

BILL NO. S-12-07-17

SPECIAL ORDINANCE NO. S-_____

AN ORDINANCE approving CONSTRUCTION CONTRACT FOR FAIRFAX STORM SEWER EXTENSION - RES. #2420-2011, W.O. #75663 between FLEMING EXCAVATING, INC. and the City of Fort Wayne, Indiana, in connection with the Board of Public Works.

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:

SECTION 1. That the CONSTRUCTION CONTRACT FOR FAIRFAX STORM SEWER EXTENSION - RES. #2420-2011, W.O. #75663 by and between FLEMING EXCAVATING, INC. and the City of Fort Wayne, Indiana, in connection with the Board of Public Works, is hereby ratified, and affirmed and approved in all respects, respectfully for:

All labor, insurance, material, equipment, tools, power, transportation, miscellaneous equipment, etc., necessary for This project will consist of a storm sewer extension that will be along Fairfax Avenue from South Wayne Avenue to Old Mill Road and regulator modifications to the Woodhurst Regulator. This will consist of approximately 1350 lf of 68" x 43" RCP and 265 lf of 54", 48", 42", 36", 30" & 12" RCP. The storm extension will pick up an existing storm sewers system with inlets and catch basins that are currently connected to the combined system. The project will also consist of 780 lf horizontally directional drilled (HDD) water main replacement on Fairfax Avenue from South Wayne Avenue to Woodhurst Boulevard:

involving a total cost of ONE MILLION, TWO HUNDRED FIFTEEN THOUSAND, EIGHT HUNDRED NINETY-EIGHT AND 87/100 DOLLARS - (\$1,215,898.87). A copy said Contract is on file with the Office of the City Clerk and made available for public inspection, according to law.

SECTION 2. That this Ordinance shall be in full force and effect from and after its passage and any and all necessary approval by the Mayor.

Council Member

APPROVED AS TO FORM AND LEGALITY

Carol Helton, City Attorney

**AGREEMENT
BETWEEN OWNER AND CONTRACTOR
ON THE BASIS OF A STIPULATED PRICE**

Resolution 2420-2011

Work Order 75663

THIS AGREEMENT is by and between the Board of Public Works of the City of Fort Wayne, Indiana (hereinafter called Owner) and **Fleming Excavating, Inc.**, (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. The Work is generally described as follows:

This project will consist of a storm sewer extension that will be along Fairfax Avenue from South Wayne Ave. to Old Mill Rd. and regulator modifications to the Woodhurst Regulator. This will consist of approximately 1350 lf of 68" x 43" RCP and 265 lf of 54", 48", 42", 36", 30" & 12" RCP. The storm extension will pick up an existing storm sewers system with inlets and catch basins that are currently connected to the combined system. The project will also incorporate the design of a 780 lf HDD water main replacement on Fairfax Avenue from South Wayne Ave. to Woodhurst Blvd.

ARTICLE 2 – THE PROJECT

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

Fairfax Storm Sewer Extension

ARTICLE 3 – ENGINEER

- 3.01 The Project has been designed by A&Z Engineering. Throughout these Contract Documents, the term Engineer is used. Engineer 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. Owner will advise Contractor prior to issuance of Notice to Proceed as to who will serve as Engineer.

ARTICLE 4 – CONTRACT TIMES

- 4.01 Time of the Essence
- A. 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.
- 4.02 Days to Achieve Substantial Completion and Final Payment
- A. The Contractor shall complete the following activities of Work by the Milestone date indicated.

Milestone 1: Complete all work related to the intersection at Old Mill Road and Fairfax, including the installation of the water main, by October 19th, 2012. (under the condition that the notice to proceed was given to Contractor by August 1, 2012).) Work shall be tested and approved, storm sewers and water mains shall be fully operational, concrete sidewalks and curb fully restored, and concrete intersection shall be completed. Final seeding shall also be completed for the easement located at 5340 Old Mill Road, Fort Wayne, IN 46807. This milestone will not require the Work be completed for the following items: installation of sluice gate; float sensor equipment relocation, abandonment of structures L19-018-1 & L19-018-2, relocation of flow meter from MH L19 018 to L19 280, installation of weir dam in structure 300A, and the concrete channel for structure 300A.

- B. The Work will be substantially completed within 210 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 by May 31st, 2013
- C. Definitions of Substantial Completion for this Work shall consist of except final seeding, installation of the sluice gate, float sensor equipment relocation, abandonment of structures L19-018-1 & L19-018-2, relocation of flow meter from MH L19 018 to L19 280, installation of weir dam in structure 300A, and the concrete channel for structure 300A has been installed and successfully tested.

4.03 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 4.02 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), Contractor shall pay Owner \$2,500.00 for each day that expires after the time specified in Paragraph 4.02 above 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 \$1,000.00 for each day that expires after the time specified in Paragraph 4.02 above for completion and readiness for final payment until the Work is completed and ready for final payment.

