

**COMMON COUNCIL  
Agenda Request Form**

(Form B-01-2012)

*Organizations and individuals are asked to submit a request form and supporting documents to be placed on the agenda. You will be contacted by the City confirming the date of the meeting in which your request will be heard. Please make sure that your contact information is accurate in case we need to get in touch with you. The Common Council meets on the 1st and 3rd Monday of each month at 6:00 p.m. in City Hall located at 70 E. Monroe Street.*

<b>Date Submitted:</b>	<b>09.29.2020</b>	<b>Meeting Date:</b>	<b>10.05.2020</b>
<b>Contact Information:</b>			
<b>Requested by:</b>	<b>Lynnette Gray</b>		
<b>On Behalf of Organization or Individual:</b> <b>City of Franklin</b>			
<b>Telephone:</b>	<b>317-738-3365</b>		
<b>Email address:</b>	<b>lynng@jgmlawfirm.com</b>		
<b>Mailing Address:</b>	<b>63 E. Court St., P.O. Box 160, Franklin, IN 46131</b>		
<b>Describe Request:</b>			
Approval of Joint Resolution of the Board of Public Works and Safety and Common Council approving Interlocal Agreement between Town of New Whiteland and City of Franklin Concerning Sale of Personal Property (a fire squad truck).			
<b>List Supporting Documentation Provided:</b>			
Resolution 20-08			
Interlocal Agreement			
<b>Who will present the request?</b>			
<b>Name:</b>	<b>Lynnette Gray, City Attorney</b>	<b>Telephone:</b>	<b>317-736-3365</b>

*In order for an individual and/or agency to be considered for new business on the Common Council agenda, this reservation form and supporting documents must be received in the Mayor's office no later than 4:00 p.m. on the Wednesday before the meeting.*

**RESOLUTION NO: 20-08  
OF THE CITY OF FRANKLIN, INDIANA  
BOARD OF PUBLIC WORKS AND SAFETY & CITY OF FRANKLIN  
COMMON COUNCIL**

**JOINT RESOLUTION APROOVING INTERLOCAL AGREEMENT BETWEEN TOWN  
OF NEW WHITELAND AND CITY OF FRANKLIN CONCERNING THE SALE OF  
PERSONAL PROPERTY**

**WHEREAS**, the City of Franklin, Indiana, acting by and through its Board of Public Works and Safety is a government organization providing services to the citizens of Franklin, Indiana and is a disposing agent as that term is contemplated pursuant to IC 36-1-11-2; and

**WHEREAS**, the Common Council is the legislative and fiscal body for the City of Franklin which exercises the power of appropriation of monies pursuant to IC 36-4-6-18; and

**WHEREAS**, the Board of Public Works and Safety has determined that a certain fire squad vehicle utilized by the Franklin Fire Department and previously purchased by the City of Franklin is surplus property no longer needed by the City of Franklin such that the continued maintenance and storage of said property is not fiscally prudent; and

**WHEREAS**, the Board of Public Works and Safety through its authorized representative, City of Franklin Fire Chief has entered into negotiations with the Town of New Whiteland, a government organization, which desires to purchase said surplus fire squad truck; and

**WHEREAS**, the Board of Public Works and Safety as the disposing agent of property has negotiated an Interlocal Agreement between the City of Franklin and the Town of New Whiteland such that the Town of New Whiteland shall purchase said surplus fire squad truck from the City of Franklin pursuant to the terms of an Interlocal Agreement; and

**WHEREAS**, a copy of said Interlocal Agreement is attached to this joint resolution as Exhibit "A"; and

**WHEREAS**, the Common Council of the City of Franklin agrees that the sale of said fire truck in accordance with the terms and conditions of the Interlocal Agreement is appropriate and in the best interests of the City of Franklin;

**NOW THEREFORE BE IT RESOLVED** that in consideration of the foregoing and other valuable consideration, the Board of Public Works and Safety and the Common Council of the City of Franklin do hereby adopt the above aforementioned as findings of fact;

**BE IT FURTHER RESOLVED** that the Board of Public Works and Safety and the Common Council of the City of Franklin do authorize and consent to the sale of the fire squad truck as set forth under the terms and conditions of the Interlocal Agreement;

**IT IS FURTHER RESOLVED** this Resolution shall be in full force and effect from and after the adoption of this resolution and that the Mayor, on behalf of the Board of Public Works and Safety and the Common Council is authorized to take all actions necessary to sell and transfer the fire squad truck in accordance with the terms of the Interlocal Agreement attached hereto as Exhibit "A".

