

SECTION 00500

FORM OF AGREEMENT

BETWEEN OWNER AND CONTRACTOR

ON THE BASIS OF A STIPULATED PRICE

THIS AGREEMENT is dated as of the _____ day of _____ in the year 2011 by and between the Board of Public Works and Safety, West Lafayette, Indiana (hereinafter called OWNER) and Atlas Excavating, Inc. (hereinafter called CONTRACTOR).

OWNER and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

Article 1. WORK

CONTRACTOR shall complete all Work as specified or indicated in the Contract Documents.

The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

**West Lafayette, Indiana
Western Sanitary Sewer Interceptor – Division V**

Article 2. ENGINEER

The Project has been designed by Greeley and Hansen who is hereinafter called ENGINEER and who is to act as OWNER's representative, assume all duties and responsibilities and have the rights and authority assigned to ENGINEER in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

Article 3. CONTRACT TIMES

3.1 Substantial Completion

Milestone 1 – Bidder agrees that the Work associated with the 12” Force Main (Green Meadows), 120” Sanitary Special Manhole, and Vortex Insert will be substantially complete within **100 calendar days** of the Notice-to-Proceed. Substantial completion shall be defined as the installation of sanitary force main pipe, installation of 120” manhole and vortex insert, testing, placing force main and vortex into operation, and restoring surfaces to grade.

Milestone 2 - Bidder agrees that the remaining Work will be substantially complete within **150 calendar days** of the Notice-to-Proceed as provided in paragraph 2.03 of the General Conditions.

3.2 Final Completion and Readiness for Final Payment

All Work shall be completed and ready for final payment in accordance with paragraph 14.07 of the General Conditions within **180 calendar days** of the Notice-to-Proceed.

3.3 Liquidated Damages

OWNER and CONTRACTOR recognize that time is of the essence of this Agreement and that OWNER will suffer financial loss if the Work is not completed within the times specified in paragraphs 3.1 and 3.2 above plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. They also recognize the delays, expense and difficulties involved in proving, in a legal or arbitration proceeding, the actual loss suffered by OWNER if the Work is not completed on time. Accordingly, instead of requiring any such proof, OWNER and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty) CONTRACTOR shall pay OWNER Seven Hundred Fifty dollars (\$750) for each calendar day that expires after the time specified for Substantial Completion. CONTRACTOR shall pay OWNER Five Hundred dollars (\$500) for each calendar day that expires after the time specified for Final Completion and Readiness for Final Payment.

Article 4. CONTRACT PRICE

OWNER shall pay CONTRACTOR for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the total sum of the amounts for all Contract Items. The final quantities and Contract Price will be determined in accordance with paragraph 11.03 of the General Conditions.

BID

Contract Item No.	Estimated Quantity	Description and Price in Words	Price in Figures	
			Unit Price	Computed Total Price For Item
1	Lump Sum	Provide Mobilization and Demobilization as specified for the lump sum price of <u>One Hundred and One Thousand</u> dollars and <u>Zero</u> cents.	Lump Sum	\$ <u>101,000</u>
2	Lump Sum	Provide Maintenance of Traffic as shown and specified for the lump sum price of <u>Fifty Thousand</u> dollars and <u>Zero</u> cents.	Lump Sum	\$ <u>50,000</u>
3	Lump Sum	Demolish Property No. 1 as shown and specified for the lump sum price of <u>Fifteen Thousand</u> dollars and <u>Zero</u> cents.	Lump Sum	\$ <u>15,000</u>
4	Lump Sum	Demolish Property No. 2 as shown and specified for the lump sum price of <u>Fifteen Thousand</u> dollars and <u>Zero</u> cents.	Lump Sum	\$ <u>15,000</u>
5	Lump Sum	Demolish Sanitary and Storm Sewers as shown and specified for the lump sum price of <u>Twenty-Five Thousand</u> dollars and <u>Zero</u> cents.	Lump Sum	\$ <u>25,000</u>
6	Lump Sum	Demolish Windsor Drive Lift Station as shown and specified for the lump sum price of <u>Fifteen Thousand</u> dollars and <u>Zero</u> cents.	Lump Sum	\$ <u>15,000</u>