ARTICLE 5 – CONTRACT PRICE

- 5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts determined pursuant to Paragraphs 5.01.A, 5.01.B, and 5.01.C below:

- A. Not used.
- B. For all Unit Price Work, an amount equal to the sum of the established unit price for each separately identified item of Unit Price Work times the actual quantity of that item as indicated in this Paragraph 5.01.B:

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.

See Article 5 (itemized Bid Schedule) of the Bid Form (00 41 00-3- 00 41 00-5)

One Million, Two Hundred Fifteen Thousand, Eight Hundred Ninety Eight Dollars and Eighty Seven Cents.

\$1,215,898.87

- C. Not Used.

Article 5 - Basis of Bid
FAIRFAX AVENUE STORM SEWER EXTENSION PROJECT

5.01 NOTE: Bidder may complete the following Bid Schedule.
Bidder will complete the Work in accordance with the Contract Documents for the following price(s):

ITEM #	WORK ITEM #	DESCRIPTION	ESTIMATED QUANTITY	UNIT	UNIT PRICE	AMOUNT
1	00 95 00-A	Mobilization and Demobilization (Not to Exceed 5%)	1	LS	\$42,375.00	\$42,375.00
2	00 95 00-B	Work Allowance (City Determined)	1	LS	\$50,000.00	\$50,000.00
3	00 95 00-C	Work Performed by ADS Allowance (City Determined)	1	LS	\$10,000.00	\$10,000.00
4	00 95 00-D	Woodhurst Regulator No. 33 Adandonment	1	LS	\$3,000.00	\$3,000.00
5	00 95 00-E	Float Sensor Equipment Relocation	1	LS	\$1,150.00	\$1,150.00
6	00 95 00-F	4" PVC Conduit Pipe, Schedule 40	190	LFT	\$18.00	\$3,420.00
7	00 95 00-G	Flow Meter Power Cable	200	LFT	\$17.25	\$3,450.00
8	00 95 00-H	Flow Meter Communication Cable	200	LFT	\$17.25	\$3,450.00
9	00 95 00-I	D.I. Piping External Ceramic Epoxy Coating	1	LS	\$2,000.00	\$2,000.00
10	01 55 26-A	Maintenance and Protection of Traffic	1	LS	\$20,760.00	\$20,760.00
11	01 57 13-A	Temporary Erosion and Sedimentation Control	1	LS	\$2,550.00	\$2,550.00
12	01 71 16.13-A	Video Documentation of Conditions	1	LS	\$2,052.75	\$2,052.75
13	01 78 39-A	Project Record Documents	1	LS	\$1,800.00	\$1,800.00
14	05 56 00-A	2' x 2' Curb and Gutter Casting	9	EA	\$495.00	\$4,455.00
15	05 56 00-B	24" Sanitary Manhole Casting	7	EA	\$365.00	\$2,555.00
16	05 56 00-C	24" Sanitary Manhole Casting (Low Profile)	2	EA	\$390.00	\$780.00
17	05 56 00-D	24" Solid Storm Manhole Casting	2	EA	\$365.00	\$730.00
18	05 56 00-E	24" Solid Storm Manhole Casting (Low Profile)	5	EA	\$390.00	\$1,950.00
19	31 00 05-A	Special Backfill, No. 53/73	1020	CY	\$23.20	\$23,664.00
20	31 00 05-B	Excavation of Unsuitable Material	300	CY	\$20.00	\$6,000.00
21	31 00 05-C	Additional Select Fill for Unsuitable Material	300	CY	\$30.00	\$9,000.00
22	31 00 05-D	Flowable Fill for Sanitary Sewer Relocation	12	CY	\$175.00	\$2,100.00
23	31 11 00-A	Clearing and Grubbing	1	LS	\$16,300.00	\$16,300.00
24	31 11 00-B	Remove Tree	6	EA	\$500.00	\$3,000.00
25	32 12 43-A	Flexible Porous Pavement System	86	SYD	\$160.03	\$13,762.58
26	32 13 00-A	7" PCCP	4200	SYD	\$36.66	\$153,972.00
27	32 16 00-A	Sidewalks	200	SYD	\$38.37	\$7,674.00
28	32 16 00-B	ADA Curb Ramps (All Types)	18	EA	\$1,255.51	\$22,599.18
29	32 16 00-C	Residential Drive Approach	100	SYD	\$41.97	\$4,197.00
30	32 92 00-A	Lawns and Grasses	1	LS	\$2,570.00	\$2,570.00
ITEM #	WORK ITEM #	DESCRIPTION	ESTIMATED QUANTITY	UNIT	UNIT PRICE	AMOUNT
31	33 05 23.13-A	8" Pressure HDPE Utility Piping, DR 11 Class 160 (HDD)	720	LFT	\$43.35	\$31,212.00
32	33 05 33-C	16" D.I. Non-Pressure Utility Piping, Class 350	70	LFT	\$202.96	\$14,207.20
33	33 05 33-D	30" D.I. Non-Pressure Utility Piping, Class 150	64	LFT	\$281.05	\$17,987.20
34	33 05 34.13-A	12" Concrete Non-Pressure Utility Piping, Class III	80	LFT	\$83.50	\$6,680.00
35	33 05 34.13-B	15" Concrete Non-Pressure Utility Piping, Class III	12	LFT	\$170.20	\$2,042.40

