

# TECHNICAL PROPOSAL FOR THE I-69 MAJOR MOVES EXPANSION PROJECT



*Major Moves*  
-----2020

**DUE DATE: SEPTEMBER 21, 2015**



**PROPOSER:  
MILESTONE CONTRACTORS, L.P.**

5950 S. BELMONT AVE.  
INDIANAPOLIS, INDIANA 46217  
OFFICE:(317) 788-6885  
FAX:(317) 788-1098



## APPENDICES

**COPIES OF ORGANIZATIONAL DOCUMENTS**

**PROPOSER TEAMING AGREEMENT  
OR KEY TERMS**

Executive Summary  
Administrative Materials  
Forms



# SUMMARY AND ORDER OF PROPOSAL CONTENTS

Exhibit E



Technical Proposal / I-69 Major Moves 2020 Expansion

# SUMMARY & ORDER OF PROPOSAL CONTENTS

## EXHIBIT E

### Exhibit E

### SUMMARY AND ORDER OF PROPOSAL CONTENTS

Technical Proposal – Volumes 1 and 2		
Technical Proposal Component	Form (if any)	ITP Section Cross-Reference
<b>Volume 1</b>		
<b>A. Executive Summary</b>		
Executive Summary ( <b>Exclude price information</b> )	No forms are provided	<u>Exhibit B, Section 3.1</u>
<b>B. Proposer Information, Certifications &amp; Documents</b>		
Proposal Letter	<u>Form A</u>	<u>Exhibit B, Section 3.2.1</u>
Authorization Documents	No forms are provided	<u>Exhibit B, Section 3.2.1</u>
Identification of Proposer and Equity Members	<u>Form B-1</u>	<u>Exhibit B, Section 3.2.2</u>
Information About Proposer Organization	<u>Form B-2</u>	<u>Exhibit B, Section 3.2.2</u>
Information About Major Participants, and Identified Contractors	<u>Form B-3</u>	<u>Exhibit B, Section 3.2.2</u>
Letter accepting joint and several liability, if applicable	<u>No forms are provided</u>	<u>Exhibit B, Section 3.2.2</u>
Responsible Proposer and Major Participant Questionnaire	<u>Form C</u>	<u>Exhibit B, Section 3.2.3</u>
Industrial Safety Record for Proposer and Major Participants	<u>Form D (as applicable)</u>	<u>Exhibit B, Section 3.2.4</u>
Personnel Work Assignment Form and Commitment of Availability	<u>Form E</u>	<u>Exhibit B, Section 3.2.5</u>
Letter(s) Regarding Pre-Proposal Submittals	No forms are provided	<u>Exhibit B, Section 3.2.6</u>
Non-Collusion Affidavit	<u>Form F</u>	<u>Exhibit B, Section 3.2.7</u>



# SUMMARY & ORDER OF PROPOSAL CONTENTS

## EXHIBIT E

Technical Proposal – Volumes 1 and 2		
Technical Proposal Component	Form (if any)	ITP Section Cross-Reference
MWVBE Certification	Form G No forms are provided for the MWVBE Performance Plan or Job Training Plan	<u>Exhibit B, Section 3.2.8</u>
Surety/Financial Institution Information	No forms are provided	<u>Exhibit B, Section 3.2.9</u>
Conflict of Interest Disclosure	Form H	<u>Exhibit B, Section 3.2.10</u>
Insurance	No forms are provided	<u>Exhibit B, Section 3.2.11</u>
Confidential Contents Index	No forms are provided	<u>Exhibit B, Section 3.2.12</u>
<b>C. Proposal Security (Proposal Bond)</b>		
Proposal Security	<u>Form J (if in the form of a bond); no forms provided for certified check</u>	<u>Exhibit B, Section 3.3</u>
<b>D. Proposal</b>		
Stipend Agreement	Form O	<u>Exhibit B, Section 3.4</u>
<b>Volume 2</b>		
<b>E. Scope Package</b>	<u>Form K</u>	<u>Exhibit B, Section 4.0</u>
<b>F. Preliminary Performance Plans</b>		
Preliminary Project Management Plan	No forms are provided	<u>Exhibit B, Section 5.1</u>
Preliminary Project Baseline Schedule for Design and Construction	No forms are provided	<u>Exhibit B, Section 5.1.2</u>
Completion Deadlines	<u>Form L</u>	<u>Exhibit B, Section 5.1.2</u>
Preliminary Design-Build Plan	No forms are provided	<u>Exhibit B, Section 5.2</u>



**Major Moves**  
-----2020



Executive Summary  
Administrative Materials  
Forms

**VOLUME**  
**1**

# SUMMARY & ORDER OF PROPOSAL CONTENTS

**EXHIBIT E**

Technical Proposal – Volumes 1 and 2		
Technical Proposal Component	Form (if any)	ITP Section Cross-Reference
<b>G. Volume 1 Appendices</b>		
Copies of Organizational Documents	No forms are provided	<u>Exhibit B, Section 3.2.2</u>
Proposer Teaming Agreement or Key Terms	No forms are provided	<u>Exhibit B, Section 3.2.2</u>
Executed Contracts or Term Sheets/Heads of Terms	No forms are provided	<u>Exhibit B, Section 3.2.2</u>
<b>H. Volume 2 Appendices</b>		
Key Personnel Resumes	No forms are provided	<u>Exhibit B, Section 3.2.5</u>
Technical/Design Drawings, Graphs and Data	No forms are provided	<u>Exhibit B, Section 5.2</u>



# SUMMARY & ORDER OF PROPOSAL CONTENTS

## EXHIBIT E

### Price Proposal – Volume 3

Proposers shall follow the order of the Price Proposal Checklist in their submissions. A referenced copy of this document shall be submitted with the Price Proposal.

Price Proposal Component	Form (if any)	ITP Section Cross-Reference
Proposal Price Form	<a href="#">Form I</a>	<a href="#">Exhibit C, Section 2.0</a>
Summary Cost Table Form	<a href="#">Form M</a>	<a href="#">Exhibit C, Section 2.0</a>
Additional Scope Pricing	<a href="#">Form Q</a>	<a href="#">Exhibit C, Section 3.0</a>
Scope Package	<a href="#">Form K</a>	Exhibit C, Section 4.0

# G. VOLUME 1 APPENDICES

## Exhibit B, Section 3.2.2

### Copies of Organizational Documents



CERTIFICATE OF LIMITED PARTNERSHIP  
OF  
MILESTONE CONTRACTORS, L.P.

ARTICLE I

The name of the limited partnership is MILESTONE CONTRACTORS, L.P.

ARTICLE II

The address for the principal office of the limited partnership is 5400 West 86th Street, Indianapolis, Indiana, 46268.

The name and address of the agent for service of process is Willis K. Kunz, 320 N. Meridian Street, Suite 528, Indianapolis, Indiana, 46204.

ARTICLE III

The name and address of each partner is as follows:

Contractors United, Inc., General Partner  
5400 West 86th Street  
Indianapolis, IN 46268

R.V. Simpson, Inc., Limited Partner  
4200 South Harding Street  
Indianapolis, IN 46217

W.L. Ripberger, Inc., Limited Partner  
4200 South Harding Street  
Indianapolis, IN 46217

The Heritage Group, Limited Partner  
5400 West 86th Street  
Indianapolis, IN 46268

ARTICLE IV

The latest date upon which the limited partnership is to dissolve is

January 09, 2093.

Dated this 31<sup>st</sup> day of May, 1994.

MILESTONE CONTRACTORS, L.P.

By:

Thomas L. Mattix  
Thomas L. Mattix, Attorney-in-Fact

KUNZ AND KUNZ  
320 N. Meridian Street, #528  
Indianapolis, IN 46204  
(317) 262-1111

ARTICLES OF LIMITED PARTNERSHIP

OF

MILESTONE CONTRACTORS, L. P.

The undersigned, CONTRACTORS UNITED, INC., an Indiana corporation (hereinafter sometimes referred to as "General Partner"), The Heritage Group, an Indiana Partnership, ("Heritage") R.V. SIMPSON, INC., an Indiana corporation ("Simpson"), and W.L. RIPBERGER, INC., an Indiana corporation ("Ripberger"), (each hereinafter sometimes referred to as "Limited Partner"), hereby adopt the following Articles of Limited Partnership.

ARTICLE I

General Provisions

Section 1. Organization. The parties hereto form a limited partnership (hereinafter "partnership"), pursuant to the Uniform Limited Partnership Act adopted by the State of Indiana.

Section 2. Name. The name of the partnership is MILESTONE CONTRACTORS, L.P.

