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 May in the year 2014 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
Cumberland Avenue Sanitary Sewer Extension

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 – To qualify for Incentive Payment all submittals (not including Precast Manholes - Section 02509) will be submitted to ENGINEER within **45 calendar days** of Notice-to-Proceed. Liquidated Damages will go into effect if all

submittals (not including Precast Manholes - Section 02509) are not submitted to ENGINEER within **60 calendar days** of Notice-to-Proceed.

Milestone 2 – To qualify for Incentive Payment all submittals will be submitted to ENGINEER within **60 calendar days** of Notice-to-Proceed. Liquidated Damages will go into effect if all submittals are not submitted to ENGINEER within **75 calendar days** of Notice-to-Proceed.

Milestone 3 – All remaining Work will be substantially complete within **160 calendar days** of the Notice-to-Proceed as provided in paragraph 2.03 of the General Conditions. Substantial Completion shall be defined as the installation of sewer, manholes, backfilling, pavement, and seed in-place restoration.

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 Incentive Payments

If completion for Milestone 1 and, or Milestone 2 is met in advance of the time specified in paragraph 3.1 Incentive Payments may be paid out of the Incentive Payment - Submittals Contract Item as described in Section 01291.

If Substantial Completion for Milestone 3 is met in advance of the time specified in paragraph 3.1 Incentive Payments may be paid out of the Incentive Payment - Substantial Completion Contract Item as described in Section 01291.

3.4 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 One Thousand Five Hundred dollars ($1,500) for each calendar day that expires after the time specified for Substantial Completion. CONTRACTOR shall pay OWNER One Thousand dollars ($1,000) 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 determined pursuant to the CONTRACTOR's Bid.

As provided in paragraph 11.03 of the General Conditions, estimated quantities are not guaranteed, and determinations of actual quantities and classifications are to be made by ENGINEER as provided in paragraph 9.08 of the General Conditions. Unit prices have been computed as provided in paragraph 11.03 of the General Conditions.

Contract Item No.	Estimated Quantity	Description and Price in Words	Price in Figures: Unit Price	Price in Figures: Computed Total Price For Item
1	Lump Sum	Provide **Mobilization and Demobilization** as specified for the lump sum price of Four Hundred Ninety Seven Thousand Seven Hundred dollars and Zero cents.	Lump Sum	$497,700.00
2	Lump Sum	Provide **Maintenance of Traffic** as shown and specified for the lump sum price of Nine Thousand dollars and Zero cents.	Lump Sum	$9,000.00
3	2,900 Lineal Feet	Furnish and install **18-inch PVC (SDR 26) Sanitary Sewer**, complete in place as shown and specified for the unit price of Fifty-Three dollars and Zero cents per lineal foot.	$53.00	$153,700.00

Contract Item No.	Estimated Quantity	Description and Price in Words	Price in Figures: Unit Price	Price in Figures: Computed Total Price For Item
4	2,600 Lineal Feet	Furnish and install **18-inch PVC (DR 18) Sanitary Sewer**, complete in place as shown and specified for the unit price of Eighty-Nine dollars and Zero cents per lineal foot.	$89.00	$231,400.00
5	1,800 Lineal Feet	Furnish and install **18-inch Lined DIP Class 53 Sanitary Sewer**, complete in place as shown and specified for the unit price of Two Hundred dollars and Zero cents per lineal foot.	$200.00	$360,000.00
6	185 Lineal Feet	Furnish and install **18-inch Lined DIP Class 53 Sanitary Sewer Under Lindberg Road**, complete in place as shown and specified for the unit price of Eight Hundred dollars and Zero cents per lineal foot.	$800.00	$148,000.00
7	9 Each	Furnish and install **48-inch Sanitary Manhole**, complete in place as shown and specified for the unit price of Ten Thousand dollars and Zero cents each.	$10,000.00	$90,000.00

Contract Item No.	Estimated Quantity	Description and Price in Words	Price in Figures: Unit Price	Price in Figures: Computed Total Price For Item
8	9 Each	Furnish and install **60-inch Sanitary Manhole**, complete in place as shown and specified for the unit price of Twenty-Five Thousand dollars and Zero cents each.	$25,000.00	$225,000.00
9	5 Each	Furnish and install **60-inch Sanitary Outside Drop Manhole**, complete in place as shown and specified for the unit price of Thirty-Five Thousand dollars and Zero cents each.	$35,000.00	$175,000.00
10	1 Each	Furnish and install **60-inch Sanitary Inside Drop Manhole**, complete in place as shown and specified for the unit price of Fifteen Thousand dollars and Zero cents each.	$15,000.00	$15,000.00
11	100 Cubic Yards	Furnish and install **Additional Earth Excavation**, complete in place for the unit price of Seven dollars and Zero cents per cubic yard.	$7.00	$700.00
12	200 Cubic Yards	Furnish and install **Additional Select Fill Material**, complete in place for the unit price of Thirty-Four dollars and Zero cents per cubic yard.	$34.00	$6,800.00

Contract Item No.	Estimated Quantity	Description and Price in Words	Price in Figures: Unit Price	Price in Figures: Computed Total Price For Item
13	Lump Sum	**Work Allowance** for the lump sum price of Twenty-Five Thousand dollars and Zero cents.	Lump Sum	$ 25,000.00
14	2 Each	**Incentive Payment - Submittals** for early completion Milestone 1 and Milestone 2 at the unit price of Three Thousand dollars and Zero cents each.	$3,000.00	$6,000.00
15	15 Days	**Incentive Payment - Substantial Completion** for early completion of Work at the unit price of One Thousand dollars and Zero cents per day.	$1,000.00	$15,000.00

TOTAL BID PRICE (Total of All Contract Item Prices)

One Million Nine Hundred Fifty-Eight Thousand Three Hundred Dollars and Zero Cents

(Amount in Words) ($ 1,958,300.00) (Amount in Figures)

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 may 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 Cumberland Avenue Sanitary Sewer Extension

7.9 Drawings bearing the title City of West Lafayette, Indiana Cumberland Avenue Sanitary Sewer Extension

7.10 Addenda (number 1, inclusive)

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.

In resolving conflicts, errors, discrepancies and disputes concerning the Scope of Work to be performed by Contractor, and other rights and obligations of Owner and Contractor, the document expressing the greater quantity, quality or other scope of work in question, or imposing the greater obligation upon Contractor and affording the greater right or remedy to Owner shall govern; otherwise the documents shall be given precedence in the order as enumerated above.

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.

8.6 Notwithstanding any term or condition in this Contract to the contrary, in the event litigations is commenced to enforce any term or condition of this Contract, the prevailing party shall be entitled to costs and expenses of litigation including a reasonable attorney fee.

8.7 By signing this Contract, CONTRACTOR certifies that it is not engaged in investment activities in the country of Iran as set forth in I.C. 5-22-16.5.

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 _____, 2014 (which is the Effective Date of the Agreement).

OWNER: Board of Public Works and Safety City of West Lafayette	CONTRACTOR: Atlas Excavating, Inc
By: _____	By: Tina K Dillon
Title: _____	Title: Tina Dillon, President
[CORPORATE SEAL]	[CORPORATE SEAL]
Attest: _____	Attest: Nichol Hauser
Title: _____	Title: Nichole Hauser, Project Administrator
Address for giving notices: 711 West Navajo Street West Lafayette, IN 47906	Address for giving notices: 4740 Swisher Road 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: Name: _____ Title: _____ Address: _____ _____ Phone: _____ Fax: _____	Designated Representative: Name: _____ Title: _____ Address: _____ _____ Phone: _____ Fax: _____

END OF SECTION