36	33 05 34.13-C	36" Concrete Non-Pressure Utility Piping, Class III	10	LFT	\$403.20	\$4,032.00
37	33 05 34.13-D	48" Concrete Non-Pressure Utility Piping, Class III	4	LFT	\$378.70	\$1,514.80
38	33 05 34.13-E	54" Concrete Non-Pressure Utility Piping, Class III	82	LFT	\$226.61	\$18,582.02
39	33 05 34.13-F	66" Concrete Non-Pressure Utility Piping, Class III	6	LFT	\$679.33	\$4,075.98
40	33 05 34.13-G	43" x 68" Elliptical Concrete Non-Pressure Utility Piping, Class HE-I	1349	LFT	\$244.34	\$329,614.66
41	33 05 37.13-A	18" PVC Non-Pressure Utility Piping, SDR 26	152	LFT	\$95.45	\$14,508.40
42	33 05 37.13-B	Sanitary Tap Relocation (6" PVC Non-Pressure Utility Piping, SDR 26)	2	EA	\$4,000.00	\$8,000.00
43	33 05 38.16-A	6" Pressure HDPE Utility Piping, DR 11 Class 160	230	LFT	\$55.08	\$12,668.40
44	33 05 38.16-B	8" Pressure HDPE Utility Piping, DR 11 Class 160	90	LFT	\$53.17	\$4,785.30
45	33 05 38.16-C	16" Pressure HDPE Utility Piping, DR 11 Class 160	50	LFT	\$349.20	\$17,460.00
46	33 05 38.16-C	Air Release Structure Type A	1	EA	\$3,700.00	\$3,700.00
47	33 11 00-A	Cut and Plug (Water Main Abandonment)	5	EA	\$1,000.00	\$5,000.00
48	33 11 00-B	Water Main Connection (6" x 6" Tapping Sleeve and Valve by WM&S)	4	EA	\$1,000.00	\$4,000.00
49	33 11 00-C	3/4" Test Riser (Temporary)	5	EA	\$450.00	\$2,250.00
50	33 11 00-D	Remove Valve Box	2	EA	\$100.00	\$200.00
51	33 11 00-E	2" Temporary Blow-off Assembly	5	EA	\$500.00	\$2,500.00
52	33 12 00-A	Water Service Replacement Short Side, 1" HDPE	5	EA	\$850.00	\$4,250.00
53	33 12 00-B	Water Service Replacement Long Side, 1" HDPE (HDD)	4	EA	\$1,900.00	\$7,600.00
54	33 12 00-C	6" x 6" D.I. Tee	1	EA	\$700.00	\$700.00
55	33 12 00-D	8" x 6" D.I. Tee	1	EA	\$775.00	\$775.00
56	33 12 00-E	8" x 6" D.I. Reducer	3	EA	\$500.00	\$1,500.00
57	33 12 00-F	6" x 6" D.I. Cross	1	EA	\$940.00	\$940.00
58	33 12 00-G	6" 22.5-Deg D.I. Elbow	3	EA	\$470.00	\$1,410.00
59	33 12 00-H	6" 45-Deg D.I. Elbow	10	EA	\$475.00	\$4,750.00
60	33 12 00-I	8" 45-Deg D.I. Elbow	4	EA	\$565.00	\$2,260.00
ITEM #	WORK ITEM #	DESCRIPTION	ESTIMATED QUANTITY	UNIT	UNIT PRICE	AMOUNT
61	33 12 00-J	16" 45-Deg D.I. Elbow	4	EA	\$1,465.00	\$5,860.00
62	33 12 00-K	6" D.I. Gate Valve and Box	2	EA	\$1,190.00	\$2,380.00
63	33 31 00-A	Pipe Plug (Bulkhead)	6	EA	\$500.00	\$3,000.00
64	33 39 13-A	48" Standard Sanitary Utility Sewerage Manhole (Str 301 thru 303)	3	EA	\$2,460.00	\$7,380.00
65	33 39 13-B	120" Sanitary Utility Sewerage Manhole (Str 108A)	1	EA	\$13,262.00	\$13,262.00
66	33 39 13-C	4' x 6' Box Manhole (Str 300)	1	EA	\$10,994.00	\$10,994.00
67	33 39 13-D	7' x 8' Box Manhole (Str 300A)	1	EA	\$17,316.00	\$17,316.00
68	33 39 13-E	Special 10' x 12' Box Manhole (Str 101)	1	EA	\$32,557.00	\$32,557.00
69	33 39 13-F	Special 10' x 10' Box Manhole (Str 102)	1	EA	\$25,469.00	\$25,469.00
70	33 39 13-G	Special 9.5' x 12' Conflict Manhole (Str 108)	1	EA	\$32,773.00	\$32,773.00
71	33 39 13-H	Manhole L19 251 Modifications	1	LS	\$2,625.00	\$2,625.00
72	33 44 13-A	Standard Catch Basin	1	EA	\$3,320.00	\$3,320.00
73	33 49 13-A	48" Standard Manhole	1	EA	\$1,845.00	\$1,845.00
74	33 49 13-B	96" Standard Manhole	1	EA	\$8,526.00	\$8,526.00

