

## AGREEMENT

THIS AGREEMENT is dated this \_\_\_\_\_ day of \_\_\_\_\_, 2014, by and between the City of West Lafayette, Indiana ("Owner") and Layne Heavy Civil, Inc. ("Contractor").

Owner and Contractor, in consideration of the mutual covenants hereinafter set forth, agree as follows:

### **ARTICLE 1 – WORK**

1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

**2014 Wastewater Treatment Plant Projects  
Area 1 – Wet-Weather Facility Improvements  
Area 2 – Phosphorus Removal – Phase 1**

### **ARTICLE 2 – ENGINEER**

2.01 The Project has been designed by Wessler Engineering, Inc. (Engineer), which 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**

3.01 All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

3.02 Work in Area 1 shall be Substantially Complete to allow the Wet-Weather Facility to be fully operational by March 21, 2015, and all Work will be substantially completed within 240 days after the date when the Contract Times commence to run as provided in Paragraph 2.03 of the General Conditions, and completed and ready for final payment in accordance with Paragraph 14.07 of the General Conditions within 270 days after the date when the Contract Times commence to run.

3.03 Liquidated Damages

A. Contractor and Owner 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 Paragraph 3.02 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. The parties 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), the Owner, in the form of a Change Order, shall deduct from the monies due the Contractor \$1,200.00 for each calendar day that expires after

the time specified in Paragraph 3.02 for Substantial Completion until the Work is substantially complete. After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by Owner, the Owner, in the form of a Change Order, shall deduct from the monies due the Contractor \$1,200.00 for each day that expires after the time specified in Paragraph 3.02 for completion and readiness for final payment until the Work is completed and ready for final payment.

#### **ARTICLE 4 – CONTRACT PRICE**

4.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents an amount in current funds as follows: **One Million One Hundred Ninety-Six Thousand Six Hundred and 00/100 Dollars (\$1,196,600.00)**,

For all Work, at the prices stated in Contractor's Bid.

#### **ARTICLE 5 – PAYMENT PROCEDURES**

5.01 Submittal and Processing of Payments

- A. 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.

5.02 Progress Payments; Retainage

- A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment on a monthly basis during performance of the Work as provided in Paragraph 5.02.A.1 below. All such payments will be measured by the schedule of values established as provided in Paragraph 2.07.A of the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no schedule of values, as provided in the General Requirements.
  - 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, including but not limited to liquidated damages, in accordance with Paragraph 14.02 of the General Conditions.
  - 2. The Owner shall retain ten percent (10%) of the amount of each payment until final completion and acceptance of all work covered by the Contract Documents. The Owner at any time, however, after fifty percent (50%) of the Work has been completed, if he finds that satisfactory progress is being made, shall reduce retainage to five percent (5%) on the current and remaining estimates. When the Work is substantially complete (operational or beneficial occupancy), the retained amount may be further reduced below five percent (5%) to only that amount necessary to assure completion. On completion and acceptance on a part of the Work on which the price is stated separately in the Contract Documents, payment may be made in full, including retained percentages, less authorized deductions.

- B. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to 100 percent of the Work completed, less such amounts as Engineer shall determine in accordance with Paragraph 14.02.B.5 of the General Conditions, less 200 percent of Engineer's estimate of the value of Work to be completed or corrected as shown on the tentative list of items to be completed or corrected attached to the certificate of Substantial Completion, and less any applicable liquidated damages.

#### 5.03 Final Payment

- A. 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 Paragraphs 14.07 and 14.08 of the General Conditions, less any applicable liquidated damages.

### **ARTICLE 6 – CONTRACTOR'S REPRESENTATIONS**

6.01 In order to induce Owner to enter into this Agreement, Contractor makes the following representations:

- A. Contractor has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.
- B. 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.
- C. 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.
- D. 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 relating to existing surface or subsurface structures at the Site (except Underground Facilities), if any, that have been identified in Paragraph SC-4.02 of the Supplementary Conditions as containing reliable "technical data," and (2) reports and drawings of Hazardous Environmental Conditions, if any, at the Site that have been identified in Paragraph SC-4.06 of the Supplementary Conditions as containing reliable "technical data."
- E. Contractor has considered the information known to Contractor; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Contract Documents; and (3) Contractor's safety precautions and programs.

- F. Contractor does not consider that 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.
- G. 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.
- H. 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.
- I. 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**

### **7.01 Contents**

- A. The Contract Documents consist of the following:
  - 1. Advertisement for Bidders
  - 2. Instructions to Bidders
  - 3. Contractor's Bid
  - 4. Bid Bond
  - 5. Agreement with E-Verify Affidavit and Indiana Iran Investment Certification
  - 6. Performance Bond
  - 7. Payment Bond
  - 8. General Conditions
  - 9. Supplementary Conditions
  - 10. Specifications as contained in Project Manual dated July 2014
  - 11. Drawings consisting of 44 sheets dated July 2014
  - 12. Addenda
    - a. No. 1 dated July 15, 2014
    - b. No. 2 dated July 24, 2014
  - 13. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:

- a. Notice to Proceed
  - b. Change Order(s).
  - c. Certificate of Substantial Completion
- B. There are no Contract Documents other than those listed above in this Article 7.
- C. The Contract Documents may only be amended, modified, or supplemented as provided in Paragraph 3.04 of the General Conditions.

## **ARTICLE 8 – MISCELLANEOUS**

### **8.01 Terms**

- A. Terms used in this Agreement will have the meanings stated in the General Conditions and the Supplementary Conditions.

### **8.02 Assignment of Contract**

- A. 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.

### **8.03 Successors and Assigns**

- A. 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.

### **8.04 Severability**

- A. 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 provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

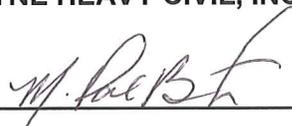
IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement in triplicate (3 copies). Counterparts have been delivered to Owner and Contractor. All portions of the Contract Documents have been signed or have been identified by Owner and Contractor or on their behalf.

This Agreement will be effective on the date as indicated on Page 1.

OWNER:  
**BOARD OF PUBLIC WORKS & SAFETY  
CITY OF WEST LAFAYETTE, INDIANA**

CONTRACTOR:  
**LAYNE HEAVY CIVIL, INC.**

Signature: \_\_\_\_\_  
John R. Dennis, Mayor

Signature: \_\_\_\_\_  


\_\_\_\_\_  
Sana G. Booker, Member

Printed: \_\_\_\_\_  
M. Paul Burton

Title: \_\_\_\_\_  
District Manager

\_\_\_\_\_  
Shawn R. Little, Member

Attest: \_\_\_\_\_  


Title: \_\_\_\_\_  
Assistant Secretary

\_\_\_\_\_  
Bradley W. Marley, Member

\_\_\_\_\_  
Jonathan C. Speaker, Member

Attest: \_\_\_\_\_  
Judith C. Rhodes IAMC/CMC/CPFA  
Clerk-Treasurer

Address for giving notices:  
609 West Navajo Street  
West Lafayette, Indiana 47906

Address for giving notices:  
4520 North S.R. 37  
Orleans, Indiana 47452