**INTRODUCED & APPROVED** by the Board of Public Works and Safety of the City of Franklin, Johnson County, Indiana, this \_\_\_\_ day of October, 2020.

**City of Franklin, Indiana, By its Board of Public Works and Safety:**

Voting Affirmative:

\_\_\_\_\_  
Mayor Steve Barnett

\_\_\_\_\_  
Robert Swinehamer, Member

\_\_\_\_\_  
Melissa Jones, Member

Voting Opposed:

\_\_\_\_\_  
Mayor Steve Barnett

\_\_\_\_\_  
Robert Swinehamer, Member

\_\_\_\_\_  
Melissa Jones, Member

**Attest:**

\_\_\_\_\_  
Jayne Rhoades,  
City Clerk-Treasurer

**DULY ADOPTED** on this \_\_\_\_\_ day of October, 2020 by the Common Council of the City of Franklin, Johnson County, Indiana.

**City of Franklin, Indiana, By its Common Council:**

Voting Affirmative:

Voting Opposed:

\_\_\_\_\_  
Kenneth Austin, President

\_\_\_\_\_  
Kenneth Austin, President

\_\_\_\_\_  
Melissa Jones

\_\_\_\_\_  
Melissa Jones

\_\_\_\_\_  
Daniel J. Blankenship

\_\_\_\_\_  
Daniel J. Blankenship

\_\_\_\_\_  
Robert D. Heuchan

\_\_\_\_\_  
Robert D. Heuchan

\_\_\_\_\_  
Anne McGuinness

\_\_\_\_\_  
Anne McGuinness

\_\_\_\_\_  
Chris Rynerson

\_\_\_\_\_  
Chris Rynerson

\_\_\_\_\_  
Shawn Taylor

\_\_\_\_\_  
Shawn Taylor

Attest:

\_\_\_\_\_  
Jayne Rhoades  
City Clerk-Treasurer

Presented by me to the Mayor of the City of Franklin for his approval pursuant to Indiana Code § 36-4-6-15, 16, this \_\_\_\_\_ day of October, 2020 at \_\_\_\_\_ o'clock p.m.

\_\_\_\_\_  
Jayne Rhoades,  
City Clerk-Treasurer

This Resolution having been passed by the legislative body and presented to me for approval and duly adopted, pursuant to Indiana Code § 36-4-6-16(a)(1) this \_\_\_\_\_ day of October, 2020 at \_\_\_\_\_ o'clock p.m.

\_\_\_\_\_  
Stephen Barnett  
Mayor

Attest:

\_\_\_\_\_  
Jayne Rhoades,  
City Clerk-Treasurer

Prepared by:  
Lynnette Gray, City Attorney



**INTERLOCAL AGREEMENT  
BETWEEN  
CITY OF FRANKLIN, INDIANA AND  
TOWN OF NEW WHITELAND, INDIANA**

**CONCERNING THE SALE OF PERSONAL PROPERTY**

THIS INTERLOCAL AGREEMENT ("Agreement") is made and entered into on this \_\_\_\_ day of \_\_\_\_\_, 2020, by and between the Town of New Whiteland, Indiana, by and through the New Whiteland Town Council, a municipality organized and formed under the laws of the State of Indiana ("Town") and the City of Franklin, by and through its Board of Public Works and Safety ("City") (collectively Town and City referred to as "Parties" or individually as "Party").

WHEREAS, the Town desires to purchase from the City certain personal property for use in its fire services within the Town of New Whiteland;

WHEREAS, the City desires to sell to the Town certain personal property;

WHEREAS, the Town and City desire to enter into an Agreement defining their rights, duties and liabilities relating to the sale pursuant to IC 36-1-7 et seq;

NOW THEREFORE, in consideration of the premises, mutual covenants herein contained, and each act done pursuant hereto by each of the Parties, it is hereby agreed by and between the Parties as follows:

**SECTION 1. PURPOSE**

- 1.1 The purpose of this Agreement is for the Town to purchase certain personal property from City for the Town's use in providing fire services within the Town of New Whiteland. Specifically, New Whiteland wishes to purchase a certain squad truck from the City of Franklin.