75	33 49 13-C	4' x 8' Box Manhole (Str 103 thru 106)	4	EA	\$10,023.00	\$40,092.00
76	33 49 13-D	8' x 10' Box Manhole (Str 107)	1	BA	\$16,465.00	\$16,465.00
77	33 49 13-E	6' x 9' Box Manhole (Str 109)	1	EA	\$12,913.00	\$12,913.00
78	43 26 33-A	Sluice Gate	1	LS	\$28,600.00	\$28,600.00
TOTAL BID					\$1,215,898.87	

Unit prices have been computed in accordance with paragraph 11.03.B of the General Conditions.

Bidder acknowledges that estimated quantities are not guaranteed, and are solely for the purpose of comparison of Bids, and final payment for all Unit Price Bid Items will be based on actual quantities provided, determined as provided in the Contract Documents.

ARTICLE 6 – PAYMENT PROCEDURES

6.01 Submittal and Processing of Payments

- A. Contractor shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Engineer will process Applications for Payment as provided in the General Conditions.

6.02 Progress Payments; Retainage

- A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment within 45 days of receipt during performance of the Work as provided in Paragraph 6.02.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, in accordance with Paragraph 14.02 of the General Conditions.
 - a. 95% of Work completed (with the balance being retainage); and
 - b. 95% of cost of materials and equipment not incorporated in the Work (with the balance being retainage).
 - B. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to 100% of the Work completed, less such amounts as Engineer shall determine in accordance with Paragraph 14.02.B.5 of the General Conditions and less 200% 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.
 - C. Escrow Agreement.
 1. If the Contract is in excess of \$200,000, the contract will be subject to the standard Board of Public Works escrow agreement; unless written notice is received from Contractor prior to execution of the Agreement stating that an Escrow Account is not desired. If an Escrow Account is not desired, then the Board of Public Works, in accordance with IC 36-1-12-14, shall hold the retainage and will not pay interest on the amounts of retainage that it holds.

6.03 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 Engineers as provided in said Paragraph 14.07.

ARTICLE 7 – INTEREST

- 7.01 All moneys not paid when due as provided in Article 14 of the General Conditions shall bear interest at the rate at the maximum rate allowed by law at the place of the Project.

ARTICLE 8 – CONTRACTOR'S REPRESENTATIONS

8.01 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 exploration 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 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 Hazardous Environmental Conditions, if any, at the Site that have been identified in the Supplementary Conditions as provided in Paragraph 4.06 of the General Conditions.
- E. Contractor has obtained and carefully studied (or assumes responsibility for having done so) all additional 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 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 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, report 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 Design Manager written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof provided by Design Manager 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.
- K. In connection with the performance of Work under this Contract, Contractor agrees to comply with Anti-Discrimination Under Indiana Code Chapter 5-16-6-1 and be bound by Chapter 93.036, of the Code of the City of Fort Wayne, Indiana of 1974, passed by the Common Council of the City of Fort Wayne, Indiana as General Ordinance No. G-34-78 (as amended) on December 12th, 1978. Contractor shall file a Manpower Utilization Report for this project with the Compliance Office within ten (10) days after completion of the construction or upon request of the Office of Compliance.