Section 3. Place of Business. The principal office of the partnership shall be located at 5400 West 86th Street, Indianapolis, Indiana, or at such other place as may be designated from time to time by the Managing Partner.

Section 4. Purpose. It is the principal purpose of the partnership to engage in the operation of the business of construction and reconstruction of roads, bridges, parking lots, and other miscellaneous asphalt paving and concrete work, and all activities related thereto, as well as any and all activities permitted to be engaged in by limited partnerships by the laws of

the State of Indiana or any other state where the partnership may do business.

Section 5. Term. The partnership shall begin business on the date of execution of these Articles of Limited Partnership and shall continue until January 1, 2093.

Section 6. Title. Title to all property of this partnership, both real and personal, shall be acquired, held and conveyed in the name of the partnership.

## ARTICLE II

### The Partners

The name of each partner is as follows:

Contractors United, Inc.	General Partner
The Heritage Group	Limited Partner
R.V. Simpson, Inc.	Limited Partner
W.L. Ripberger, Inc.	Limited Partner

## ARTICLE III

### Capital Contributions, Distribution, Profits and Losses

Section 1. Initial Capital Contributions. The initial capital of this partnership shall consist of the assets listed on Exhibit "A" subject to all liabilities, with such assets to have an agreed net value of Twenty-Three Million Sixty-Four Thousand Nine Hundred Seventeen Dollars (\$23,064,917.00). The partners agree that each partner has made the contribution set forth below:

Contractors United, Inc.	\$21,316,596.29
The Heritage Group	\$1,243,199.03
R.V. Simpson, Inc.	\$329,828.31
W.L. Ripberger, Inc.	\$175,293.37

Section 2. Assumption of Liabilities. The partners agree that the initial capital contributions are subject to certain

liabilities which are set out in Exhibit "B". These liabilities are hereby assumed by the partnership and the partnership hereby accepts such obligations and agrees to be bound by the terms thereof except that the partnership shall cancel three promissory notes owing to the former partners of Astro Paving and shall issue new promissory notes, which notes shall become obligations of the partnership under Section 7 of this Article.

For any loans from the partners to the partnership repayment shall be on a pro rata basis, except in the case of a buy-out of a limited partner's interest pursuant to the Buy-Out Agreement.

Section 3. Additional Capital Contributions and Guaranties.

The partners anticipate that from time to time the partnership may require additional capital for operating purposes, or outside financing may need to be obtained and be secured with guaranties from the partners. In the event additional capital contributions are required from the partners, the partners shall contribute in proportion to their ownership interests. If a limited partner is unable or unwilling to contribute his portion of required additional capital, any one or more of the other partners may make the contribution to capital up to the amount required, and thereafter the units of participation set forth in Section 5 shall be adjusted to reflect each partner's capital account balance as it relates to total capital.

$$\left[ \frac{\text{Partner's Capital Account Balance}}{\text{Total of all Capital Account Balances}} = \% \text{ of partnership interest} \right. \\ \left. \text{X } 10,000 = \text{Partner's Units} \right]$$

See example of adjustment attached as Exhibit "C".

The partners agree that they will execute guaranties in proportion to their ownership interests whenever the same are required to secure outside financing as determined to be necessary by the General Partner.

Section 4. Amount of Distributions. The partners agree that each partner shall receive annual distributions in an amount which is equal to or greater than the amount necessary for payment of the combined federal and state income taxes owed by such partner. For purposes of this Section all distributions shall be at the assumed combined tax rate of the partner with the highest tax rate for the year. If practicable, quarterly distributions shall be made corresponding to quarterly installments of taxes due by the partners. Any additional distributions and the time or times of any such distributions shall be within the sole discretion of General Partner.

Section 5. Allocation of Profits and Losses. The profits and losses of the partnership shall be determined each year in accordance with the accounting methods followed for federal income tax purposes (federal taxable income or loss as reported on Schedule K of the U.S. Partnership Return of Income in its present form or as it may be changed from time to time) and shall be allocated among the partners in proportion to their respective units of participation in the limited partnership.

	<u>Participation Units</u>
Contractors United, Inc.	9242 Units
The Heritage Group	539 Units
R.V. Simpson, Inc.	143 Units
W.L. Ripberger, Inc.	76 Units
Total	10,000 Units

The partners agree that units of participation set out above shall be adjusted in the event of a partner's failure to contribute additional capital as set out in Section 3 above.

Section 6. Capital Accounts. The capital account of each partner shall consist of its initial contribution and any additional contributions by it, other profits (or losses) credited (or charged) thereto, and less any distributions from the partnership to the partner.

Section 7. Additional Loans to Partnership. The partners, or any of them, may make loans to the partnership, in addition to those provided for above and those assumed under Section 2, in order to carry on the business of the partnership. Such additional loans shall be repaid thereafter upon demand, and shall draw interest from the date of such loan at the rate at which the partnership could then borrow from the primary lending institution used as a depository. Such additional loans shall be evidenced by a promissory note or notes of the partnership upon the terms and conditions as set out above. Each partner shall have the right to make loans to the partnership of any amount, and such loans need not be prorata based upon participation in the partnership's profits and losses. The partners agree that loans created under

this provision shall be senior to and repaid prior to loans assumed by the partnership under Article III, Section 2 above.

#### ARTICLE IV

##### Management of the Partnership

Section 1. General Powers. The partnership shall have all the powers permitted by law which are necessary or desirable in carrying out the purposes of the partnership, including, but not limited to the following:

- a. To borrow money;
- b. To mortgage, pledge, lease or sell its real estate or personal property;
- c. To purchase, contract to purchase, lease or otherwise acquire the rights to or use of any real or personal property;
- d. To employ, contract for, supervise and discharge personnel;
- e. To manage and operate the business of the partnership;
- f. To make expenditures and accept receipts and to account therefor; and
- g. To do such other acts permitted by law as shall be necessary or desirable in carrying out, directly or indirectly, the purposes of the partnership.

Section 2. Management of Business by the Partners. The powers set out above shall be exercised subject to the following provisions:

- a. General Partner is Managing Partner. The General Partner shall have the exclusive right and power to manage the business and affairs of the partnership with all powers necessary, advisable or convenient to that end. The various officers of General Partner, including, but not limited to, the President, Vice-President, Secretary and Treasurer, shall have the authority to execute checks, tax returns and forms and other business documents on behalf of the partnership.

- b. Limited Partners. The Limited Partners shall take no part in the control of the partnership's business, but may exercise the rights and powers granted to them under this Agreement; however, any one or more of the limited partners shall have those rights and obligations delegated to them as employees of the partnership. Additional limited partners may be admitted to the partnership without the written consent of all partners, however, in the event that additional limited partners are admitted to the partnership, Simpson and Ripberger shall have the option to withdraw from the partnership and their partnership interests shall be purchased by the partnership at the price agreed to in Paragraph 4 of their respective Buy-Out Agreement which are being executed concurrently herewith.
- c. Limitation on Powers. No partner shall:
- i. Use the partnership name or assets in any way, except for the transaction of the legitimate partnership business, nor do any act in contravention of these Articles of Limited Partnership.
  - ii. Have any power or authority to do any act prohibited by law to be done by a single partner, unless authorized specifically herein.
  - iii. Impart to any other person any information concerning the financial statement or operation of the partnership, except as may be necessary to carry on the business of the partnership, or to disclose the financial condition of a partner for any purpose.

Section 3. Other Matters Relating to Operation.

- a. Accounting. The books of account and records of the partnership shall be located at its principal office, and shall be kept in accordance with generally accepted accounting principles consistently applied. Audited financial statements shall be prepared annually. Copies of the annual financial statements shall be furnished promptly to each partner.
- b. Right to Inspection. Each limited partner shall have the right to inspect and copy partnership records as set forth in I.C. 23-16-4-5.
- c. Meeting. The partners shall meet at least annually at the partnership's offices, or such other place and at such times as may be agreed upon.

The Limited Partners shall be notified of all meetings, but need not be present to constitute a quorum and shall not vote except as specifically provided in this Agreement.

- d. Fees Charged by General Partner. Management and business fees charged by the General Partner and affiliates of the General Partner providing services to the partnership shall be reasonable and consistent with the fees charged to other related companies.
- e. Assumption of Existing Contracts. The Partnership shall assume all existing contracts of Contractors United, Inc., Fauber Construction Co., Inc. and Astro Paving Co., Limited Partnership, a list of such contracts are attached hereto as Exhibit "D" except that the Partnership shall not assume any employment contracts of any of the above entities and the partners agree that all such employment contracts be terminated effective June 1, 1994.

#### ARTICLE V

##### Dissolution of Partnership

The partnership shall be dissolved upon the occurrence of any of the following events:

A. Voluntary Agreement. The general partner and the holders of at least fifty-one percent (51%) of all of the units of participation in the partnership voluntarily agree to dissolve the partnership.

