

SECTION 00500
AGREEMENT

THIS AGREEMENT is by and between City of Grand Island (“Owner”) and
Merryman Excavation, Inc. (“Contractor”).

Owner and Contractor hereby, agree as follows:

WITNESSETH:

THAT, WHEREAS, in accordance with law, Owner has caused contract documents to be prepared and an advertisement calling for bids to be published, for **Grand Island North Interceptor – Phase I, Project No. 2012-S-6** and;

WHEREAS, Owner, in the manner prescribed by law, has publicly opened, examined, and canvassed the proposals submitted, and has determined the aforesaid Contractor to be the lowest responsible and responsive bidder, and has duly awarded to the said Contractor a contract therefore, for the sum or sums named in Contractor's bid, a copy thereof being attached to and made a part of this Contract;

NOW, THEREFORE, in consideration of the compensation to be paid to Contractor and of the mutual agreements herein contained, the parties have agreed and hereby agree, Owner for itself and its successors, and Contractor for itself, himself/herself, or themselves, and its, his/hers, or their successors, 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:

- Installation of approximately 7,000 linear feet of 54-inch diameter sanitary sewer and associated manholes from the City of Grand Island’s Wastewater Treatment Plant to the intersection of 7th Street and 4th Street. Approximately 1,250 linear feet of the 7,100 linear feet will require removal and replacement of the City’s existing 30-inch diameter sanitary sewer (reinforced concrete pipe) and manholes.
- Installation of approximately 980 linear feet of 42-inch sanitary sewer within a maximum of 66-inch diameter casing pipe. The casing pipe will be installed by microtunneling and will be for a 185 linear foot crossing at US Highway 30 and a 525 linear foot crossing at the Union Pacific Railroad tracks.
- Installation of approximately 130 linear feet of 27-inch FRPM direct jack pipe by microtunneling.
- Sliplining of approximately 3,990 linear feet of 30-inch reinforced concrete host pipe with 24-inch diameter sanitary sewer.
- Sliplining of approximately 960 linear feet of 36-inch reinforced concrete host pipe with 24-inch diameter sanitary sewer.
- Installation of approximately 670 linear feet of 8-inch diameter sanitary sewer and associated manholes.
- Installation of approximately 680 linear feet of 24-inch diameter sanitary sewer and associated manholes.
- Installation of approximately 415 linear feet of 27-inch diameter sanitary sewer and associated manholes with at least 130 feet being installed by horizontal directional drilling.

- 1.02 That Contractor shall (a) furnish all tools, equipment, superintendence, transportation, and other construction materials, services and facilities; (b) furnish, as agent for Owner, all materials, supplies and equipment specified and required to be incorporated in and form a permanent part of the completed work; (c) provide and perform all necessary labor; and (d) in a good substantial and workmanlike manner and in accordance with the requirements, stipulations, provisions, and conditions of the contract documents as listed in the attached General Conditions, Standard Specifications, and Bid Documents, said documents forming the contract and being as fully a part thereof as if repeated verbatim herein, perform, execute, construct and complete all work included in and covered by Owner's official award of this contract to the said Contractor, such award being based on the acceptance by Owner of Contractor's bid;
- 1.03 That Contractor shall start work as soon as possible after the contract is signed and the required bond(s) is approved, and that Contractor shall complete all work in accordance with Article 3 of this Agreement; Contract Times, or as modified contractually in accordance with General Conditions.

ARTICLE 2 – ENGINEER

- 2.01 The Project has been designed by Black & Veatch Corporation, 8400 Ward Parkway, Kansas City, MO 64114, who is referred to in the Contract Documents as Engineer. Engineer, and its duly authorized agents are 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 the essence of the Contract.

3.02 Days to Achieve Substantial Completion and Final Payment

- A. The Work will be substantially completed within 210 calendar 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 245 calendar 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 as stated in Paragraph 3.01 above 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), Contractor shall pay Owner \$550.00 for each 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, Contractor shall pay Owner \$350.00 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.

- B. The liquidated damages set forth herein shall not be cumulative. If Substantial Completion of the Work is not met within the time specified for Final Completion of all Work, the liquidated damages shall continue to be at the rate or rates specified for default on Substantial Completion until Substantial Completion is attained. If the Work is not then finally completed within the time specified for Final Completion of all Work, the rate or rates specified for default on Final Completion shall apply until final completion is attained.
- C. Owner shall have the right to deduct the liquidated damages from any money in its hands, otherwise due, or to become due, to Contractor and to recover liquidated damages for nonperformance of this Contract within the time stipulated.