ARTICLE 9 – CONTRACT DOCUMENTS

9.01 Contents

A. The Contract Documents consist of the following:

1. This Agreement (pages 00 52 00-1 to 00 52 00-9, inclusive);
2. Escrow Account Agreement (pages 00 54 43-1 to 00 54 43-3, inclusive);
3. Drug Policy Acknowledgement Form (page 00 54 52-1);
4. E-Verify Affidavit (page 00 54 53-1, inclusive);
5. Local Indiana Business Preference Form (page 00 54 54-1, inclusive);
6. SRF Loan Program DBE Packet (pages 00 54 61-1 to 00 54 61-4, inclusive);
7. SRF Attachment B – Davis-Bacon Act Contract Provisions (pages 00 54 65-1 to 00 54 65-9, inclusive);
8. SRF Attachment C – Wage Fringe Benefit Certification Contract Provisions (page 00 54 66-1);
9. SRF Attachment E – Suspension and Debarment Contract Provisions (page 00 54 68-1);
10. SRF EPA Form OBE-1 (page 00 54 72-1);
11. SRF EPA Form OBE-2 (page 00 54 73-1);
12. Performance Bond Form (pages 00 61 13.13-1 to 00 61 13.13-2, inclusive);
13. Payment Bond Form (pages 00 61 13.16-1 to 00 61 13.16-2, inclusive);
14. Guaranty Bond Form (pages 00 61 31-1 to 00 61 31-2, inclusive);
15. Federal Wage Rate Requirements (see Appendix A);
16. General Conditions (pages 00 72 00-1 to 00 72 00-41, inclusive);
17. Supplementary Conditions (pages 00 73 00-1 to 00 73 00-11, inclusive);
18. Standard Specifications (page 00 95 00-1 to 00 95 00-5);
19. Drawings consisting of Drawing SY-20523, pages 1 through 23, inclusive, with each sheet bearing the following general title: **Fairfax Storm Sewer Extension**;
20. Addenda (numbers 1 to 3, inclusive);
21. Attachments to this Agreement (enumerated as follows):
 - a. Contractor's Bid Schedule (page 00 41 00-3- 00 41 00-5);
 - b. Documentation submitted by Contractor prior to Notice of Award (pages ____ to ____, inclusive);

22. 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. Written Amendments;
- c. Work Change Directives;
- d. Change Orders;

- B. The documents listed in Paragraph 9.01.A 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 9.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in Paragraph 3.04 of the General Conditions.

ARTICLE 10 – MISCELLANEOUS

10.01 Terms

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

10.02 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.

10.03 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.

10.04 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.

10.05 Contractor's Certification

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 10.05:
1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process or in the Contract execution;
 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
 3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
 4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the contract.

10.06 M.B.E./W.B.E. Participation

- A. Indiana State Revolving Fund Loan Program – This project is being financed in whole or in part by the Indiana State Revolving Fund Loan Programs. The Contractor is required to comply with all federal and state laws, rules, regulations, and contract provisions included in Indiana Finance Authority (IFA) State Revolving Fund (SRF) documents per Article 9 of this agreement

(IFA SRF requirements and forms are available on the IFA SRF website.)

10.07 Other Provisions

- A. None.

IN WITNESS WHEREOF, OWNER and CONTRACTOR have signed this Agreement (Contract/Resolution Number 2420-2011). One counterpart has been delivered to Owner, and one counterpart delivered to 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 _____, _____ (which is the Effective Date of the Agreement).

CONTRACTOR:

FLEMING EXCAVATING, INC.

BY: *Gregory D. Fleming*
(Name)

TITLE: President

DATE: July 3, 2012
(Date signed by Contractor)

Address for giving notices:

Fleming Excavating, Inc.
112 E 1000 N
Decatur, IN 46733

OWNER:

CITY OF FORT WAYNE

BY: *Thomas C. Henry*
THOMAS C. HENRY, MAYOR

BOARD OF PUBLIC WORKS

BY: *Robert P. Kennedy*
ROBERT P. KENNEDY, CHAIR

BY: *Mike Awla*
MIKE AWLA, MEMBER

BY: *Kumar Menon*
KUMAR MENON, MEMBER

ATTEST: *Victoria Edwards*
VICTORIA EDWARDS, CLERK

DATE: July 11, 2012
(Date signed by Board)

ACKNOWLEDGMENT (CONTRACTOR)

STATE OF INDIANA)
SS:)
COUNTY OF ALLEN)

BEFORE ME, a Notary Public, in and for said County and State, this 3rd day of July, 2012, personally appeared the within named Gregory A. Fleming who under penalty of perjury says that he is the President of Fleming Excavating and as such duly authorized to execute the foregoing instrument and acknowledged the same as the voluntary act and deed of Fleming Excavating, Inc. for the uses and purposes therein set forth.

IN WITNESS WHEREOF, hereunto subscribed my name, affixed my official seal.

Leslie Miller
Notary Public

Leslie Miller

Printed Name of Notary

My Commission Expires:

Resident of Adams County

ACKNOWLEDGMENT (OWNER)

STATE OF INDIANA)
SS:)
COUNTY OF ALLEN)

BEFORE ME, a Notary Public, in and for said County and State, this 11th day of July, 2012 personally appeared the within named Thomas C. Henry, Robert P. Kennedy, Mike Avila, Kumar Menon and Victoria Edwards, by me personally known, who being by me duly sworn said that they are respectively the Mayor of the City of Fort Wayne, and Chairman, Members, and Clerk of the Board of Public Works of the City of Fort Wayne, Indiana, and that they signed said instrument on behalf of the City of Fort Wayne, Indiana, with full authority so to do and acknowledge said instrument to be in the voluntary act and deed of said City for the uses and purposes therein set forth.