B. Other Events. In the event of bankruptcy, insolvency or the appointment of a receiver for the assets of the partnership or of the General Partner not dissolved within ninety (90) days, or of the withdrawal or retirement from the partnership of the General Partner, or the assignment or transfer by operation of law or otherwise by or from the General Partner of all of its interest in the partnership.

ARTICLE VI

Continuance of the Partnership Business,

Transfer of Partnership Interest, or Liquidation

Section 1. General Partner's Right to Continue the Partnership. Upon the dissolution of the partnership, the General Partner shall have the option, but not the obligation, to continue the business of the partnership. Such option shall be exercised by the General Partner by giving notice to the Limited Partners, within ninety (90) days after the date of the event causing such dissolution, and the General Partner shall compensate the Limited Partners for their interests according to the agreement of the parties at such time, according to any purchase agreement between the partners or as provided by law.

Section 2. Liquidation. In the event of any liquidation, the proceeds of liquidating the partnership shall be applied and distributed in the following manner and order of priority:

- a. The payment of liabilities of creditors other than partners and to the expenses of liquidation;
- b. To the setting up of any reserves which the General Partner determines reasonably necessary for any contingent liabilities of the partnership or of any partner arising out of or in connection with a partnership liability;
- c. To the repayment of loans or other liabilities to partners other than distributions of profits or capital;
- d. To the partners with respect to distribution of profits;
- e. To the partners in an amount equal to their respective capital accounts;
- f. The balance to the payment in full for the partnership interests of the partners to be distributed in accordance with each partner's units of participation; and

- g. With respect to each distribution level set forth in d, e, and f, if the amount available for any such payment be insufficient, then the amount available shall be distributed pro rata, based upon units of participation at the time of liquidation.

## ARTICLE VII

### Miscellaneous

Section 1. Notice. All notices under these Articles shall be in writing and shall be effectively given to any partner if delivered to any partner or if mailed by United States certified mail, return receipt requested, to such partner at the last address furnished by him to the partnership, and to the partnership, if mailed in such manner to its principal office.

Section 2. Construction. These Articles shall be construed in accordance with the laws of the State of Indiana.

Section 3. Assigns and Successors in Interest. Except as otherwise specifically limited in this instrument, these Articles shall be binding upon and shall run for the benefit of the parties executing these Articles, their personal representatives, heirs, legatees, devisees, assigns and successors in interest.

Section 4. Amendment. These Articles may be changed whenever mutually agreed upon in writing by all partners, such changes to become effective when reduced to writing and signed by the partners.

Section 5. Fiscal Year. The fiscal year of this partnership shall begin June 1st and end May 31st in each year.

Section 6. Power to File Certificates. Each of the partners hereby constitutes and appoints KUNZ AND KUNZ the true and lawful

attorneys to make, execute, sign, acknowledge, file, amend or cancel any Certificate of Partnership or assumed name certificate under the laws of the State of Indiana or any other state and to include therein all information required by the laws of such state, and also to make, execute, sign, acknowledge, file, amend or cancel such other instruments as may be required under the laws of the State of Indiana or any other state in connection with the information, operation or termination of a partnership or the business conducted by such partnership under the laws of any such state.

ARTICLE VIII

Effective Date

These Articles of Limited Partnership shall become effective after execution by all partners named herein.

IN WITNESS WHEREOF, the parties hereto have executed these Articles of Limited Partnership this 31<sup>st</sup> day of May, 1994, and have affixed their signatures thereto, all in the City of Indianapolis, State of Indiana.

LIMITED PARTNERS:

THE HERITAGE GROUP

R.V. SIMPSON, INC.

By:

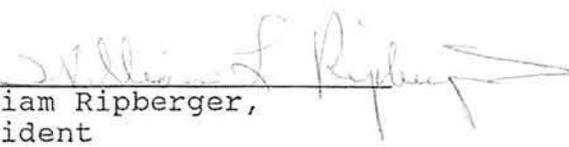
Fred M. Dehaufeld, Jr.  
Trustee

By:

Ralph Simpson  
Ralph Simpson, President

W.L. RIPBERGER, INC.

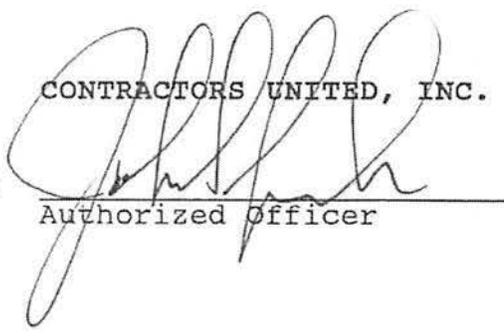
By:

  
\_\_\_\_\_  
William Ripberger,  
President

GENERAL PARTNER:

CONTRACTORS UNITED, INC.

By:

  
\_\_\_\_\_  
Authorized Officer

AMENDMENT OF  
ARTICLES OF LIMITED PARTNERSHIP

The Articles of Limited Partnership of Milestone Contractors, L.P., dated May 31, 1994 ("Articles"), are hereby amended in order to reflect the buy-out and removal of R. V. Simpson, Inc. as a Limited Partner and the later addition of Maggie Fehsenfeld Trust No. 105 and Trust for the Benefit of James C. Fehsenfeld and His Issue as Limited Partners, as follows:

1. Effective June 30, 2003, the Articles are hereby amended to reflect the removal of R. V. Simpson, Inc. as a Limited Partner, with such former interest having been acquired by the Company.

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2. Effective July 31, 2003, the Articles are hereby amended in order to reflect the purchase of Five Hundred Forty-eight (548) Units by each of Maggie Fehsenfeld Trust Number 105 and Trust for the Benefit of James C. Fehsenfeld and His Issue pursuant to a certain "Agreement for Purchase of Ownership Interest" dated July 27, 2003. Said purchasers shall be reflected as Limited Partners.
3. Following the above mentioned transactions, the ownership of Company shall be reflected as follows in the books and records of the Company:

	<u>Units</u>	<u>Percentage</u>
Contractors United, Inc.	9242	84.379%
The Heritage Group	539	4.921%
W. L. Ripberger, Inc.	76	.694%
Maggie Fehsenfeld Trust Number 105	548	5.003%
Trust for the Benefit of James C. Fehsenfeld and His Issue (Wives' Trust)	<u>548</u>	<u>5.003%</u>
	10,953	100%

4. All other terms of the Articles, except as amended hereby, shall remain in full force and effect.

DATED this 31<sup>st</sup> day of July, 2003.

CONTRACTORS UNITED, INC.

By: John P. Vermeuse U.P.

THE HERITAGE GROUP

By: Fred M. Fehsenfeld, Jr.

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W. L. RIPBERGER, INC.

By: William L. Ripberger

MAGGIE FEHSENFELD TRUST  
NUMBER 105

By: Fred M. Fehsenfeld, Jr.  
Fred M. Fehsenfeld, Jr.  
Designated Managing Trustee

TRUST FOR THE BENEFIT OF  
JAMES C. FEHSENFELD  
AND HIS ISSUE

By: Fred M. Fehsenfeld, Jr.  
Fred M. Fehsenfeld, Jr.  
Designated Managing Trustee

AMENDMENT OF  
ARTICLES OF LIMITED PARTNERSHIP

THIS AMENDMENT dated this 1<sup>st</sup> day of July, 2003 hereby amends the Articles of Limited Partnership of MILESTONE CONTRACTORS, L.P. dated May 31, 1994 as follows:

1. Article III Section 6 is hereby amended by adding to such Section the following language (at the end of such Section):

"In accordance with Section 1.704 – 1(b)(2)(iv)(q) of the Treasury Regulations, each Partner's Capital account shall be adjusted in a manner that maintains equality between the aggregate of all of the Partners' Capital Accounts and the amount of capital reflected on Company's balance sheet as computed for book purposes."

2. All provisions of the Articles of Limited Partnership, except as amended previously and except as amended hereby shall remain in full force and effect.

DATED the day and year first above written.

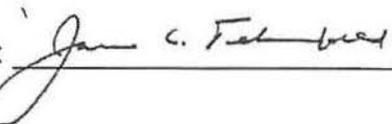
CONTRACTORS UNITED, INC.