Contract Item No.	Estimated Quantity	Description and Price in Words	Price in Figures	
			Unit Price	Computed Total Price For Item
7	Lump Sum	Demolish Blackbird Pond Lift Station as shown and specified for the lump sum price of <u>Fifteen Thousand</u> dollars and <u>Zero</u> cents.	Lump Sum	\$ <u>15,000</u>
8	Lump Sum	Demolish Camelback Lift Station as shown and specified for the lump sum price of <u>Fifteen Thousand</u> dollars and <u>Zero</u> cents.	Lump Sum	\$ <u>15,000</u>
9	330 Lineal Feet	Furnish and install 6-inch PVC (SDR 26) Sanitary Sewer Laterals , complete in place as shown and specified for the unit price of <u>One Hundred Seventy-Five</u> dollars and <u>Zero</u> cents per lineal foot.	\$ <u>175</u>	\$ <u>57,750</u>
10	90 Lineal Feet	Furnish and install 8-inch PVC (SDR 26) Sanitary Sewer , complete in place as shown and specified for the unit price of <u>One Hundred Ninety</u> dollars and <u>Zero</u> cents per lineal foot.	\$ <u>190</u>	\$ <u>17,100</u>
11	155 Lineal Feet	Furnish and install 8-inch PVC (SDR 35) Sanitary Sewer , complete in place as shown and specified for the unit price of <u>One Hundred Eighty-Five</u> dollars and <u>Zero</u> cents per lineal foot.	\$ <u>185</u>	\$ <u>28,675</u>

Contract Item No.	Estimated Quantity	Description and Price in Words	Price in Figures	
			Unit Price	Computed Total Price For Item
12	1,070 Lineal Feet	Furnish and install 12-inch PVC (SDR 26) Sanitary Sewer , complete in place as shown and specified for the unit price of <u>Two Hundred Fifty</u> dollars and <u>Zero</u> cents per lineal foot.	\$ <u>250</u>	\$ <u>267,500</u>
13	265 Lineal Feet	Furnish and install 15-inch PVC (SDR 35) Sanitary Sewer , complete in place as shown and specified for the unit price of <u>One Hundred Ninety-Five</u> dollars and <u>Zero</u> cents per lineal foot.	\$ <u>195</u>	\$ <u>51,675</u>
14	975 Lineal Feet	Furnish and install 18-inch PVC (SDR 26) Sanitary Sewer , complete in place as shown and specified for the unit price of <u>Two Hundred</u> dollars and <u>Zero</u> cents per lineal foot.	\$ <u>200</u>	\$ <u>195,000</u>
15	1,060 Lineal Feet	Furnish and install 24-inch PVC (SDR 26) Sanitary Sewer , complete in place as shown and specified for the unit price of <u>Three Hundred</u> dollars and <u>Zero</u> cents per lineal foot.	\$ <u>300</u>	\$ <u>318,000</u>

Contract Item No.	Estimated Quantity	Description and Price in Words	Price in Figures	
			Unit Price	Computed Total Price For Item
16	112 Lineal Feet	Furnish and install 12-inch PVC Sanitary Sewer Crossing Under U.S. 231 , complete in place as shown and specified for the unit price of <u>Four Hundred Fifty</u> dollars and <u>Zero</u> cents per lineal foot.	\$ <u>450</u>	\$ <u>50,400</u>
17	106 Lineal Feet	Furnish and install 24-inch PVC Sanitary Sewer Crossing Under U.S. 231 , complete in place as shown and specified for the unit price of <u>Seven Hundred Fifty</u> dollars and <u>Zero</u> cents per lineal foot.	\$ <u>750</u>	\$ <u>79,500</u>
18	100 Lineal Feet	Furnish and install 12-inch PVC (SDR 21) Sanitary Force Main , complete in place as shown and specified for the unit price of <u>One Hundred</u> dollars and <u>Zero</u> cents per lineal foot.	\$ <u>100</u>	\$ <u>10,000</u>
19	185 Lineal Feet	Furnish and install 12-inch RCP (Class III) Storm Sewer , complete in place as shown and specified for the unit price of <u>Sixty</u> dollars and <u>Zero</u> cents per lineal foot.	\$ <u>60</u>	\$ <u>11,100</u>
20	505 Lineal Feet	Furnish and install 15-inch RCP (Class III) Storm Sewer , complete in place as shown and specified for the unit price of <u>One Hundred</u> dollars and <u>Zero</u> cents per lineal foot.	\$ <u>100</u>	\$ <u>50,500</u>