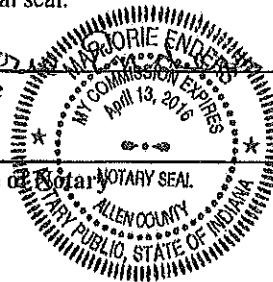
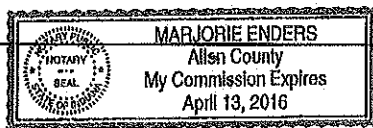
IN WITNESS WHEREOF, hereunto subscribed my name, affixed my official seal.

Marjorie Enders
Notary Public

Printed Name of Notary

My Commission Expires:

Resident of _____ County



PROJECT:	Fishery Water Service Extension	ESTIMATED BY:	Kelly A. Bajic
Drawn by:	2/22/2011		
Work Order:	1062		
Project Engineer:	Kelly Bajic		
Construction Manager:	Art Adams		
Owner:	MSA Authority		
Est. Date: (Issue Date):	June 26, 2011		
Revision:	182		

BID		Estimator's Estimate		Theoretical Estimate		Bidding Review	
Item	Description	Quantity	Unit	Unit Price	Estimate	Unit Price	Estimate
1	Excavation and Backfill (Class III) (See Item 1)	1	EA	\$70,000.00	\$ 70,000.00	\$ 43,775.00	\$ 43,775.00
2	Backfill (Class III) (See Item 1)	1	EA	\$10,000.00	\$ 10,000.00	\$ 5,000.00	\$ 5,000.00
3	Backfill (Class III) (See Item 1)	1	EA	\$10,000.00	\$ 10,000.00	\$ 5,000.00	\$ 5,000.00
4	Backfill (Class III) (See Item 1)	1	EA	\$10,000.00	\$ 10,000.00	\$ 5,000.00	\$ 5,000.00
5	Backfill (Class III) (See Item 1)	1	EA	\$10,000.00	\$ 10,000.00	\$ 5,000.00	\$ 5,000.00
6	Backfill (Class III) (See Item 1)	1	EA	\$10,000.00	\$ 10,000.00	\$ 5,000.00	\$ 5,000.00
7	Backfill (Class III) (See Item 1)	1	EA	\$10,000.00	\$ 10,000.00	\$ 5,000.00	\$ 5,000.00
8	Backfill (Class III) (See Item 1)	1	EA	\$10,000.00	\$ 10,000.00	\$ 5,000.00	\$ 5,000.00
9	Backfill (Class III) (See Item 1)	1	EA	\$10,000.00	\$ 10,000.00	\$ 5,000.00	\$ 5,000.00
10	Backfill (Class III) (See Item 1)	1	EA	\$10,000.00	\$ 10,000.00	\$ 5,000.00	\$ 5,000.00
11	Backfill (Class III) (See Item 1)	1	EA	\$10,000.00	\$ 10,000.00	\$ 5,000.00	\$ 5,000.00
12	Backfill (Class III) (See Item 1)	1	EA	\$10,000.00	\$ 10,000.00	\$ 5,000.00	\$ 5,000.00
13	Backfill (Class III) (See Item 1)	1	EA	\$10,000.00	\$ 10,000.00	\$ 5,000.00	\$ 5,000.00
14	Backfill (Class III) (See Item 1)	1	EA	\$10,000.00	\$ 10,000.00	\$ 5,000.00	\$ 5,000.00
15	Backfill (Class III) (See Item 1)	1	EA	\$10,000.00	\$ 10,000.00	\$ 5,000.00	\$ 5,000.00
16	Backfill (Class III) (See Item 1)	1	EA	\$10,000.00	\$ 10,000.00	\$ 5,000.00	\$ 5,000.00
17	Backfill (Class III) (See Item 1)	1	EA	\$10,000.00	\$ 10,000.00	\$ 5,000.00	\$ 5,000.00
18	Backfill (Class III) (See Item 1)	1	EA	\$10,000.00	\$ 10,000.00	\$ 5,000.00	\$ 5,000.00
19	Backfill (Class III) (See Item 1)	1	EA	\$10,000.00	\$ 10,000.00	\$ 5,000.00	\$ 5,000.00
20	Backfill (Class III) (See Item 1)	1	EA	\$10,000.00	\$ 10,000.00	\$ 5,000.00	\$ 5,000.00
21	Backfill (Class III) (See Item 1)	1	EA	\$10,000.00	\$ 10,000.00	\$ 5,000.00	\$ 5,000.00
22	Backfill (Class III) (See Item 1)	1	EA	\$10,000.00	\$ 10,000.00	\$ 5,000.00	\$ 5,000.00
23	Backfill (Class III) (See Item 1)	1	EA	\$10,000.00	\$ 10,000.00	\$ 5,000.00	\$ 5,000.00
24	Backfill (Class III) (See Item 1)	1	EA	\$10,000.00	\$ 10,000.00	\$ 5,000.00	\$ 5,000.00
25	Backfill (Class III) (See Item 1)	1	EA	\$10,000.00	\$ 10,000.00	\$ 5,000.00	\$ 5,000.00
26	Backfill (Class III) (See Item 1)	1	EA	\$10,000.00	\$ 10,000.00	\$ 5,000.00	\$ 5,000.00
27	Backfill (Class III) (See Item 1)	1	EA	\$10,000.00	\$ 10,000.00	\$ 5,000.00	\$ 5,000.00
28	Backfill (Class III) (See Item 1)	1	EA	\$10,000.00	\$ 10,000.00	\$ 5,000.00	\$ 5,000.00
29	Backfill (Class III) (See Item 1)	1	EA	\$10,000.00	\$ 10,000.00	\$ 5,000.00	\$ 5,000.00
30	Backfill (Class III) (See Item 1)	1	EA	\$10,000.00	\$ 10,000.00	\$ 5,000.00	\$ 5,000.00
31	Backfill (Class III) (See Item 1)	1	EA	\$10,000.00	\$ 10,000.00	\$ 5,000.00	\$ 5,000.00
32	Backfill (Class III) (See Item 1)	1	EA	\$10,000.00	\$ 10,000.00	\$ 5,000.00	\$ 5,000.00
33	Backfill (Class III) (See Item 1)	1	EA	\$10,000.00	\$ 10,000.00	\$ 5,000.00	\$ 5,000.00
34	Backfill (Class III) (See Item 1)	1	EA	\$10,000.00	\$ 10,000.00	\$ 5,000.00	\$ 5,000.00
35	Backfill (Class III) (See Item 1)	1	EA	\$10,000.00	\$ 10,000.00	\$ 5,000.00	\$ 5,000.00
36	Backfill (Class III) (See Item 1)	1	EA	\$10,000.00	\$ 10,000.00	\$ 5,000.00	\$ 5,000.00
37	Backfill (Class III) (See Item 1)	1	EA	\$10,000.00	\$ 10,000.00	\$ 5,000.00	\$ 5,000.00