**SECTION 2. GENERAL PROVISIONS**

2.1 Incorporation of Recitals and Exhibits

- (a) The Recitals referred to herein are true and accurate in all respects and made a part hereof for all purposes as if fully set forth, and constitute additional promises, representations and warranties of the Parties and are incorporated within this Agreement as if fully rewritten herein.

## 2.2 Authorized Representatives

- (a) The Town designates, \_\_\_\_\_, as the representative authorized to act on behalf of Town, with respect to this Agreement and serve as the Town's primary point of contact ("Town Representative");
- (b) The City designates, Chief Matt Culp, as the representative authorized to act on behalf of City, with respect to this Agreement and serve as the City's primary point of contact ("City Representative");
- (c) Parties Authorizations:
  - (i) Both Parties are organized and existing pursuant to the laws of the State of Indiana and have the power and authority to enter into this Agreement and to carry out its obligations hereunder and the execution of this Agreement has been duly authorized by the undersigned representative of each Party.

## **SECTION 3. PURCHASED PERSONAL PROPERTY**

- 3.1 Subject to the further terms and conditions hereof, the City hereby sells, assigns and transfers to the Town and the Town hereby purchases from the City, as of the Closing Date (as defined in Section 6) the following personal property of the City ("Purchased Property"):
  - (a) 2007 Ford Expedition, VIN #1FMFK16587LA63025 with approximately 72,000 miles;
- 3.2 The transfer of the Purchased Property by the City to the Town shall be affected by a bill of sale or other instruments of transfer as hereinafter specified ("Transfer Documents").
- 3.3 Photographs of the vehicle in question are attached to this Interlocal Agreement as Exhibit "1" in three (3) parts.

## **SECTION 4. PURCHASE PRICE**

- 4.1 The total purchase price for the Purchased Property is the sum of Three Thousand Five Hundred Dollars and No Cents (\$3,500.00).

## **SECTION 5. PAYMENT OF THE PURCHASE PRICE**

- 5.1 The Purchase Price shall be paid at the Closing Date by delivery of a check

or wire transfer or otherwise in immediately available funds to the City.

**SECTION 6. CLOSING DATE**

- 6.1 The transaction contemplated by this Agreement shall be consummated within seven (7) days of both entities executing and approving this Interlocal Agreement. Such closing to occur at a location as the Parties may determine.

**SECTION 7. DELIVERY AND TRANSFER OF PURCHASED PROPERTY.**

- 7.1 The transfer of the Purchased Property from the City to the Town shall take place as of the Closing Date.

**SECTION 8. REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE CITY**

- 8.1 The City hereby represents, warrants and covenants to the Town and its successors and assigns that as of the Closing Date:
- (a) The City has taken all necessary action to authorize the execution, delivery and performance of this Agreement and all other agreements, instruments, certificates and documents contemplated hereby, including without limitation the Transfer Documents;
  - (b) The City as of the Closing Date, will have good and marketable title to the Purchased Property, free and clear of any mortgage, pledges, liens, conditional sales agreements, encumbrances, security interest, charges or other exceptions or limitations on title, except such obligations which are to be assigned to or assumed by Purchaser or as otherwise set forth herein.

**SECTION 9. DISCLAIMER**

- 9.1 Except as is otherwise expressly provided in Section 8, the City does hereby specifically disclaim any warranty (oral or written) concerning:
- (a) The nature and condition of the Purchased Property, the suitability thereof for any and all activities and uses that the Town elects to conduct therewith;
  - (b) The manner, construction, condition and state of repair or lack of repair of the Purchased Property;
  - (c) The compliance of, or their operation with any laws, rules, ordinances or regulations of any government or other body; and



(d) Any other matter whatsoever except as expressly set forth in this Agreement.

