

SECTION 00520

FORM OF AGREEMENT

BETWEEN OWNER AND CONTRACTOR

ON THE BASIS OF A STIPULATED PRICE

**THIS AGREEMENT** is dated as of the 23<sup>rd</sup> day of July in the year 2019 by and between Board of Public Works and Safety of the City of Lafayette, Indiana (hereinafter called OWNER) and Bowen Engineering Corporation (hereinafter called 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.
- 1.02 The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

**City of Lafayette  
Board of Public Works and Safety  
Williams Street Sewer**

**Article 2. ENGINEER**

- 2.01 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**

- 3.01 Time of the Essence
  - A. All time limits for Substantial Completion and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

3.02 Days to Achieve Substantial Completion and Final Payment

A. Substantial Completion

Bidder agrees that the Work associated with the installation of the Williams Street Sewer will be substantially complete by **June 15, 2020**. Substantial completion shall be defined as the installation of sewer, testing, and restoring surfaces to grade.

B. Final Completion

The Work will be ready for final payment in accordance with paragraph 14.07 of the General Conditions by **July 12, 2020**.

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. 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 day that expires after the time specified in paragraph 4.02 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, CONTRACTOR shall pay OWNER one thousand dollars (\$1,000) for each day that expires after the time specified in paragraph 4.02 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 equal to the total sum of the amounts determined pursuant to the CONTRACTOR's Bid.

- 4.02 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.

**BID**

| Contract Item No. | Estimated Quantity | Description and Price in Words   | Price in Figures    |                               |
|-------------------|--------------------|--|---------------------|-------------------------------|
|                   |                    |  | Unit Price          | Computed Total Price For Item |
| 1                 | Lump Sum           | Furnish and install <b>New Sewers, Structures, and Site Work</b> , complete in place as shown and specified for the lump sum price of <u>One Million Six Hundred Eighty-Five Thousand</u> dollars and <u>Zero</u> cents. | Lump Sum            | <u>\$1,685,000.00</u>         |
| 2                 | 20 TONS            | <b>Disposal of Sorted Trash and Specified Excess Sorted Fill Material</b> , complete in place for the unit price of <u>Two Hundred Fifty</u> dollars and <u>Zero</u> cents per ton.                                      | <u>\$250.00/Ton</u> | <u>\$ 5,000.00</u>            |

**CONTRACTOR TOTAL BID PRICE** (Total of All Contract Item Prices)

One Million Six Hundred Ninety Thousand Dollars and Zero Cents. [**\$1,690,000**]

**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 or about the first day of each month during performance of the Work as provided in paragraphs 5.02.A.1 and 5.02.A.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).

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.
  - a. 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
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.

5.03 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 said paragraph 14.07.

**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 (including the Addenda) and the other related data identified in the Bidding Documents, including "technical data".
  - 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 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.
- E. 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.
- F. 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.
- 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 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.
- I. 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.

- J. 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. This Agreement
  - 2. Performance and Payment Bonds
  - 3. Notice to Proceed
  - 4. General Conditions
  - 5. Supplementary Conditions
  - 6. Specifications bearing the title City of Lafayette, Board of Public Works and Safety, Williams Street Sewer.
  - 7. Drawings bearing the title Williams Street Sewer.
  - 8. Addenda (numbers 1 to 2, inclusive)
  - 9. Exhibits to this Agreement (enumerated as follows):
    - a. CONTRACTOR's Bid
    - b. Documentation submitted by CONTRACTOR prior to Notice of Award
    - c. Notice of Award
  - 10. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:
    - a. Written Amendments
    - b. Work Change Directives and
    - c. Change Order(s)
    - d. Field Order
- B. The documents listed in paragraphs above are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 7.

- D. The Contract Documents may only be amended, modified or supplemented as provided in paragraph 3.05 of the General Conditions.

**Article 8. MISCELLANEOUS**

8.01 Terms

- A. Terms used in this Agreement will have the meanings indicated in Article 1 of the General 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 provisions or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

8.05 Disputes

- A. 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 the date first above written.

OWNER:

City of Lafayette

Board of Public Works and Safety

\_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

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

Title: \_\_\_\_\_

Address for Giving Notices:

Board of Public Works and Safety

City of Lafayette

P.O. Box 1688

Lafayette, Indiana 47902

\_\_\_\_\_

CONTRACTOR:

Bowen Engineering Corporation

\_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

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

Title: \_\_\_\_\_

Address for Giving Notices:

Bowen Engineering Corporation

8802 N. Meridian Street

Indianapolis, IN 46260

\_\_\_\_\_

License No. \_\_\_\_\_

(Where applicable)

Designated Representative:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Phone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

Designated Representative:

Name \_\_\_\_\_

Title: \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Phone: \_\_\_\_\_

Facsimile: \_\_\_\_\_