Contract Item No.	Estimated Quantity	Description and Price in Words	Price in Figures	
			Unit Price	Computed Total Price For Item
21	17 Each	Furnish and install 48-inch Sanitary Manhole , complete in place as shown and specified for the unit price of <u>Eight Thousand</u> dollars and <u>Zero</u> cents each.	\$ <u>8,000</u>	\$ <u>136,000</u>
22	3 Each	Furnish and install 48-inch Sanitary Drop Manhole , complete in place as shown and specified for the unit price of <u>Fifteen Thousand</u> dollars and <u>Zero</u> cents each.	\$ <u>15,000</u>	\$ <u>45,000</u>
23	1 Each	Furnish and install 48-inch Sanitary Special Manhole , complete in place as shown and specified for the unit price of <u>Ten Thousand</u> dollars and <u>Zero</u> cents each.	\$ <u>10,000</u>	\$ <u>10,000</u>
24	2 Each	Furnish and install 60-inch Sanitary Manhole , complete in place as shown and specified for the unit price of <u>Sixteen Thousand</u> dollars and <u>Zero</u> cents each.	\$ <u>16,000</u>	\$ <u>32,000</u>
25	3 Each	Furnish and install 60-inch Sanitary Drop Manhole , complete in place as shown and specified for the unit price of <u>Eighteen Thousand</u> dollars and <u>Zero</u> cents each.	\$ <u>18,000</u>	\$ <u>54,000</u>

Contract Item No.	Estimated Quantity	Description and Price in Words	Price in Figures	
			Unit Price	Computed Total Price For Item
26	1 Each	Furnish and install 60-inch Sanitary Special Manhole , complete in place as shown and specified for the unit price of <u>Eleven Thousand</u> dollars and <u>Zero</u> cents each.	\$ <u>11,000</u>	\$ <u>11,000</u>
27	1 Each	Furnish and install 72-inch Sanitary Sewer Manhole , complete in place as shown and specified for the unit price of <u>Twelve Thousand</u> dollars and <u>Zero</u> cents each.	\$ <u>12,000</u>	\$ <u>12,000</u>
28	1 Each	Furnish and install 120-inch Sanitary Special Manhole , complete in place as shown and specified for the unit price of <u>Eighty Thousand</u> dollars and <u>Zero</u> cents each.	\$ <u>80,000</u>	\$ <u>80,000</u>
29	Lump Sum	Furnish and install Vortex Insert , complete in place as shown and specified for the unit price of <u>Thirty-Two Thousand</u> dollars and <u>Zero</u> cents each.	Lump Sum	\$ <u>32,000</u>
30	5 Each	Furnish and install 48-inch Storm Manhole , complete in place as shown and specified for the unit price of <u>Two Thousand Four Hundred</u> dollars and <u>Zero</u> cents each.	\$ <u>2,400</u>	\$ <u>12,000</u>

Contract Item No.	Estimated Quantity	Description and Price in Words	Price in Figures	
			Unit Price	Computed Total Price For Item
31	3 Each	Furnish and install 48-inch Storm Special Manhole , complete in place as shown and specified for the unit price of <u>Two Thousand Five Hundred</u> dollars and <u>Zero</u> cents each	\$ <u>2,500</u>	\$ <u>7,500</u>
32	4 Each	Furnish and install Storm Inlets , complete in place as shown and specified for the unit price of <u>One Thousand Seven Hundred Fifty</u> dollars and <u>Zero</u> cents each.	\$ <u>1,750</u>	\$ <u>7,000</u>
33	200 Lineal Feet	12" Cured-in-Place Pipe complete in place as shown and specified for the unit price of <u>Eighty</u> dollars and <u>Zero</u> cents per lineal foot.	\$ <u>80</u>	\$ <u>16,000</u>
34	2 Each	Provide for Water Main Adjustment (Undistributed) , as shown, specified or directed for the unit price of <u>Two Thousand Five Hundred</u> dollars and <u>Zero</u> cents each.	\$ <u>2,500</u>	\$ <u>5,000</u>
35	2 Each	Provide for Gas Main Adjustment (Undistributed) , as shown, specified or directed for the unit price of <u>Two Thousand Five Hundred</u> dollars and <u>Zero</u> cents each.	\$ <u>2,500</u>	\$ <u>5,000</u>