- 9.2 **EXCEPT AS IS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, THE SALE OF PURCHASED PROPERTY AS PROVIDED FOR HEREIN IS MADE ON A STRICTLY "AS IS" "WHERE IS" BASIS AS OF THE CLOSING DATE, AND THE CITY MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW, INCLUDING, BUT IN NO WAY LIMITED TO, ANY WARRANTY OF QUANTITY, QUALITY, CONDITION, MERCHANTABILITY, SUITABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE PURCHASED PROPERTY;**
- 9.3 THE TOWN SPECIFICALLY ACKNOWLEDGES THAT IT IS NOT RELYING ON (AND THE CITY HEREBY DISCLAIMS AND RENOUNCES) ANY REPRESENTATIONS OR WARRANTIES MADE BY OR ON BEHALF OF THE CITY OF ANY KIND OR NATURE WHATSOEVER, EXCEPT FOR THOSE PARTICULAR REPRESENTATIONS AND WARRANTIES EXPRESSLY PROVIDED IN SECTION 8 OF THIS AGREEMENT;
- 9.4 THE TOWN ACKNOWLEDGES AND AGREES THAT THE WAIVERS, RELEASES AND OTHER PROVISIONS CONTAINED IN THIS SECTION 9 WERE A MATERIAL FACTOR IN THE CITY'S ACCEPTANCE OF THE PURCHASE PRICE AND THAT THE CITY IS UNWILLING TO SELL THE PURCHASED PROPERTY TO THE TOWN UNLESS THE CITY IS RELEASED AS EXPRESSLY SET FORTH ABOVE;
- 9.5 THE TOWN, WITH THEIR COUNSEL, HAS FULLY REVIEWED THE DISCLAIMERS AND WAIVERS SET FORTH IN THIS AGREEMENT, AND UNDERSTANDS THE SIGNIFICANCE AND EFFECT THEREOF;
- 9.6 THE TERMS AND CONDITIONS OF THIS SECTION 9 WILL EXPRESSLY SURVIVE THE CLOSING, AND WILL NOT MERGE WITH THE PROVISIONS OF ANY CLOSING DOCUMENTS.

#### **SECTION 10. REPRESENTATIONS AND WARRANTIES OF THE TOWN**

- 10.1 The Town hereby represents, warrants and covenants to the City and its successors and assigns that as of the Closing Date:
- (a) The Town has taken all necessary action to authorize the execution, delivery and performance of this Agreement and all other agreements, instruments, certificates and documents

contemplated hereby, including without limitation the Transfer Documents.

**SECTION 11. TERMINATION OF AGREEMENT.**

- 11.1 Notwithstanding anything contained herein to the contrary, this Agreement, and the obligations of the Parties hereto and their respective assigns and successors in interest, may be terminated upon the mutual agreement of the Parties.

**SECTION 12. DISPUTE RESOLUTION**

- 12.1 Any disputes that may arise under this Agreement shall be resolved by the Parties' respective executive officers or their designees;
- 12.2 In the event the Parties are unable to resolve their claims through the executive officers or their designees, the Parties shall endeavor to resolve their claims by mediation administered pursuant to the Indiana Rules for Alternative Dispute Resolution in effect on the date of the Agreement. The Parties shall equally share the mediator's fees and any filing fees. The mediation shall be held in Franklin, Indiana, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof;
- 12.3 The Parties agree that the exclusive and sole venue for any claim arising out of or relating to the Agreement shall be any court of competent jurisdiction located in Johnson County, Indiana.

**SECTION 13. RECORDING AND FILING**

- 13.1 This Agreement shall be recorded in the Office of the Recorder of Johnson County, Indiana and filed with the Indiana State Board of Accounts within sixty (60) days of execution.

**SECTION 14. EFFECTIVE DATE**

- 14.1 This Agreement shall be effective upon the occurrence of the following:
- (a) Signing by the Parties hereto;
  - (b) The passage of appropriate resolutions and ordinances, recordation of this Agreement with the Johnson County Recorder; and
  - (c) Filing of this Agreement with the Indiana State Board of Accounts, Johnson County Auditor, and Auditor of the State.

## **SECTION 15. INDEMNIFICATION**

- 15.1 Each Party agrees to indemnify and hold harmless the other Party hereto, and its directors, officers, agents, and employees of and from any claims, damages, or expenses, including reasonable attorney fees, arising or alleged to arise in connection with this Agreement, and related documents, the performance or nonperformance of this Agreement, if such claim, damage, or expense is caused or alleged to be caused by the negligence, breach of contract or warranty, or any other breach of duty by such Party.