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



THE HERITAGE GROUP

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



W. L. RIPBERGER, INC.

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



**AMENDMENT OF  
ARTICLES OF LIMITED PARTNERSHIP**

THIS AMENDMENT hereby amends the Articles of Limited Partnership of Milestone Contractors, L.P. dated May 31, 1994 as follows:

1. The Articles shall be amended to reflect the buy-out of the Limited Partner interest of W. L. Ripberger, Inc. All relevant portions of the Articles shall be amended accordingly and shall reflect the current partners, as follows:

	<u>Units</u>	<u>Percentage</u>
Contractors United, Inc.	9242	84.968%
The Heritage Group	539	4.956%
Maggie Fehsenfeld Trust No. 105	548	5.038%
Trust f/b/o James C. Fehsenfeld and His Issue dated December 27, 1973	548	5.038%

2. Except as amended hereby, all other provisions of the Articles of Limited Partnership shall remain in full force and effect.

EXECUTED this 15<sup>th</sup> day of October, 2008.

CONTRACTORS UNITED, INC.

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

Ted Lucas, President

MAGGIE FEHSENFELD  
TRUST NO. 105

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

Fred M. Fehsenfeld, Jr., Trustee

THE HERITAGE GROUP

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

James C. Fehsenfeld, Trustee

TRUST F/B/O  
JAMES C. FEHSENFELD AND HIS  
ISSUE DATED DECEMBER 27, 1973

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

Fred M. Fehsenfeld, Jr., Trustee

**WRITTEN CONSENT TO RESOLUTIONS**  
of the  
**PARTNERS**  
of  
**MILESTONE CONTRACTORS, L.P.**  
A Limited Partnership

The undersigned, being the General Partner of the Limited Partnership, with all other Partners being Limited Partners, of MILESTONE CONTRACTORS, L.P., hereby consent to the following resolutions for an Annual Meeting of the Partnership:

RESOLVED, that Contractors United, Inc., as General Partner, be appointed a Managing Partner of the Partnership and that all of the acts of the Partnership during the past year be hereby approved and ratified.

RESOLVED FURTHER, that the Company make a contribution to the Retirement Savings Plan for the year ending December 31, 2013 in the amount of \$325,091.80.

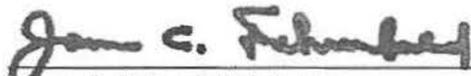
RESOLVED FURTHER, that the undersigned Limited Partners execute this Written Consent in lieu of an Annual Meeting to acknowledge notice of the same.

EXECUTED this 11<sup>th</sup> day of August, 2014.

CONTRACTORS UNITED, INC.

\_\_\_\_\_  
Charles Potts, Jr. President

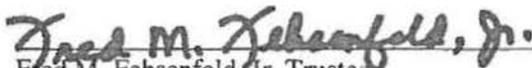
THE HERITAGE GROUP

  
\_\_\_\_\_  
James C. Fehsenfeld, Trustee

MAGGIE FEHSENFELD TRUST #105

  
\_\_\_\_\_  
Fred M. Fehsenfeld, Jr., Trustee

IRREVOCABLE INTERVIVOS TRUST FOR  
THE BENEFIT OF JAMES C. FEHSENFELD  
AND HIS ISSUE DATED DECEMBER 27, 1973

  
\_\_\_\_\_  
Fred M. Fehsenfeld, Jr. Trustee

**WRITTEN CONSENT TO RESOLUTIONS**  
**of the**  
**PARTNERS**  
**of**  
**MILESTONE CONTRACTORS, L.P.**  
**A Limited Partnership**

The undersigned, being the General Partner of the Limited Partnership, with all other Partners being Limited Partners, of MILESTONE CONTRACTORS, L.P., hereby consent to the following resolutions for an Annual Meeting of the Partnership:

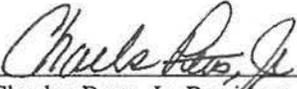
RESOLVED, that Contractors United, Inc., as General Partner, be appointed a Managing Partner of the Partnership and that all of the acts of the Partnership during the past year be hereby approved and ratified.

RESOLVED FURTHER, that the Company make a contribution to the Retirement Savings Plan for the year ending December 31, 2013 in the amount of \$325,091.80.

RESOLVED FURTHER, that the undersigned Limited Partners execute this Written Consent in lieu of an Annual Meeting to acknowledge notice of the same.

EXECUTED this 11<sup>th</sup> day of August, 2014.

CONTRACTORS UNITED, INC.

  
\_\_\_\_\_  
Charles Potts, Jr. President

THE HERITAGE GROUP

\_\_\_\_\_  
James C. Fehsenfeld, Trustee

MAGGIE FEHSENFELD TRUST #105

\_\_\_\_\_  
Fred M. Fehsenfeld, Jr., Trustee

IRREVOCABLE INTERVIVOS TRUST FOR  
THE BENEFIT OF JAMES C. FEHSENFELD  
AND HIS ISSUE DATED DECEMBER 27, 1973

\_\_\_\_\_  
Fred M. Fehsenfeld, Jr. Trustee

**WRITTEN CONSENT TO RESOLUTIONS**  
of the  
**PARTNERS**  
of  
**MILESTONE CONTRACTORS, L.P.**  
A Limited Partnership

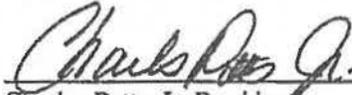
The undersigned, being the General Partner of the Limited Partnership, with all other Partners being Limited Partners, of MILESTONE CONTRACTORS, L.P. ("Milestone"), hereby consent to the following resolutions in lieu of a Meeting of the Partnership:

RESOLVED, that Milestone shall submit a proposal to the Indiana Finance Authority for the *I-69 Major Moves 2020 Expansion Project* involving constructing additional travel lanes along I-69 within the existing median from Exit 205 to the Lapel Road overpass (the "Project"); and

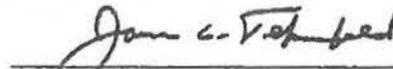
RESOLVED, that in the event there is a dispute between or among the Partners, no individual Partner shall be entitled to stop, hinder or delay the work on the Project.

EXECUTED this 14<sup>th</sup> day of August, 2015.

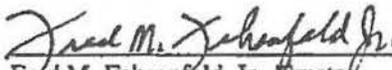
CONTRACTORS UNITED, INC.

  
\_\_\_\_\_  
Charles Potts, Jr. President

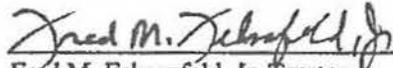
THE HERITAGE GROUP

  
\_\_\_\_\_  
James C. Fehsenfeld, Trustee

MAGGIE FEHSENFELD TRUST #105

  
\_\_\_\_\_  
Fred M. Fehsenfeld, Jr., Trustee

IRREVOCABLE INTERVIVOS TRUST FOR  
THE BENEFIT OF JAMES C. FEHSENFELD  
AND HIS ISSUE DATED DECEMBER 27, 1973

  
\_\_\_\_\_  
Fred M. Fehsenfeld, Jr. Trustee

APPROVED  
AND  
FILED  
MAY 12 1970  
*William H. Salin*  
SECRETARY OF STATE INDIANA

Corporate Form No. 4 (Sept. 1967)—Page

ARTICLES OF AMENDMENT (Amending Individual Articles Only)

Prescribed by the Secretary of State of Indiana  
Filing Requirements—Present 3 Executed Copies to Secretary of State

Recording Requirements—Before Exercising any Authority under Amendment, Record 1 of such 3 Executed Copies, as Approved and Returned by Secretary of State, with Recorder of County where Principal Office is Located.

ARTICLES OF AMENDMENT  
OF THE  
ARTICLES OF INCORPORATION  
OF

**MESHBERGER CONTRACTING, INC.**

The undersigned officers of Meshberger Contracting, Inc.  
(hereinafter referred to as the "Corporation"), existing pursuant to the provisions of The Indiana General Corporation Act, as amended (hereinafter referred to as the "Act"), desiring to give notice of corporate action effectuating amendment of certain provisions of its Articles of Incorporation, certify the following facts:

SUBDIVISION A  
THE AMENDMENTS

The exact text of Article I of the Articles of Incorporation of the Corporation, as amended (hereinafter referred to as the "Amendments"), now is as follows:

**The name of the Corporation is CONTRACTORS UNITED, INC.**

SUBDIVISION B  
MANNER OF ADOPTION AND VOTE

1. Action by Directors (select appropriate paragraph)

~~(a) The Board of Directors of the Corporation, at a meeting thereof, duly called, constituted and held on \_\_\_\_\_, 19\_\_\_\_, at which a quorum of such Board of Directors was present, duly adopted a resolution proposing to the Shareholders of the Corporation entitled to vote in respect of the Amendments that the provisions and terms of Article \_\_\_\_\_ of its Articles of Incorporation be amended so as to read as set forth in the Amendments; and called a meeting of such Shareholders, to be held \_\_\_\_\_, 19\_\_\_\_, to adopt or reject the Amendments, unless the same were so approved prior to such date by unanimous written consent.~~

(b) By written consent executed on May 6 \_\_\_\_\_, 1970, signed by all of the members of the Board of Directors of the Corporation, a resolution was adopted proposing to the Shareholders of the Corporation entitled to vote in respect of the Amendments, that the provisions and terms of Article I \_\_\_\_\_ of its Articles of Incorporation be amended so as to read as set forth in the Amendments, and a meeting of such shareholders was called to be held May 6 \_\_\_\_\_, 1970, to adopt or reject the Amendments, unless the same were so approved prior to such date by unanimous written consent.

