractors all statutory, contractual and other benefits and/or obligations as they become due. Professional hereby warrants and indemnifies TOWN for and from any and all costs, fees, expenses and/or damages incurred by TOWN as a result of any claim for wages, benefits or otherwise by any agent, employee or contractor of Professional regarding or related to the subject matter of this Agreement. This indemnification obligation shall survive the termination of this Agreement.

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7.5 Insurance.

Professional shall procure and maintain with an insurer licensed to do business in the State of Indiana such insurance as is necessary for the protection of TOWN and Professional from all claims under workers' compensation, occupational disease and/or unemployment compensation acts, because of errors and omissions, because of bodily injury, including, but not limited to, the personal injury, sickness, disease, or death of any of Professional's employees, agents or contractors and/or because of 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 on attached Exhibit C. Such insurance policies shall not be canceled without thirty (30) days' prior written notice to TOWN.

7.6 Liens.

Professional shall not cause or permit the filing of any lien on any of TOWN's property. In the event such a lien is filed and Professional fails to remove it within ten (10) days after the date of filing, TOWN shall have the right to pay or bond over such lien at Professional's sole cost and expense.

7.7 Default.

In the event Professional: (a) repudiates, breaches or defaults under any of the terms or conditions of this Agreement, including Professional's warranties; (b) fails to perform the Services as specified; (c) fails to make progress so as to endanger timely and proper completion of the Services and does not correct such failure or breach within five (5) business days after receipt of notice from TOWN specifying same; or (d) becomes insolvent, files, or has filed against it, a petition for 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 terminate all or any part of this Agreement, without liability to Professional and to exercise any other rights or remedies available to it at law or in equity.

7.8 Government Compliance.

Professional agrees to comply with all laws, executive orders, rules and regulations applicable to Professional's performance of its obligations under this Agreement, all relevant provisions of which being hereby incorporated herein by this reference, to keep all of Professionals' required professional licenses and certifications valid and current, and to indemnify and hold harmless TOWN from any and all losses, damages, costs, liabilities, damages, costs and attorney fees resulting from any failure by Professional to do so. This indemnification obligation shall survive the termination of this Agreement.

7.9 Indemnification.

7.9.1 Professional shall indemnify and hold harmless TOWN and its officers, officials, attorneys, and employees and agents from all losses, liabilities, claims, judgements and liens, including but not limited to all damages, costs, expenses and attorney fees arising out of any intentional or negligent act or omission of Professional and/or any of its employees, agents or contractors in the performance of this Agreement. This indemnification obligation shall survive the termination of this Agreement.

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7.9.2 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.

7.10 Discrimination Prohibition.

Professional represents and warrants that it and each of its employees, agents and contractors shall comply with all existing and future laws prohibiting discrimination against any employee, applicant for employment and/or other person in the subcontracting of work and/or in the performance of any Services contemplated by this Agreement with respect to hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, subcontracting or work performance hereunder because of race, religion, color, sex, handicap, national origin, ancestry, age, disabled veteran status or Vietnam era veteran status. This indemnification obligation shall survive the termination of this Agreement.

7.11 E-Verify

Pursuant to I.C. § 22-5-1.7 et seq., Professional shall enroll in and verify the work eligibility status of all of its newly-hired employees using the E-Verify program, if it has not already done so as of the date of this Agreement. Professional is further required to execute the attached Affidavit, herein referred to as Exhibit D, which is an Affidavit affirming that: (i) Professional is enrolled and is participating in the E-verify program, and (ii) Professional does not knowingly employ any unauthorized aliens. This Addendum incorporates by reference, and in its entirety, attached Exhibit D. In support of the Affidavit, Professional shall provide the City with documentation that it has enrolled and is participating in the E-Verify program. This Agreement shall not take effect until said Affidavit is signed by Professional and delivered to the City's authorized representative.

Should Professional subcontract for the performance of any work under this Addendum, the Professional shall require any subcontractor(s) to certify by affidavit that: (i) the subcontractor does not knowingly employ or contract with any unauthorized aliens, and (ii) the subcontractor has enrolled and is participating in the E-verify program. Professional shall maintain a copy of such certification for the duration of the term of any subcontract. Professional shall also deliver a copy of the certification to the City within seven (7) days of the effective date of the subcontract.