## **SECTION 16. NOTICE**

- 16.1 All notices required to be given under this Agreement will be made in writing and will be sent by certified or registered mail addressed to the Parties, as follows:

Town:

Town of New Whiteland  
President of Town Council and Town Manager  
540 Tracy Road, Suite A  
New Whiteland, IN 46184

With copy to:

Lee Robbins  
Town Counsel  
Williams Barrett & Wilkowski  
600 North Emerson Avenue  
Greenwood, IN 46143

City:

City of Franklin  
Steve Barnett, Mayor  
70 East Monroe Street  
Franklin, IN 46131

With copy to:

Lynnette Gray  
City Attorney  
Johnson Gary & Johnson  
63 East Court Street  
Franklin, IN 46131

## **SECTION 17. PARTIES BOUND BY THIS AGREEMENT**

- 17.1 This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors in interest and assignees. If any of the Purchased Property or any interest therein passes or is transferred to any person other than pursuant to this Agreement, such transferee shall receive and hold such Purchased Property subject to the terms of this Agreement and subject to all obligations hereunder with respect to the transfer of such Purchased Property to such transferee and to any subsequent transfer by such transferee, unless otherwise provided herein.

## **SECTION 18. ENTIRE AGREEMENT; AMENDMENT**

- 18.1 The written terms and provisions of this Agreement shall supersede all prior verbal statements of any officer or other representative of the Town or City and such statements shall not be effective or be construed as entering into or forming a part of, or altering in any manner whatsoever, this Agreement;
- 18.2 This Agreement contains and constitutes the entire agreement of the Parties regarding the subject matter hereof, and there are no other agreements, written or oral, between the Parties affecting the subject matter hereof;
- 18.3 No amendment of this Agreement shall be effective unless the same is made in writing and signed by the Parties hereto.

## **SECTION 19. SEVERABILITY**

- 19.1 Any provision of this Agreement prohibited by law or invalid under any law shall be ineffective only to the extent of such prohibition, without in any manner invalidating or affecting the remaining provisions of this Agreement such provisions being deemed severable.

## **SECTION 20. ASSIGNMENT**

- 20.1 Neither Party shall assign, pledge or hypothecate this Agreement or any of its rights hereunder.

## **SECTION 21. GOVERNING LAW; CONSTRUCTION**

- 21.1 This Agreement shall be interpreted and enforced according to the laws of the State of Indiana;
- 21.2 All headings of sections of this Agreement are inserted for convenience only, and do not form part of this Agreement or limit, expand or otherwise

alter the meaning of any provisions hereof;

- 21.3 This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which shall constitute one and the same Agreement;
- 21.4 The terms "hereof", "herein" and "hereunder", and words of similar import, shall be construed to refer to this Agreement as a whole, and not to any particular paragraph or provision, unless expressly so stated;
- 21.5 The word "person" shall mean any natural person, partnership, limited liability company, corporation and any other form of business or legal entity;
- 21.6 All words or terms used in this Agreement, regardless of the number or gender in which they are used, shall be deemed to include any other number and any other gender as the context may require;
- 21.7 The provisions of this Agreement are intended to be for the sole benefit of the Parties hereto, and their respective successors and assigns, and none of the provisions of this Agreement are intended to be, nor shall they be construed to be, for the benefit of any third party;
- 21.8 This Agreement shall be construed without regard to any presumption or rule requiring construction against the Party causing such instrument to be drafted;
- 21.9 Each and every provision of law and governmental regulation required by law to be inserted in the Agreement such as this shall be deemed to be inserted herein or therein and this Agreement shall read and shall be enforced as though so included therein, and if through mistake, inadvertence or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either Party, this Agreement shall be deemed to be amended to make such insertion or correction.

## **SECTION 22. COUNTERPARTS**

- 22.1 This Agreement and any amendments, waivers, consents or supplements may be executed in any number of counterparts and by different Parties hereto in separate counterparts, each of which, when so executed and delivered, shall be deemed an original, but all of which counterparts together shall constitute but one Agreement.

## **SECTION 23. ELECTRONIC APPROVAL**

- 23.1 This Agreement together with any document contemplated to be executed

in connection herewith may be transmitted between the Parties electronically or digitally. The Parties intend that electronically or digitally transmitted signatures constitute original signatures and are binding on the Parties. The original documents shall be promptly executed and/or delivered.

IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year indicated below.

**Town of New Whiteland**

**City of Franklin**

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

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

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

Prepared by:  
Lynnette Gray  
Attorney, City of Franklin  
JOHNSON GRAY & JOHNSON  
63 E. Court St.  
Franklin, IN 46131

Reviewed by:  
Lee Robbins  
Town Counsel  
WILLIAMS BARRETT & WILKOWSKI  
600 North Emerson Avenue  
Greenwood, IN 46143