2. Action by Shareholders (select appropriate paragraph)

~~(a) The Shareholders of the Corporation entitled to vote in respect of the Amendments, at a meeting thereof, duly called, constituted and held on \_\_\_\_\_, 19\_\_\_\_, at which \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_ were present in person or by proxy, adopted the Amendments.~~

The holders of the following classes of shares were entitled to vote as a class in respect of the Amendments:

(1)

(2)

~~(3)~~

The number of shares entitled to vote in respect of the Amendments, the number of shares voted in favor of the adoption of the Amendments, and the number of shares voted against such adoption are as follows:

	<u>Total</u>	<u>Shares Entitled To Vote as A Class</u> <u>(as listed immediately above)</u>		
		(1)	(2)	(3)
Shares entitled to vote:	.....	.....	.....	.....
Shares voted in favor:	.....	.....	.....	.....
Shares voted against:	.....	.....	.....	.....

(b) By written consent executed on May 6, 1970, signed by the holders of 1760 shares of the Corporation, being all of the shares of the Corporation entitled to vote in respect of the Amendments, the Shareholders adopted the Amendments.

3. Compliance with Legal Requirements

The manner of the adoption of the Amendments, and the vote by which they were adopted, constitute full legal compliance with the provisions of the Act, the Articles of Incorporation, and the By-Laws of the Corporation.

SUBDIVISION C  
STATEMENT OF CHANGES MADE WITH RESPECT TO THE  
SHARES HERETOFORE AUTHORIZED

**No change**

IN WITNESS WHEREOF, the undersigned officers execute these Articles of Amendment of the Articles of Incorporation of the Corporation, and certify to the truth of the facts herein stated, this ..... day of **May**, 19 **70**

*Roger E. Meshberger Sr.*  
(Written Signature)

**Roger E. Meshberger, Sr.**  
(Printed Signature)  
President of

**Meshberger Contracting, Inc.**  
(Name of Corporation)

*Robert G. Paris*  
(Written Signature)

**Robert G. Paris**  
(Printed Signature)

Secretary of

**Meshberger Contracting, Inc.**  
(Name of Corporation)

STATE OF INDIANA }  
COUNTY OF ..... } SS:

I, the undersigned, a Notary Public duly commissioned to take acknowledgments and administer oaths in the State of Indiana, certify that **Roger E. Meshberger, Sr.**, the ..... President, and **Robert G. Paris**, the ..... Secretary, of **Meshberger Contracting, Inc.**, the officers executing the foregoing Articles of Amendment of Articles of Incorporation, personally appeared before me; acknowledged the execution thereof; and swore to the truth of the facts therein stated.

WITNESS my hand and Notarial Seal this ..... day of **MAY**, 19**70**.....

*Imogene Hutson*  
(Written Signature)

**Imogene Hutson**  
(Printed Signature)

Notary Public

My commission expires

**4-15-73**

This instrument was prepared by **Donald L. Beckerich**

Corporate Form No. 4 (Sept. 1954)--Page One

ARTICLES OF AMENDMENT (Amending Individual  
Articles Only)

Prescribed by the Secretary of State of  
Indiana

Filing Requirements--Present 3 Executed  
Copies to Secretary of State

Recording Requirements--Before Exercising  
any Authority under Amendment, Record 1  
of such 3 Executed Copies, as approved  
and Returned by Secretary of State, with  
Recorder of County where Principal Office  
is Located.

APPROVED  
AND  
FILED  
FEB 14 1965

*John D. Patton*  
SECRETARY OF STATE OF INDIANA

ARTICLES OF AMENDMENT

OF THE

ARTICLES OF INCORPORATION

OF

MESHBERGER STONE CORPORATION

The undersigned officers of Meshberger Stone Corporation  
(hereinafter referred to as the "Corporation"), existing pursuant to the pro-  
visions of the Indiana General Corporation Act, as amended (hereinafter referred  
to as the "Act"), desiring to give notice of corporate action effectuating amend-  
ment of certain individual Articles of its Articles of Incorporation, certify the  
following facts:

SUBDIVISION A

THE AMENDMENTS

The exact text of Article(s) I (One), IV (Four) and IX (Nine) of  
the Articles of Incorporation of the Corporation, as amended (hereinafter re-  
ferred to as "The Amendments"), now is as follows:

ARTICLE I

NAME

The name of the Corporation is MESHBERGER CONTRACTING, INC.

ARTICLE IV

PRINCIPAL OFFICE AND RESIDENT AGENT

The post-office address of the principal office of the Corporation is Box 506, Columbus, Indiana; and the name and post-office address of its Resident Agent in charge of such office is Roger E. Meshberger, Sr. post-office box 560, Columbus, Indiana.

ARTICLE IX

DATA RESPECTING DIRECTORS

Section 1. Number. Seven (7)

SUBDIVISION BMANNER OF ADOPTION AND VOTE1. Action by Directors

The Board of Directors of the Corporation, at a meeting thereof, duly called, constituted and held on January 7, 1966, at which a quorum of such Board of Directors was present, duly adopted a resolution proposing to the Shareholders of the Corporation entitled to vote in respect of The Amendments that the provisions and terms of Articles I, IV, and IX of its Articles of Incorporation be amended so as to read as set forth in The Amendments; and called a meeting of such Shareholders, to be held January 18, 1966, to adopt or reject The Amendments.

2. Action by Shareholders

The Shareholders of the Corporation entitled to vote in respect of The Amendments, at a meeting thereof, duly called, constituted and held on January 18, 1966, at which all shareholders entitled to vote

were present in person or by proxy, adopted The Amendments.

The number of shares entitled to vote in respect of The Amendments, the number of shares voted in favor of the adoption of The Amendments, and the number of shares voted against such adoption are as follows:

No. of shares entitled to vote	--	586 2/3
No. of shares voted in favor	--	586 2/3
No. of shares voted against	--	None

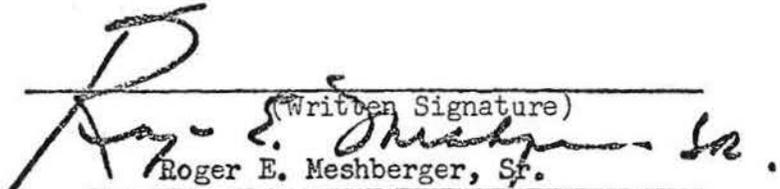
amendment

3. Compliance with Legal Requirements

The manner of the adoption of The Amendments, and the vote by which they were adopted, constitute full legal compliance with the provisions of the Act, the Articles of Incorporation, and the By-Laws of the Corporation.

SUBDIVISION CSTATEMENT OF CHANGES MADE WITH RESPECT TO THESHARES HERETOFORE AUTHORIZED

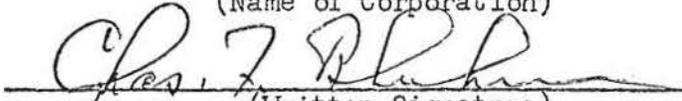
IN WITNESS WHEREOF, the undersigned officers execute these Articles of Amendment of the Articles of Incorporation of the Corporation, and certify to the truth of the facts herein stated, this 1st day of February, 19 66.

  
(Written Signature)  
Roger E. Meshberger, Sr.  
(Printed Signature)

President of

MESHBERGER CONTRACTING, INC.

(Name of Corporation)

  
(Written Signature)

Chas. F. Bluhm

(Printed Signature)

Secretary of

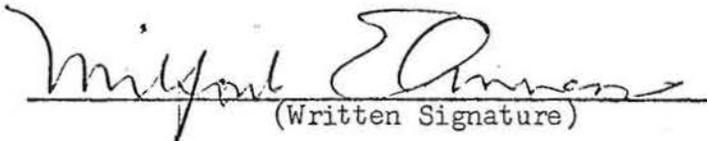
MESHBERGER CONTRACTING, INC.

