

## AGREEMENT FORM

### SALISBURY STREET SAFETY IMPROVEMENTS PROJECT, PHASE III

This agreement, made this **17th** day of **December, 2013** at West Lafayette, Indiana, by and between the Board of Public Works and Safety for the City of West Lafayette, Indiana and the Redevelopment Commission for the City of West Lafayette, Indiana (hereinafter referred to as the "City") and **Milestone Contractors, L.P.** (hereinafter referred to as the "Contractor").

#### WITNESSETH:

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

#### Article 1: SCOPE OF WORK

The Contractor shall furnish all labor and tools and equipment and do all things required for complete installation, construction, and resurfacing in accordance with the plans and specifications. The plans and specifications shall be on file in the office of the City Engineer.

#### Article 2: PAYMENT

The City shall pay to the Contractor, in full and complete payment for all performance of the Contract, in current funds. The estimated sum of **\$1,664,244.82 (one million six hundred sixty four thousand, two hundred forty four dollars and eighty two cents)** defined as the contract price, and computed from the Contractors Bid included herein. The final contract price will be the result of the actual installed quantities of materials multiplied by the corresponding contract unit prices. Variance from the estimated plan quantities will be done by change order for any additions or deletions to the contract as determined by the work and approved by the West Lafayette Board of Public Works and Safety.

Said contract price shall be paid to the Contractor in installments in the manner provided in, and under conditions of, the General Conditions.

#### Article 3: CONTRACT DOCUMENTS

The contract documents include this agreement, current wage rate table, the General Conditions, Special Conditions, Materials Specifications, the Contractor's maintenance bond, and the Contractor's certification of insurance, together with plans and any subsequent addenda.

Said documents are hereby incorporated into and made a part of this agreement the same as if herein fully set forth.

**Article 4: SEVERANCE**

The intent of the parties is that this agreement be deemed entire in the sense that its purpose is to establish one price for the doing of the whole work, and that it be deemed severable in the sense that the voidance of any part or portion shall not void the remainder.

It is understood and agreed that partial payments may be made for the mutual convenience of the City and Contractor but shall not be construed as the City's acceptance of a part or portion of the work. Acceptance is to only in the manner prescribed in the General Conditions.

**Article 5: RECORDS**

The Contractor will maintain proper records for review by the City.

**Article 6: DATE OF COMPLETION**

The Contractor agrees that the work contained in the contract will be substantially completed on or before August 1, 2014, and final completion achieved on or before October 1, 2014.

**Article 7: LIQUIDATED DAMAGES**

Contractor and City recognize that time is of the essence of this Agreement and that the City will suffer financial loss if the Work is not completed within the times specified in Article 6 above, plus any extensions thereof allowed in accordance with a Change Order. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by the City if the Work is not completed on time. Accordingly, instead of requiring any such proof, City and Contractor agree that as liquidated damages for delay (but not as a penalty), the City, in the form of a Change Order, shall deduct from the monies due the Contractor \$5,000.00 for each calendar day that expires after the time specified in Article 6 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 the City, the City, in the form of a Change Order, shall deduct from the monies due the Contractor \$2,000.00 for each calendar day that expires after the time specified in Article 6 for completion and readiness for final payment until the Work is completed and ready for final payment.

**Article 8: PREVAILING PARTY – ATTORNEY FEES**

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

**Article 9: ENGAGING IN ACTIVITIES WITH IRAN**

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

**Article 10: E-VERIFY**

Contractor shall comply with E-Verify Program as follows:

- a. Pursuant to IC 22-5-1.7, Contractor shall enroll in and verify the work eligibility status of all newly hired employees of Contractor through the E-Verify Program ("Program"). Contractor is not required to verify the work eligibility status of all newly hired employees through the Program if the Program no longer exists.
- b. Contractor and its subcontractors shall not knowingly employ or contract with an unauthorized alien or retain an employee or contract with a person that Contractor or its subcontractors subsequently learns is an unauthorized alien. If Contractor violates this Section 7(b), the City shall require Contractor to remedy the violation not later than thirty (30) days after the City notifies Contractor. If Contractor fails to remedy the violation within the thirty (30) day period, the City shall terminate the contract for breach of contract. If the City terminates the contract, Contractor shall, in addition to any other contractual remedies, be liable to the City for actual damages. There is a rebuttable presumption that Contractor did not knowingly employ an unauthorized alien if Contractor verified the work eligibility status of the employee through the Program.
- c. If Contractor employs or contracts with an unauthorized alien but the City determines that terminating the contract would be detrimental to the public interest or public property, the City may allow the contract to remain in effect until the City procures a new contractor.
- d. Contractor shall, prior to performing any work, require each subcontractor to certify to Contractor that the subcontractor does not knowingly employ or contract with an unauthorized alien and has enrolled in the Program. Contractor shall maintain on file a certification from each subcontractor throughout the duration of the Project. If Contractor determines that a subcontractor is in violation of this Section 7(d), Contractor may terminate its contract with the subcontractor for such violation. Such termination may not be considered a breach of contract by Contractor or the subcontractor.
- e. By its signature below, Contractor swears or affirms that it i) has enrolled and is participating in the E-Verify program, ii) has provided documentation to the City that it has enrolled and is participating in the E-Verify program, and iii) does not knowingly employ an unauthorized alien.

**Article 11: NON-DISCRIMINATION**

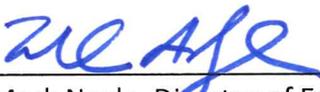
Contractor agrees:

- a. That in the hiring of employees for the performance of work under this contract or any subcontract hereunder, no contractor, or subcontractor, nor any person acting on behalf of such contractor or subcontractor, shall, by reason of race, religion, color, sex, national origin or ancestry, discriminate against any citizen of the State of Indiana who is qualified and available to perform the work to which the employment relates;
- b. That no contractor, subcontractor, nor any person on his behalf shall, in any manner, discriminate against or intimidate any employee hired for the performance of work under this contract on account of race, religion, color, sex, national origin or ancestry;
- c. That the City may deduct from the amount payable to the contractor a penalty of five dollars (\$5.00) for each person for each calendar day during which such person was discriminated against or intimidated in violation of the provisions of the contract;
- d. If there is a second or any subsequent violation of the terms or conditions of this section, then this contract may be cancelled or terminated by City and all money due or to become due hereunder will be forfeited.

IN WITNESS WHEREOF we have set our hands the day and year first above written.

**CONTRACTOR:**

**BOARD OF PUBLIC WORKS AND SAFETY**

  
 \_\_\_\_\_  
 Mark Nagle, Director of Estimating  
 Milestone Contractors, L.P.

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

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

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

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

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

ATTEST: \_\_\_\_\_  
 Judith C. Rhodes, Clerk-Treasurer

**CITY OF WEST LAFAYETTE REDEVELOPMENT COMMISSION**

---

Lawrence T. Oates, President

---

Stephen B. Curtis, Secretary