

ESCROW AGREEMENT

THIS ESCROW AGREEMENT made and entered into this **29th** day of **August, 2011** by and between **Huntington Bank**, hereinafter called the Escrow Agent, the **Board of Public Works & Safety, City of West Lafayette, IN** hereinafter called the Board, and **Atlas Excavating, Inc.**, hereinafter called the Contractor.

WHEREAS, the Board and Contractor entered into a contract providing for the construction by the Contractor of a public work in accordance with IC 36-1-12-14 and

WHEREAS, said construction contract provides that portions of payments by the Board to the Contractor shall be retained by the Board (herein called Retainage), and

WHEREAS, all retainage shall be deposited in an Escrow Account.

NOW, THEREFORE, it is agreed as follows:

1. The Board will hereafter deliver or cause to be delivered to the Escrow Agent that portion of the Retainage to be placed in escrow, to be held in escrow in accordance with the terms of this Agreement.
2. The Escrow Agent will promptly invest this Retainage in such obligations as selected by the Escrow Agent at its discretion. All income earned on such funds shall be added to and become part of the escrowed principal.
3. The Escrow Agent shall pay over the net sum held by it hereunder as follows:
 - a. In the manner directed by the joint written authorization of the Board and Contractor which shall include the remittance of the same proportion of then escrowed income as the designated part of escrowed principal to be paid unless the parties agree otherwise.

- b. In the absence of such a joint written authorization, upon receipt from the Board of a written notice showing that the Board has terminated the employment of the Contractor, then the Escrow Agent shall pay over to the Board the net sum held by it hereunder.
 - c. In the absence of such a joint written authorization and in the absence of the termination of the employment of the Contractor as provided in 'b', above, in the manner directed by a certified copy of a judgment of a court of record establishing the rights of the parties to said funds.
4. This Escrow Agreement shall constitute the direction from the Board and Contractor to the Escrow Agent of the manner in which the Retainage is to be paid by the Escrow Agent, pursuant to IC 36-1-12-14.
5. The Escrow Agent shall deduct, before any payment from the amounts received hereunder, its reasonable fees as Escrow Agent, which fee shall be payable from the income earned by the retainage and which escrow fee shall be 0 , but in no event exceed zero percent (0%) of said income earned.
6. This agreement and anything done or performed hereunder by either the Contractor or Board shall not be constructed to prejudice or limit the claims which either party may have against the other arising out of the aforementioned construction agreement.
7. This instrument constitutes the entire agreement between the parties regarding the duties of the Escrow Agent with respect to the investment and payment of escrow funds; the Escrow Agent is not liable to the Board and Contractor for any loss or damages other than by its own negligence or willful misconduct.
8. An amendment to this agreement must be agreed to and be executed by all three parties.

BOARD: **Board of Public Works & Safety**
City of West Lafayette, IN

BY: _____
(Printed Name and Title)

Member

Member

CONTRACTOR: Atlas Excavating, Inc.
4740 Swisher Road
West Lafayette, IN 47906

BY: _____
Tina Dillon, President
(Printed Name and Title)

ESCROW AGENT: Huntington Bank
45 North Pennsylvania Street
Suite 600
Indianapolis, IN 46204

BY: _____

(Printed Name and Title)