If Professional, or any subcontractor of Professional, knowingly employs or contracts with any unauthorized aliens, or retains an employee or contract with a person that the Professional or subcontractor subsequently learns is an unauthorized alien, Professional shall terminate the employment of or contract with the unauthorized alien within thirty (30) days ("Cure Period"). Should the Professional or any subcontractor of Professional fail to cure within the Cure Period, the City has the right to terminate this Agreement without consequence.

The E-Verify requirements of this Agreement will not apply, should the E-Verify program cease to exist.

7.12 Severability.

If any provision of this Agreement is held to be invalid, illegal or unenforceable by a court of competent jurisdiction, that provision shall be stricken, and all other provisions of this Agreement that can operate independently of same shall continue in full force and effect.

7.13 Notice.

Any notice, invoice, order or other correspondence required or allowed to be sent pursuant to this Agreement shall be written and either hand-delivered or sent by prepaid U.S. certified mail, return receipt requested, addressed to the parties as follows:

**TOWN:**

**If to TOWN:** TOWN OF WHITESTOWN  
\_\_\_\_\_ Department  
6210 Veterans Drive  
Whitestown, Indiana 46075  
Attn: \_\_\_\_\_  
\_\_\_\_\_  
Katie Barr, Town Manager  
[\\*kbarr@whitestown.in.gov](mailto:*kbarr@whitestown.in.gov)

**AND**

Ashley Ulbricht  
Taft Law  
One Indiana Square  
Suite 3500  
Indianapolis, IN 46204  
[aulbricht@taftlaw.com](mailto:aulbricht@taftlaw.com)

**PROFESSIONAL:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Notwithstanding the above, TOWN may orally provide to Professional any notice required or permitted by this Agreement, provided that such notice shall also then be sent as required by this paragraph within ten (10) business days from the date of such oral notice.

7.14 Effective Date.

The effective date (“Effective Date”) of this Agreement shall be the date on which the last of the parties hereto executes same.

7.15 Governing Law; Lawsuits.

This Agreement shall be governed by and construed in accordance with the laws of the State of Indiana, except for its conflict of laws provisions, as well as by all ordinances and codes of the Town of Whitestown, Indiana. The parties agree that, in the event a lawsuit is filed hereunder, they waive any right to a jury trial they may have, agree to file 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.

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7.16 Waiver.

Any delay or inaction on the part of either party in exercising or pursuing its rights and/or remedies hereunder or under law shall not operate to waive any such rights and/or remedies nor in any way affect the rights of such party to require such performance at any time thereafter.

7.17 Non-Assignment.

Professional shall not assign or pledge this Agreement nor delegate its obligations hereunder without TOWN's prior written consent.

7.18 Entire Agreement.

This Agreement contains the entire agreement of and between the parties hereto with respect to the subject matter hereof, and no prior agreement, understanding or representation pertaining to such subject matter, written or oral, shall be effective for any purpose. No provision of this Agreement may be amended, added to or subtracted from except by an agreement in writing signed by both parties hereto and/or their respective successors in interest. To the extent any provision contained in this Agreement conflicts with any provision contained in any exhibit attached hereto, the provision contained in this Agreement shall prevail.

7.19 Representation and Warranties.

Each party hereto represents and warrants that it is authorized to enter into this Agreement and that any person or entity executing this Agreement on behalf of such party has the authority to bind such party or the party which they represent, as the case may be.

7.20 Headings.

All headings 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.

7.21 Advice of Counsel.

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

7.22 Copyright.

TOWN acknowledges that various materials which may be used and/or generated by Professional in performance of Services, including forms, job description formats, comprehensive position questionnaire, compensation and classification plan and reports are copyrighted. TOWN agrees that all ownership rights and copyrights thereto lie with Professional, and TOWN will use them solely for and on behalf of its own operations. TOWN agrees that it will take appropriate action with its employees to satisfy its obligations with respect to use, copying, protection and security of Professional's property.