Contract Item No.	Estimated Quantity	Description and Price in Words	Price in Figures	
			Unit Price	Computed Total Price For Item
36	2,300 Lineal Feet	Furnish and install Curb and Gutter complete in place, as shown and specified for the unit price of <u>Twenty-Eight</u> dollars and <u>Zero</u> cents per lineal foot.	\$ <u>28</u>	\$64,400
37	3,600 Square Yards	Provide Pavement Restoration , complete in place, as shown and specified for the unit price of <u>Fifteen</u> dollars and <u>Fifty</u> cents per square yard.	\$ <u>15.50</u>	\$ <u>55,800</u>
38	100 Cubic Yards	Furnish and install Additional Earth Excavation , complete in place for the unit price of <u>Seventeen</u> dollars and <u>Zero</u> cents per cubic yard.	\$ <u>17</u>	\$ <u>1,700</u>
39	100 Cubic Yards	Furnish and install Additional Select Fill Material , complete in place for the unit price of <u>Thirty</u> dollars and <u>Zero</u> cents per cubic yard.	\$ <u>30</u>	\$ <u>3,000</u>
40	Lump Sum	Work Allowance for the lump sum price of <u>Fifty Thousand</u> dollars and <u>Zero</u> cents.	Lump Sum	\$ <u>50,000</u>

TOTAL BID PRICE (Total of All Contract Item Prices)

Two Million Twenty-Seven Thousand Six Hundred Dollars and Zero Cents. [**\$2,027,600**]

Article 5. PAYMENT PROCEDURES

CONTRACTOR shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by ENGINEER as provided in the General Conditions.

5.1 Progress Payments; Retainage

OWNER shall make progress payments on the basis of CONTRACTOR's Applications for Payment, on or about the thirtieth day of each month during performance of the Work as provided in paragraphs 5.1.1 and 5.1.2 below. All such payments will be measured by the schedule of values established in paragraph 2.07.A of the General Conditions (and in the case of Unit Price Work based on the number of units completed).

5.1.1 Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below, but in each case, less the aggregate of payments previously made and less such amounts as ENGINEER may determine, or OWNER may withhold, in accordance with paragraph 14.02 of the General Conditions.

Progress payments shall not exceed an amount equal to 90 percent of the Work completed and of the cost of materials not incorporated in the Work but delivered and suitably stored (with the balance being retainage). If the Work is 50 percent complete as determined by ENGINEER, and if the character and progress of the Work have been satisfactory to OWNER and ENGINEER, OWNER, on recommendation of ENGINEER, may determine that as long as the character and progress of the Work remain satisfactory to them, there will be no retainage on account of Work subsequently completed, in which case the remaining progress payments prior to Substantial Completion will be in an amount equal to 100 percent of the Work completed less the aggregate of payments previously made; and

5.1.2 Upon Substantial Completion, OWNER shall pay an amount sufficient to increase total payments to CONTRACTOR to 100 percent of the Work completed, less 200 percent of ENGINEER's estimate of the value of Work to be completed or corrected attached to the certificate of Substantial Completion.

5.2 Final Payment

Upon final completion and acceptance of the Work in accordance with paragraph 14.07 of the General Conditions, OWNER shall pay the remainder of the Contract Price as recommended by ENGINEER as provided in said paragraph 14.07.

Article 6. CONTRACTOR'S REPRESENTATIONS

In order to induce OWNER to enter into this Agreement CONTRACTOR makes the following representations:

- 6.1 CONTRACTOR has examined and carefully studied the Contract Documents (including the Addenda) and the other related data identified in the Bidding Documents including "technical data".
- 6.2 CONTRACTOR has visited the Site and become familiar with and is satisfied as to the general, local and Site conditions that may affect cost, progress, and performance of the Work.
- 6.3 CONTRACTOR is familiar with and is satisfied as to all federal, state and local Laws and Regulations that may affect cost, progress, and performance of the Work.
- 6.4 CONTRACTOR has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) which have been identified in the Supplementary Conditions as provided in paragraph 4.02 of the General Conditions and (2) reports and drawings of a Hazardous Environmental Condition, if any, at the Site which has been identified in the Supplementary Conditions as provided in paragraph 4.06 of the General Conditions. CONTRACTOR accepts the determination set forth in paragraph SC-4.02 of the Supplementary Conditions as to the extent of the "technical data" contained in such reports and drawings upon which CONTRACTOR is entitled to rely as provided in paragraph 4.02B of the General Conditions. CONTRACTOR acknowledges that such reports and drawings are not Contract Documents and may not be complete for CONTRACTOR's purposes. CONTRACTOR acknowledges that OWNER and ENGINEER do not assume responsibility for the accuracy or completeness of information and data shown or indicated in the Contract Documents with respect to Underground Facilities at or contiguous to the Site.
- 6.5 CONTRACTOR has obtained and carefully studied (or assumes responsibility for having done so) all additional or supplementary examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods,

techniques, sequences and procedures of construction to be employed by CONTRACTOR, including applying the specific means, methods, techniques, sequences and procedures of construction, if any, expressly required by the Contract Documents to be employed by CONTRACTOR, and safety precautions and programs incident thereto.