(Name of Corporation)

STATE OF INDIANA )  
COUNTY OF Barth. )SS:

I, the undersigned, a Notary Public duly commissioned to take acknowledgments and administer oaths in the State of Indiana, certify that Roger E. Meshberger, Sr., the President, and Chas. F. Bluhm, the Secretary, of Meshberger Contracting, Inc., the officers executing the foregoing Articles of Amendment of Articles of Incorporation, personally appeared before me; acknowledged the execution thereof; and swore to the truth of the facts therein stated.

WITNESS my hand and Notarial Seal this 1st day of February, 19 66.

  
(Written Signature)

Milford E. Anness

(Printed Signature)

NOTARY PUBLIC

My commission expires  
March 13, 1966

32

STATE OF INDIANA  
OFFICE OF THE SECRETARY OF STATE  
INDIANAPOLIS, INDIANA

460217-30

To Whom These Presents Come, Greeting:

Whereas, there has been presented to me at this office Articles of Amendment in triplicate of.....COLUMBUS PAVING COMPANY, INC.....

Amending Article I.

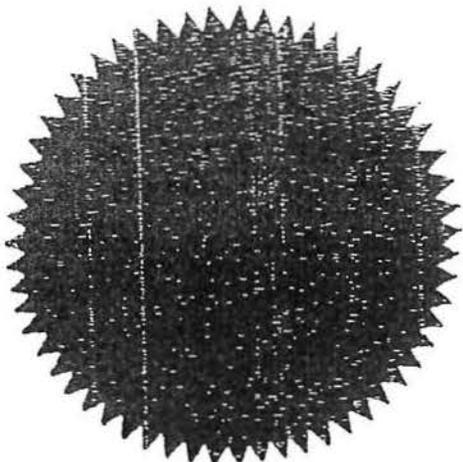
The name of the corporation shall be:

MESHBERGER STONE CORPORATION

Said Articles of Amendment having been prepared and signed in accordance with "An Act concerning domestic and foreign corporations for profit, providing penalties for the violation hereof, and repealing all laws or parts of laws in conflict herewith," approved March 16, 1929, and Acts supplemental thereto.

Whereas, upon due examination, I find that they conform to law:

Now, therefore, I hereby certify that I have this day endorsed my approval upon the triplicate copies of Articles so presented, and, having received the fees required by law, in the sum of \$... 23.00... have filed one copy of the Articles in this office and returned two copies bearing the endorsement of my approval to the Corporation.



In Witness Whereof, I have hereunto set my hand and affixed the seal of the State of Indiana, at the City of Indianapolis, this .. 3rd .. day of..... APRIL....., 19 61 ..

CHARLES O. HENDRICKS, Secretary of State.  
By..... Deputy.

Corporate Form No. 1 (Sept. 1954)—Page One  
ARTICLES OF AMENDMENT (Amending Individual Articles Only)

Prescribed by the Secretary of State of Indiana

Filing Requirements—Present 3 Executed Copies to Secretary of State

Recording Requirements—Before Exercising any Authority under Amendment, Record 1 of such 3 Executed Copies, as Approved and Returned by Secretary of State, with Recorder of County where Principal Office is Located.

APPROVED  
AND  
FILED  
APR 3 1961

*Charles O. Hendricks*  
SECRETARY OF STATE OF INDIANA

ARTICLES OF AMENDMENT  
OF THE  
ARTICLES OF INCORPORATION  
OF  
COLUMBUS PAVING COMPANY, INC.

The undersigned officers of Columbus Paving Company, Inc. (hereinafter referred to as the "Corporation"), existing pursuant to the provisions of The Indiana General Corporation Act, as amended (hereinafter referred to as the "Act"), desiring to give notice of corporate action effectuating amendment of certain individual Articles of its Articles of Incorporation, certify the following facts:

SUBDIVISION A

THE AMENDMENTS

The exact text of Article I (One) of the Articles of Incorporation of the Corporation, as amended (hereinafter referred to as "The Amendments"), now is as follows:

ARTICLE I

Name

The name of the Corporation is MESHBERGER STONE CORPORATION.

SUBDIVISION BMANNER OF ADOPTION AND VOTE1. Action by Directors

The Board of Directors of the Corporation, at a meeting thereof, duly called, constituted and held on April 1, 1961, at which a quorum of such Board of Directors was present, duly adopted a resolution proposing to the Shareholders of the Corporation entitled to vote in respect of The Amendments that the provisions and terms of Article I (One) of its Articles of Incorporation be amended so as to read as set forth in The Amendments; and called a meeting of such Shareholders, to be held April 1, 1961, to adopt or reject The Amendments.

2. Action by Shareholders

The Shareholders of the Corporation entitled to vote in respect of The Amendments, at a meeting thereof, duly called, constituted and held on April 1, 1961, at which all of the outstanding common stock of the corporation was

~~was~~ present in person ~~and by proxy~~, adopted The Amendments.

The number of shares entitled to vote in respect of The Amendments, the number of shares voted in favor of the adoption of The Amendments, and the number of shares voted against such adoption are as follows:

<u>The number of shares entitled to vote were:</u>	<u>1760</u>
<u>The number of shares voted in favor of The Amendments were:</u>	<u>1760</u>
<u>The number of shares voted against such adoption were:</u>	<u>None</u>

3. Compliance with Legal Requirements

The manner of the adoption of The Amendments, and the vote by which they were adopted, constitute full legal compliance with the provisions of the Act, the Articles of Incorporation, and the By-Laws of the Corporation.

SUBDIVISION C

STATEMENT OF CHANGES MADE WITH RESPECT TO THE  
SHARES HERETOFORE AUTHORIZED

None

24

IN WITNESS WHEREOF, the undersigned officers execute these Articles of Amendment of the Articles of Incorporation of the Corporation, and certify to the truth of the facts herein stated, this 1st day of April, 1961.

Roger E. Meshberger  
(Written Signature)

Roger E. Meshberger  
(Printed Signature)

President of  
Columbus Paving Company, Inc.

(Name of Corporation)

Herman Neuen  
(Written Signature)

Herman Neuen  
(Printed Signature)

Secretary of  
Columbus Paving Company, Inc.  
(Name of Corporation)

STATE OF INDIANA }  
COUNTY OF Bartholomew SS:

I, the undersigned, a Notary Public duly commissioned to take acknowledgments and administer oaths in the State of Indiana, certify that Roger E. Meshberger, the President, and Herman Neuen, the Secretary, of Columbus Paving Company, Inc., the officers executing the foregoing Articles of Amendment of Articles of Incorporation, personally appeared before me; acknowledged the execution thereof; and swore to the truth of the facts therein stated.

WITNESS my hand and Notarial Seal this 1st day of April, 1961.

Jane Allison  
(Written Signature)  
Jane Allison  
(Printed Signature)  
Notary Public

My commission expires  
February 26, 1962

ARTICLES OF INCORPORATION

Prescribed by the Secretary of State of Indiana  
For Use with Special Instructions No. 1  
Use White Paper—Size 8x10½ Inches

Filing Requirements—Present 3 Executed Copies  
to Secretary of State

Recording Requirements—Record 1 of such 3  
Executed Copies, as Approved and Returned by  
Secretary of State, with Recorder of County  
where Principal Office is Located.

**APPROVED  
AND  
FILED**

DEC 22 1953

*Lawford F. Perkins*  
Secretary of State of Indiana

ARTICLES OF INCORPORATION

OF

COLUMBUS PAVING COMPANY, INC.

The undersigned incorporators, desiring to form a corporation (hereinafter referred to as the "Corporation") pursuant to the provisions of The Indiana General Corporation Act, as amended (hereinafter referred to as the "Act"), execute the following Articles of Incorporation.

ARTICLE I

Name

The name of the Corporation is COLUMBUS PAVING COMPANY, INC.

ARTICLE II

Purposes

The purposes for which the Corporation is formed are:

The quarrying, mining, production and sale of crushed stone and agricultural limestone, concrete stone, gravel and sand; road and bridge contracting and building contracting; production and sale of ready-mixed concrete and materials; manufacture and sale and/or mixing and/or application of bituminous materials and concrete materials; trucking of all products in connection with the operation of this business and the trucking of road equipment and machinery; sale of road machinery and equipment; production and sale of brick and tile products; sale of auto parts, equipment, auto tires and gasoline; the purchase and sale of real estate, as well as the acquisition, holding, improving, conveying, assigning, and mortgaging of real estate and to do all and everything necessary or convenient for the accomplishment of any of the purposes or objects and powers above mentioned or incidental thereto; to acquire by transfer all the property of every kind and nature and description owned by Columbus Paving Company and wheresoever it may be situate, and to issue stock therefor and to continue the business now conducted by Columbus Paving Company.