ARTICLE 4 – CONTRACT PRICE

4.01 That Owner shall pay to Contractor for the performance of the work embraced in this contract and Contractor will accept as full compensation therefore the sum of the amounts determined pursuant to Paragraphs 4.01.F below, or as modified contractually in accordance with General Conditions for all services, materials, and work covered by and included in the contract award and designated in the foregoing Article I; payments thereof to be made in cash or its equivalent in the manner provided in the General Specifications.

A. Unit Price for Base Bid	\$ 8,687,110
B. Owner has elected to reject Bid Alternative A	\$ 8,943,086
C. Owner has elected to reject Bid Alternative B	\$ 9,222,986
D. Owner has elected to reject Bid Alternative C	\$ 9,109,910
E. Owner has elected to reject Bid Alternative D	\$ 9,208,715
F. Owner has elected to reject Bid Alternative E	\$ 9,324,458
G. Owner has elected to reject Bid Alternative F	\$ 9,044,558
H. Owner has elected to accept Bid Alternative G	\$ (242,475)
I. TOTAL CONTRACT PRICE	\$ 8,444,635

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 Owner 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 as recommended by Engineer in accordance with Article 14 of the General Conditions. All such payments will be measured by the schedule of values established as provided in Paragraph 2.07.A of the General Conditions:

- 1. For Cost of Work: Progress payments on account of the Cost of the Work will be made:

- a. 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:

- 1) 95 percent Cost of Work completed (with the balance being retainage). If the Work has been 50 percent completed 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 additional 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.
- 2) 95 percent of cost of materials and equipment not incorporated in the Work but delivered, suitably stored and documented in accordance with Paragraph 14.02.A.2 of the General Conditions (with the balance being retainage).

- b. Upon Substantial Completion: Owner shall pay an amount sufficient to increase total payments to Contractor to 95 percent of the Contract Price (with the balance being retainage), less such amounts as Engineer and Owner shall determine in accordance with Paragraph 14.02.B.5 of the General Conditions.

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 – AGENT FOR THE CITY IN PURCHASING MATERIALS AND SUPPLIES

- 6.01 Contractor hereby agrees to act as agent for Owner in purchasing materials and supplies for Owner for this project. Owner shall be obligated to the vendor of the materials and supplies for the purchase price, but Contractor shall handle all payments hereunder on behalf of Owner. The

vendor shall make demand or claim for payment of the purchase price from Owner by submitting an invoice to Contractor. Title to all materials and supplies purchased hereunder shall vest in Owner directly from the vendor. Regardless of the method of payment, title shall vest immediately in Owner. Contractor shall not acquire title to any materials and supplies incorporated into the project. All invoices shall bear Contractor's name as agent for Owner. This paragraph will apply only to these materials and supplies actually incorporated into and becoming a part of the finished product of *Grand Island North Interceptor – Phase I, Project No. 2012-S-6*.

ARTICLE 7 – CONTRACTOR’S REPRESENTATIONS

7.01 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 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.
- E. Based on the information and observations referred to in Paragraph 7.01.D above, 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.
- F. 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.
- G. 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.
- H. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

ARTICLE 8 – CONTRACT DOCUMENTS

8.01 *Contents*

- A. The Contract Documents consist of the following:
1. This Agreement (pages 1 to 9 inclusive).
 2. Performance bond (pages 00610-1 to 00610-2, inclusive).
 3. Payment bond (pages 00615-1 to 00615-2, inclusive).
 4. General Conditions (pages 1 to 76 inclusive).
 5. Specifications as listed in the table of contents of the Project Manual.
 6. Drawings consisting of sheets listed in Index of Drawings with each sheet bearing the following general title: Grand Island, Nebraska, North Interceptor – Phase I.
 7. Addenda (numbers 1 to 2, inclusive).
 8. Exhibits to this Agreement (enumerated as follows):
 - a. Contractor's Bid (pages 1 to 29, inclusive).
 - b. Documentation submitted by Contractor prior to Notice of Award (pages N/A to N/A, inclusive).
 9. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:
 - a. All written amendments and other documents amending, modifying or supplementing the Contract Documents pursuant to Paragraph 3.04 of the General Conditions.
- B. The documents listed in Paragraph 8.01 above, are attached to this Contract (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in Article 8. The Contract Documents may only be amended, modified or supplemented as provided in Paragraph 3.04 of the General Conditions.