CITY OF FORT WAYNE, INDIANA

Fleming Excavating, Inc.

(Vendor Name)

VENDOR DISCLOSURE STATEMENT RELATING TO:

- 1. FINANCIAL INTERESTS;**
- 2. POTENTIAL CONFLICTS OF INTERESTS;**
- 3. CURRENT AND PENDING CONTRACTS OR PROCUREMENTS**

Vendors desiring to enter into certain contracts with the City of Fort Wayne, Indiana (the "City") shall disclose their financial interests, potential conflicts of interest and current and pending contract or procurement information as set forth below.

The following disclosures by Vendors are required for all contracts with annual payments by the City in the amount of \$25,000 or more. Vendors shall disclose the financial interests, potential conflicts of interest and other contract and procurement information identified in Sections 1, 2 and 3 below as a prerequisite for consideration of an award of contract by the City. This Disclosure Statement must be completed and submitted together with Vendor's contract, bid, proposal, or offer.

A publicly traded entity may submit its current 10K disclosure filing in satisfaction of the disclosure requirements set forth in Sections 1 and 2 below.

Section 1. Disclosure of Financial Interest in Vendor

- a. If any individuals have either of the following financial interests in Vendor (or its parent), please check all that apply and provide their names and addresses (attach additional pages as necessary):

(i) Equity ownership exceeding 5% ☒ (X)

(ii) Distributable income share exceeding 5% ☐ ()

(iii) Not Applicable (If N/A, go to Section 2) ☐ ()

Name: Gregory A. Fleming

Name: _____

Address: 50 E 1000 N - Decatur, IN 46733

Address: _____

- b. For each individual listed in Section 1a., show his/her type of equity ownership: sole proprietorship ☐ () stock ☐ () partnership interest ☐ () units (LLC) ☐ () other (explain) Sub S, Corp

- c. For each individual listed in Section 1a., show the percentage of ownership interest in Vendor (or its parent):
ownership interest: 100 %

Section 2. Disclosure of Potential Conflicts of Interest (not applicable for vendors who file a 10K)

For each individual listed in Section 1a., check "Yes" or "No" to indicate which, if any, of the following potential conflict of interest relationships apply. If "Yes", please describe using space under applicable subsection (attach additional pages as necessary):

- a. City employment, currently or in the previous 3 years, including contractual employment for services.

Yes ☐ _____

No. ☒ X

- b. City employment of "Member of Immediate Family" (defined herein as: spouse, parent, child or sibling) including contractual employment for services in the previous 3 years. Yes _____ No. X
- c. Relationship to Member of Immediate Family holding elective City office currently or in the previous 3 years. Yes _____ No. X
- d. Relationship to Member of Immediate Family holding appointive City office currently or in the previous 3 years. Yes _____ No. X

Section 3. DISCLOSURE OF OTHER CONTRACT AND PROCUREMENT RELATED INFORMATION

- a. Does Vendor have current contracts (including leases) with the City? Yes _____ No X
- b. If "Yes", identify each current contract with descriptive information including purchase order or contract reference number, contract date and City contact using space below (attach additional pages as necessary).
- c. Does Vendor have pending contracts (including leases), bids, proposals, or other pending procurement relationship with the City? Yes _____ No. X

If "Yes", identify each pending matter with descriptive information including bid or project number, contract date and City contact using space below (attach additional pages as necessary).