ARTICLE IIITerm of Existence

The period during which the Corporation shall continue is perpetual

ARTICLE IVPrincipal Office and Resident Agent

The post-office address of the principal office of the Corporation is Box 252, Columbus, Indiana; and the name and post-office address of its Resident Agent in charge of such office is Herman D. Neuen, Box 252, Columbus, Indiana.

ARTICLE VAmount of Capital Stock

The total number of shares into which the authorized capital stock of the Corporation is divided is 2,000 shares consisting of 1,000 shares with the par value of \$ 100.00 per share, and 1,000 shares without par value.

ARTICLE VITerms of Capital Stock

The 1,000 shares of preferred stock shall have an annual return of 6% and it shall be cumulative and will participate with common as to income after the preferred dividend has been paid, and after common stockholders have been paid a return of 6%.

The preferred stock shall be callable by the corporation at 105% of its par value, five (5) years after its issuance by the corporation, or at any period after six months of the commencement of business; plus the proportionate share of earnings of preferred stock to total stock outstanding at the date of calling. The 1,000 shares of common no par stock of this corporation shall be of the same class. Upon liquidation of this corporation, the preferred stockholders shall have prior rights over the common stockholders, but all owners of shares of the common no par stock in this corporation shall have equal rights.

Shares of the common no par stock of this corporation may be issued by the corporation for such an amount of consideration as may be fixed from time to time by the Board of Directors, and may be paid, in whole or in part, in money, in other property, tangible or intangible, or in labor actually performed for, or services actually rendered to, the corporation.

When payment of the consideration for which a share was authorized to be issued shall have been received by this corporation, such share shall be taken to be fully paid and not liable to any further call or assessment, and the holder thereof shall not be liable for any further payments.

ARTICLE VIIVoting Rights of Capital Stock

The preferred stock shall have no voting rights in this corporation. Each owner of common no par stock of this corporation shall have the right at all meetings of the stockholders to one (1) vote for each share of stock so held by him, her or it.

ARTICLE VIIIPaid-in Capital

The amount of paid-in capital, with which the Corporation is beginning business, is \$ One Thousand (\$1,000.00) Dollars

ARTICLE IXData Respecting Directors

Section 1. Number. Four (4)

Section 2. Qualifications. Directors need not be shareholders of the Corporation. A majority of the Directors at any time shall be citizens of the United States.

ARTICLE XFurther Data Respecting Directors

Section 1. Names and Post-Office Addresses. The names and post-office addresses of the first Board of Directors of the Corporation are as follows:

<u>Name</u>	<u>Number and Street or Building</u>	<u>City</u>	<u>Zone</u>	<u>State</u>
Harry Meshberger	2138 Franklin St.,	Columbus		Indiana
Frank Leon Meshberger	1022 Hawthorne Dr.,	Columbus		Indiana
Roger E. Meshberger	Box 278,	Nashville		Indiana
Herman D. Neuen	1301 Laurel Dr.,	Columbus		Indiana

Section 2. Citizenship. All of such Directors are citizens of the United States.

ARTICLE XIData Respecting Incorporators

Section 1. Names and Post-Office Addresses. The names and post-office addresses of the incorporators of the Corporation are as follows:

<u>Name</u>	<u>Number and Street or Building</u>	<u>City</u>	<u>Zone</u>	<u>State</u>
Harry Meshberger	2138 Franklin St.,	Columbus		Indiana
Frank Leon Meshberger	1022 Hawthorne Dr.,	Columbus		Indiana
Roger E. Meshberger	Box 278,	Nashville		Indiana
Herman D. Neuen	1301 Laurel Dr.,	Columbus		Indiana

Section 2. Age and Citizenship. All of such incorporators are of lawful age; and all of such incorporators are citizens of the United States.

Section 3. Compliance with Provisions of Sections 15 and 16 of the Act. The undersigned incorporators hereby certify that the person or persons intending to form the Corporation first caused lists for subscriptions to the shares of the capital stock of the Corporation to be opened at such time and place as he or they determined; when such subscriptions had been obtained in an amount not less than \$1,000, such person or persons, or a majority of them, called a meeting of such subscribers for the purpose of designating the incorporators and of electing the first Board of Directors; the incorporators so designated are those named in Section 1 of this Article; and the Directors so elected are those named in Section 1 of Article X.

ARTICLE XIIProvisions for Regulation of Business and Conduct  
of Affairs of Corporation

The salaries of the members of the Board of Directors shall be fixed by the members of said Board, and the duties, powers, authority and limitation of the officers and Directors shall be as provided in the By-Laws of this corporation.

IN WITNESS WHEREOF, the undersigned, being all of the incorporators designated in Article XI, executed these Articles of Incorporation and certify to the truth of the facts herein stated, this 22nd day of December, 1953.

Herman D. Neuen  
Herman D. Neuen

Harry Meshberger  
(Written signature)  
Harry Meshberger  
(Printed Signature)

Frank Leon Meshberger  
(Written signature)  
Frank Leon Meshberger  
(Printed Signature)

Roger E. Meshberger  
(Written signature)  
Roger E. Meshberger  
(Printed Signature)

STATE OF INDIANA }  
COUNTY OF Bartholomew } SS:

I, the undersigned, a Notary Public duly commissioned to take acknowledgments and administer oaths in the State of Indiana, certify that Harry Meshberger, Frank Leon Meshberger, Roger E. Meshberger and Herman D. Neuen, being all of the incorporators referred to in Article XI of the foregoing Articles of Incorporation, personally appeared before me; acknowledged the execution thereof; and swore to the truth of the facts therein stated.

WITNESS my hand and Notarial Seal this 22nd day of December, 1953.

Eillene W. McClure  
(Written signature)  
Eillene W. McClure  
(Printed Signature)  
Notary Public

My commission expires  
November 29th, 1954

VOTING LIST  
for  
MESHBERGER CONTRACTING, INC.  
NOW KNOWN AS  
CONTRACTORS UNITED, INC.

<u>Name</u>	<u>Certificate Number</u>	<u>Number Shares</u>	<u>Total Per Person</u>	<u>Total Outstanding</u>
Asphalt Material and Construction, Inc. 4900 West 86th Street Indianapolis, Indiana 46268	13	586-2/3		
Asphalt Material and Construction, Inc.	14	1173-1/3		
Roger Meshberger	15	240	240	2000 <i>Cancelled</i>
<i>Asphalt Material and Construction, Inc.</i>	<i>16</i>	<i>240</i>		
<i>John Spangler</i>	<i>17</i>	<i>240</i>		

# G. VOLUME 1 APPENDICES

## Exhibit B, Section 3.2.2

### Proposer Teaming Agreement or Key Terms

**CONFIDENTIAL**



TEAMING AGREEMENT

-between-

MILESTONE CONTRACTORS, L.P.

-and-

UNITED CONSULTING, INC.

This Subcontracting Teaming Agreement ("Agreement") is entered into on April 15, 2015 by and between MILESTONE CONTRACTORS, L.P. ("Contractor"), an Indiana corporation, and UNITED CONSULTING INC. ("United"), an Indiana corporation. Contractor and United are hereinafter also referred to individually as a "Party" and collectively as the "Parties."

WHEREAS, the Indiana Department of Transportation ("Client") is considering requesting a statement of qualifications and proposal (together the "Proposal") from bidders for the I-69 Major Moves 2020 Expansion Project, Hamilton and Madison Counties, ("Project"); and

WHEREAS, Contractor desires (i) to prepare and submit a Proposal with the assistance of United and, (ii) if a contract ("Prime Contract") is awarded to Contractor, to employ United to perform its share of the services according to the terms of a subcontract ("Subcontract"); and

WHEREAS, United desires to (i) assist Contractor in the preparation of the Proposal and (ii) perform its scope as a subcontractor if the Prime Contract is awarded to Contractor; and

WHEREAS, this Agreement is entered into, recognizing the complementary capabilities of the Parties, to establish their mutual rights and obligations during the period of preparing and submitting the Proposal and negotiating the Prime Contract.