ARTICLE 9 – NEBRASKA STATE FAIR LABOR STANDARDS

9.01 *Assignment*

- A. Contractor agrees to comply with all applicable State fair labor standards in the execution of this contract as required by Section 73-102, R.R.S. 1943. Contractor further agrees to comply with the provisions of Section 48-657, R.R.S. 1943, pertaining to contributions to the Unemployment Compensation Fund of the State of Nebraska. During the performance of this contract, contractor and all subcontractors agree not to discriminate in hiring or any other employment practice on the basis of race, color, religion, sex, national origin, age or disability. Contractor agrees to comply with all applicable Local, State and Federal rules and regulations.

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 express 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 bind 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 Certifications*

- 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 any thing of value 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 the detriment of Owner, (b) to establish Bid 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 (2) 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 *Gratuities And Kickbacks*

- A. City of Grand Island, Nebraska code states that it is unethical for any person to offer, give, or to agree to give any City employee or former City employee, or for any City employee or former City employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, or preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefore. It shall be unethical for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.

10.07 *Fiscal Year Budget Authority.*

- A. The City of Grand Island, Nebraska operates on a fiscal year beginning October 1st and ending on the following September 30th. It is understood and agreed that any portion of this agreement which will be performed in a future fiscal year is contingent upon the City Council adopting budget statements and appropriations sufficient to fund such performance.

10.08 *LB 403*

- A. Every public contractor and their subcontractors who are awarded a contract by Owner for the physical performance of services within the State of Nebraska shall register with and use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska.

10.09 *Title VI*

- A. The City of Grand Island, Nebraska in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C 2000d to 2000d-4 and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally assisted programs of the Department of Transportation issued pursuant to such Act, hereby notify all bidders that it will affirmatively insure that in any contact entered into

pursuant to this advertisement, minority business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin, sex, age and disability/handicap in consideration for an award.

10.10 *Section 504/ADA Notice to the Public*

- A. The City of Grand Island, Nebraska does not discriminate on the basis of disability in admission of its programs, services, or activities, in access to them, in treatment of individuals with disabilities, or in any aspect of their operations. The City of Grand Island also does not discriminate on the basis of disability in its hiring or employment practices.

This notice is provided as required by Title II of the Americans with Disabilities Act of 1990 and Section 504 of the Rehabilitation Act of 1973. Questions, complaints, or requests for additional information or accommodation regarding the ADA and Section 504 may be forwarded to the designated ADA and Section 504 compliance coordinator.

10.11 *Article X*

- A. Owner reserves the right to terminate this contract at any time upon sixty (60) days notice. If the contract is terminated, Contractor will be compensated for any services rendered to date of termination.

10.12 *Fair Employment Practices*

- A. Each Bidder agrees that they will not discriminate against any employee or applicant for employment because of age, race, color, religious creed, ancestry, handicap, sex or political affiliation.

IN WITNESS WHEREOF, the parties hereto have executed this Contract Agreement. Counterparts have been delivered to Owner, Contractor, Surety, and Engineer. 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 June 12, 2013

OWNER:

City of Grand Island

By: [Signature]

Title: Mayor

Date 6/12/2013

Attest: RaNae Edwards

Title: City Clerk

Address for giving notices:

City Hall *100 East 1st *P.O. Box 1968

Grand Island, Nebraska 68802-1968

Attention: Public Works Division

CONTRACTOR:

Merryman Excavation, Inc.

By: [Signature]

Title: Patrick Merryman, President

Date 6-7-13

(If Contractor is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)

Attest: Jennifer Graff

Title: Jennifer Graff, Notary

Address for giving notices:

Merryman Excavation, Inc.

1501 Lamb Road

Woodstock, IL 60098

License No.: _____

(Where applicable)

Agent for service of process:

The contract and bond are in due form according to law and are hereby approved.

Stacy R. Nonhof
Attorney for the City

6/12/13

Date