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7.23 Personnel.

Professional represents that it has, or will secure at its own expense, all personnel required in performing the services under this Agreement. Such personnel shall not be employees of or have any contractual relationship with TOWN. All of the services required hereunder will be performed by Professional or under his supervision and all personnel engaged in the work shall be fully qualified to perform such services.

7.24 Records and Inspections

Professional shall maintain full and accurate records with respect to all matters covered under this agreement for three (3) years after the expiration or early termination of this agreement. TOWN shall have free access at all proper times to such records and the right to examine and audit the same and to make transcripts there from, and to inspect all program data, documents, proceedings and activities.

7.25 Accomplishment of Project

Professional shall commence, carry on, and complete the project with all practicable dispatch, in a sound economical and efficient manner, in accordance with the provisions thereof and all applicable laws. In accomplishing the project, Professional shall take such steps as are appropriate to ensure that the work involved is properly coordinated with related work being carried on within TOWN's organization.

7.26 Debarment And Suspension

7.26.1 The Professional certifies by entering into this 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 Professional.

7.26.2 The Professional 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 Professional shall immediately notify the TOWN if any subcontractor becomes debarred or suspended, and shall, at the TOWN's request, take all steps required by the TOWN to terminate its contractual relationship with the subcontractor for work to be performed under this Agreement.

7.27 Access to Public Records Act

Professional understands and agrees that any "public record", as that term is defined in Indiana Code 5-14-3-2(m), as amended, that is related to the subject matter of this Agreement, whether the same is in the possession or control of the Professional or the City, shall be subject to release under and pursuant to the provisions of Indiana's Access to Public Records Act, as codified in Indiana Code 5-14-3-1, et seq., as amended.



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7.28 Iran Certification.

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

7.29 Job Site Safety.

Neither the professional activities or the Professional, nor the presence of the Professional or its employees and subconsultants at a construction/project site, shall relieve the general contractor of its obligations, duties and responsibilities including, but not limited to, construction means, methods, sequence, techniques or procedures necessary for performing, superintending and coordinating the work in accordance with the contract documents and any health or safety precautions required by any regulatory agencies. The Professional and its personnel have no authority to exercise any control over any construction contractor or its employees in connection with their work or any health or safety programs or procedures.

7.30 Non-Appropriation Clause.

The parties acknowledge that TOWN is a governmental entity whose funds are subject to appropriation by its fiscal body. If at any time during any term of this Agreement, the fiscal body of TOWN should fail to appropriate sufficient funds to continue this Agreement, this Agreement shall become null and void. In the event of non-appropriation of funds, TOWN will give notice to Professional immediately of such failure and shall pay Professional for all Services provided prior to the exhaustion of the appropriated funds. TOWN agrees to seek funding for the continuation of this Agreement during each budget cycle during any term of this Agreement.

*(remainder of page intentionally left blank)*

\_\_\_\_\_  
\_\_\_\_\_

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

\_\_\_\_\_

BY:

\_\_\_\_\_  
Authorized Signature

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

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

FID/TIN: \_\_\_\_\_

Last Four of SSN if Sole Proprietor: \_\_\_\_\_

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

**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

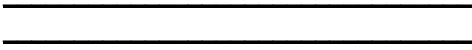
\_\_\_\_\_  
Cheryl Hancock

\_\_\_\_\_  
Tobe Thomas

\_\_\_\_\_  
Eric Nichols

ATTEST:

\_\_\_\_\_  
Matt Sumner, Clerk-Treasurer



**EXHIBIT A**  
**PROFESSIONAL SERVICES**

**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

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## 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

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EXHIBIT D

AFFIDAVIT OF \_\_\_\_\_

\_\_\_\_\_, 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 \_\_\_\_\_ (the "Employer") in the position of the \_\_\_\_\_.
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 Whitestown, Indiana.
5. The Company does not knowingly employ any unauthorized aliens and/or undocumented persons.

FURTHER AFFIANT SAYETH NOT.

EXECUTED on the \_\_\_\_\_ day of \_\_\_\_\_, 2024.

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

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.

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