- 6.6 CONTRACTOR does not consider that any further examinations, investigations, explorations, tests, studies or data are necessary for the performance of the Work at the Contract Price, within the Contract Times and in accordance with the other terms and conditions of the Contract Documents.
- 6.7 CONTRACTOR is aware of the general nature of work to be performed by OWNER and others at the Site that relates to the Work as indicated in the Contract Documents.
- 6.8 CONTRACTOR has correlated the information known to CONTRACTOR, information and observations obtained from visits to the Site, reports and drawings identified in the Contract Documents and all additional examinations, investigations, explorations, tests, studies and data with the Contract Documents.
- 6.9 CONTRACTOR has given ENGINEER written notice of all conflicts, errors, ambiguities or discrepancies that CONTRACTOR has discovered in the Contract Documents and the written resolution thereof by ENGINEER is acceptable to CONTRACTOR, and the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

Article 7. CONTRACT DOCUMENTS

The Contract Documents which comprise the entire agreement between OWNER and CONTRACTOR concerning the Work consist of the following:

- 7.1 This Agreement, identified as Section 00500
- 7.2 Performance and Payment Bonds, identified as Sections 00610 and 00620
- 7.3 Maintenance Bond, identified as Section 00650
- 7.4 Notice to Proceed, identified as Section 00680
- 7.5 CONTRACTOR'S BID, identified as Section 00300
- 7.6 Standard General Conditions, identified as Section 00700
- 7.7 Supplementary Conditions, identified as Section 00800

- 7.8 Specifications bearing the title City of West Lafayette, Indiana Western Sanitary Sewer Interceptor – Division V
- 7.9 Drawings bearing the title City of West Lafayette, Indiana Western Sanitary Sewer Interceptor – Division V
- 7.10 Addendum No. 1
- 7.11 Exhibit A, Wage Rates

The documents listed in the paragraphs above are attached to this Agreement (except as expressly noted otherwise above).

There are no Contract Documents other than those listed above in this Article 7. The Contract Documents may only be amended, modified or supplemented as provided in paragraph 3.05 of the General Conditions.

Article. 8 MISCELLANEOUS

- 8.1 Terms used in this Agreement which are defined in Article 1 of the General Conditions will have the meanings indicated in the General Conditions.
- 8.2 No assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.
- 8.3 OWNER and CONTRACTOR each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.
- 8.4 Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon OWNER and CONTRACTOR, who agree that the Contract Documents shall be reformed to replace such stricken provisions or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- 8.5 This Contract is to be governed by the law of the State of Indiana. Venue for all disputes arising under this Contract shall be Tippecanoe County, Indiana.

IN WITNESS WHEREOF, OWNER and CONTRACTOR have signed this Agreement in duplicate. One counterpart each has been delivered to OWNER, and CONTRACTOR. All portions of the Contract Documents have been signed, or identified by OWNER and CONTRACTOR or on their behalf.

This Agreement will be effective on _____, 2011 (which is the Effective Date of the Agreement).

OWNER: Board of Public Works and Safety

CONTRACTOR: _____

City of West Lafayette

ATLAS EXCAVATING, INC.

By: _____

By: Tina Dillon

Title: _____

Title: TINA DILLON, PRESIDENT

[CORPORATE SEAL]

[CORPORATE SEAL]

Attest: _____

Attest: Elizabeth Golden

Title: Clerk-Treasurer

Title: ELIZABETH GOLDEN, PROJECT ADMIN.

Address for giving notices:

Address for giving notices:

609 West Navajo Street

4740 SWISHER ROAD

West Lafayette, IN 47906

WEST LAFAYETTE, IN 47906

(If OWNER is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of Agreement)

License No. _____

Agent for service of process: _____

(If CONTRACTOR is a corporation or partnership, attach evidence of authority to sign.)

Designated Representative:

Designated Representative:

Name: _____

Name: _____

Title: _____

Title: _____

Address: _____

Address: _____

Phone: _____

Phone: _____

Fax: _____

Fax: _____

END OF SECTION