Section 4. CERTIFICATION OF DISCLOSURES

In connection with the disclosures contained in Sections 1, 2 and 3 Vendor hereby certifies that, except as described in attached Schedule A:

- Vendor (or its parent) has not, within the five (5) year period preceding the date of this Disclosure Statement, been debarred, suspended, proposed for debarment declared ineligible or voluntarily excluded from any transactions by any federal, state or local unit of government;
- No officer or director of Vendor (or its parent) or individual listed in Section 1a. is presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any offense;
- Vendor (or its parent) has not, within the five (5) year period preceding the date of this Disclosure Statement, had one or more public transactions (federal, state or local) terminated for cause or default;
- No officer or director of Vendor (or its parent) or individual listed in Section 1a. has, within the five

(5) year period preceding the date of this Disclosure Statement, been convicted, adjudged guilty, or found liable in any criminal or civil action instituted by the City, the federal or state government or any other unit of local government; and

- e. Neither Vendor, nor its parent, nor any affiliated entity of Vendor, or any of their respective officers, directors, or individuals listed in Section 1a. is barred from contracting with any unit of any federal, state or local government as a result of engaging in or being convicted of: (i) bid-rigging; (ii) bid-rotating; or (iii) any similar federal or state offense that contains the same elements as the offense of bid-rigging or bid-rotating.

The disclosures contained Sections 1, 2 and 3 and the foregoing Certifications are submitted by

Fleming Excavating, Inc.
(Name of Vendor)

112 E 1000 N - Decatur, IN 46733
Address
(260) 724-2697
Telephone fleming_one@nchsi.com
E-Mail Address

The individual authorized to sign on behalf of Vendor represents that he/she: (a) is fully informed regarding the matters pertaining to Vendor and its business; (b) has adequate knowledge to make the above representations and disclosures concerning Vendor; and (c) certifies that the foregoing representations and disclosures are true and accurate to the best of his/her knowledge and belief.

Name (Printed) Gregory A. Fleming Title President

Signature  Date Juen 20, 2012

NOTE: FAILURE TO COMPLETE AND RETURN THIS FORM WITH YOUR DOCUMENTATION MAY RESULT IN YOUR CONTRACT, OFFER, BID OR PROPOSAL BEING DISQUALIFIED FROM CONSIDERATION.

Interoffice Memo

Date: July 9, 2012
To: Common Council Members
From: Michael Kiester, Manager, City Utilities Engineering / ESS
RE: Fairfax Storm Sewer Extension
Res. #2420-2011, W.O. #75663, Fairfax Storm Sewer Extension

Michael Kiester
7-11-12

Council District #5

The contractor shall furnish all labor, insurance, equipment, materials and power for the completion of the project: "Fairfax Storm Sewer Extension" as follows: This project will consist of a storm sewer extension that will be along Fairfax Avenue from South Wayne Avenue to Old Mill Road and regulator modifications to the Woodhurst Regulator. This will consist of approximately 1350 lf of 68" x 43" RCP and 265 lf of 54", 48", 42", 36", 30" & 12" RCP. The storm extension will pick up an existing storm sewers system with inlets and catch basins that are currently connected to the combined system. The project will also consist of 780 lf horizontally directional drilled (HDD) water main replacement on Fairfax Avenue from South Wayne Avenue to Woodhurst Boulevard.

Implications of not being approved: This separation project is to meet the Consent Decree requirements of CSO Control Measure (CM) 6 for CSO Outfall 39. Partial sewer separation will reduce the amount of stormwater entering the combined sewer system by picking up existing inlets and catchbasins from the combined system. By removing stormwater runoff from the existing combined sewer in the neighborhood, this will result in fewer combined sewer overflows. The CSO CM 6 requires that CSSCIP (combined sewer separation capital improvements projects) work be initiated in 2012 and all construction completed by 2018.

If Prior Approval is being Requested, Justify N/A

This project was advertised to contractors on June 1st, 2012, June 8th, 2012 in the Journal Gazette and the News Sentinel and June 6th, 2012 in Frost Illustrated, Inc.

The contract for Resolution # 2420-2011 awarded to Fleming Excavating, Inc. for \$1,215,898.87 was the lowest most responsive bidder of 2 bidders and 19% below the Engineer's estimate of \$1,508,140.00. The second lowest bidder was \$348,164.33 above Fleming Excavating, Inc.'s bid.

The cost of said project funded by 2012 SRF.

Council Introduction Date: July 24, 2012

CC: BOW
Matthew Wirtz
Diane Brown
Construction Manager
Chrono
File