TERMS AND CONDITIONS

1. Contractor shall act as Proposer and prime Contractor and will be the only party to this Agreement to submit a proposal to the Client and to negotiate the Prime Contract with the Client for this Project. The Parties shall work together on an exclusive basis throughout the pursuit of the Project. Neither Party shall submit a Proposal for work related to the Project separately or with others, or take any action or make any agreement or representation inconsistent with the exclusive relationship of the Parties in pursuing the Project. A Party may withdraw from participating in pursuing the Project, provided that such notice is given in writing to the other Party no later than 10 calendar days after the Client releases its request for qualifications. In the event a Party withdraws from pursuing the Project, the non-withdrawing Party may continue to pursue the Project either alone or with any other party; however, the withdrawing Party shall not pursue the Project either alone or with any other party.
2. United shall assist in the preparation of the Proposal, as requested by Contractor, by supplying in a timely manner pertinent data including without limitation technical proposal requirements outlined in the Client's request for proposal, which is generally described in the following paragraph. United shall reasonably support Contractor in any written communications or presentations concerning the Proposal and the Scope of Work and shall be reasonably available for consultation with Contractor during the course of negotiations concerning same.
3. The scope of work that United shall be responsible for on the Project is:

Project Design Lead

Engineering Services During Construction

4. The award of a Subcontract to United for the above scope of work is subject to the following conditions:
  - a. Award to Contractor of the Prime Contract by Client for the Project.
  - b. Mutual agreement by the Parties of the price and terms and conditions of the Subcontract.
5. The Parties shall exert all reasonable and proper efforts to develop and submit a competitive Proposal to the Client including the above Scope of Work.
6. The following terms apply to United's Proposal preparation services for Contractor:
  - a. United's Proposal preparation services will be compensated as a lump sum in the amount shown below. The total budget will consist of United's cost for the Proposal phase services of its subcontractors. United agrees to notify Contractor at or before 70% completion if additional costs or services are necessary and Contractor and United shall negotiate compensation for those Services.

United proposal preparation services budget: \$225,000. Payment is contingent upon Technical Proposal acceptance from INDOT and receipt of stipend payment from INDOT.
  - b. The proposal scope of services is outlined in the Preliminary Pre-Award Phase Services and Cost Estimate letter dated April 16, 2015. See Attachment A.
  - c. In the event the Contractor is awarded the project, Contractor shall compensate United for its labor portion at a 3.2 multiplier, less any reimbursement already made by Contractor to United for its Proposal preparation services.
7. The Parties expect that in connection with the preparation and submission of the Proposal it will be necessary to exchange information of a proprietary or confidential nature (the "Confidential Information"). Neither Party shall use Confidential Information of the other Party nor disclose such Confidential Information other than as provided in this Agreement. In particular:
  - a. Each Party shall supply such Confidential Information to the other Party as might be deemed necessary to prepare the Proposal. Information provided by a Party in this regard and which such Party desires to be treated as Confidential Information shall be conspicuously marked "CONFIDENTIAL", "PROPRIETARY", or similar. If such Confidential Information is disclosed orally, the disclosing Party shall, within ten (10) days after such oral disclosure, produce in writing such Confidential Information, marked "Confidential" or "Proprietary", and describing the time and nature of the oral disclosure.
  - b. During the term of this Agreement and for a period of three years after the termination hereof, the Party receiving the Confidential Information of the other Party (i) shall protect such Confidential Information in the manner in which the receiving Party protects its own Confidential Information, (ii) shall not disclose such Confidential Information to a third party except with the prior written consent of the disclosing Party, and (iii) shall use such Confidential Information only for the preparation and submission of the Proposal.
  - c. The obligations of a Party hereunder with respect to non-disclosure and limited use of Confidential Information provided by the other Party shall not apply to information that (i) was in the possession of the receiving Party without such restrictions at the time it receives the Confidential Information as evidenced by the receiving Party's pre-existing records, (ii) comes into the possession of the receiving Party in a manner that is not subject to any obligation of confidentiality, (iii) is now or subsequently becomes generally known to the public through no violation of this Agreement, (iv) is developed by the receiving Party independently and without reference to the Confidential

Information, (v) is disclosed by the disclosing Party, without restriction, to a person or entity other than the receiving Party, or (vi) the Receiving Party reasonably believes on advice of legal counsel it is legally obligated to disclose by law, rule, regulation, court order, or other compulsory process of a court or other governmental body, provided, however, that in such case, the Receiving Party shall immediately notify the Disclosing Party of its intention to disclose (unless the Receiving Party reasonably believes based on the advice of legal counsel that providing such notice would violate applicable law, rule, regulation, court order, or other compulsory process of a court or other governmental body) so that the Disclosing Party can take such legal action as it deems necessary or appropriate to prevent such disclosure.

- d. Upon the termination or expiration of this Agreement, each Party shall, within a reasonable period of time after the request of the disclosing Party, return all Confidential Information received from the other Party, except that each Party may retain a copy of the Confidential Information solely in the files of such receiving Party's legal counsel for any relevant compliance purposes or for the purposes of defending or maintaining any litigation (including any administrative proceeding) relating to this Agreement.
  - e. Disclosure of Confidential Information, or any other information, constitutes a representation by the disclosing Party that such Party has all right, title, and interest in such information necessary for its intended use, and such disclosing Party shall indemnify, defend, and hold the receiving Party harmless against any third-party claims to the contrary.
  - f. Except as otherwise provided herein, this Agreement does not offer or grant to the receiving Party any rights in, or license to use, any drawings, data, plans, ideas, or methods, including but not limited to Confidential Information disclosed pursuant to this Agreement.
  - g. Each Party recognizes that the unauthorized use or disclosure of Confidential Information of the other will cause irreparable injury to the disclosing Party. Therefore, the Parties shall each have the right to apply to any court of competent jurisdiction to enjoin any breach or threatened breach by the receiving Party and for any other equitable or legal remedy that the disclosing Party deems appropriate. This Agreement shall not be amended or modified, nor any right hereunder be considered to have been waived, unless such amendment, modification or waiver is in writing and executed by duly authorized representatives of the Parties.
8. Unless otherwise agreed in writing by the Parties, this Agreement shall automatically terminate on the earliest date on which any of the following events occur, without further obligation or liability between the Parties, except those obligations that by their explicit terms survive termination:
- a. Notice from the Owner to Contractor that the Prime Contract will not be awarded to Contractor or a public announcement that the Prime Contract has been executed with another bidder;
  - b. Execution and coming into effect of the Subcontract;
  - c. Notice of cancellation of the procurement of the Project by the Owner;
  - d. Notice of withdraw by one Party as provided in Article 1 of this Agreement;
  - e. Agreement in writing between the Parties;
  - f. Expiration of a period of 12 months after the effective date of this Agreement, unless the Proposal remains under Owner evaluation or the award is under protest, in which case this Agreement shall remain in effect until such time as the Owner ceases its evaluation

or the protest is finally resolved, but in no event longer than 12 months after the effective date of this Agreement;

- g. Failure of the Parties to agree upon the terms of the Subcontract after negotiating in good faith for a reasonable time, provided that either Party gives the other Party five (5) days written notice of its intention to terminate such negotiations.
  - h. Either Party commits a material breach of this Agreement and the breach is not cured within ten (10) days after that party receives notice of the breach, including without limitation the failure of the Subcontractor to provide timely and acceptable input during the Pre-Award phase of the Project; provided however, that notice is given to the Subcontractor as provided herein.
  - i. Either party becomes insolvent or bankrupt, files for reorganization under the bankruptcy laws, or makes an assignment for the benefit of its creditors.
  - j. The debarment or suspension of one of the Parties by the United States Government.
10. Nothing in this Agreement shall grant to any Party the right to make commitments of any kind for the other Party without prior written consent of the other Party, nor shall it create a joint venture, partnership or other form of business organization between the Parties of any kind.
11. This Agreement and any proposed Subcontract (and services there under) arising out of this Agreement shall not be assigned by either of the Parties without the prior written approval of the other Party. Such approval will not be unreasonably withheld. No assignment shall discharge the obligations of the assigning Party.
12. No news release, including photographs and films, public announcement, denial or confirmation shall be made by a Party concerning the subject matter of this Agreement without the consent of the other Party and the Client first obtained.
13. Neither Party shall have any liability to the other arising out of this Agreement in the event Client does not award the Prime Contract to Contractor, or United declines for any sound business reason to enter into a Subcontract with the Contractor.
14. Neither Party shall be liable to the other Party under this Agreement in contract, tort, strict liability, warranty, or otherwise for any special, indirect, incidental, or consequential damages.
15. The following key personnel will represent the Parties during preparation and submission of the Proposal and negotiation of the Subcontract:

**Contractor**

Brad McCall  
Jason Holloway

**United**

Matt Taylor, PE  
Jay Ridens, PE

16. Any notice required or permitted under this Agreement shall be delivered to the respective individuals and to the addresses shown herein below by way of (a) personal delivery, (b) delivery by first class USPS postage prepaid, (c) facsimile, or (d) e-mail or other form of electronic communication:

**Contractor**

Brad McCall  
Milestone Contractors, LP  
5950 S Belmont Ave  
Indianapolis, IN 46217  
Brad.McCall@milestonelp.com  
Fax:317-788-1098

**United**

Michael Rowe  
United Consulting, Inc.  
1625 N. Post Road  
Indianapolis, IN 46219  
[michael.rowe@ucindy.com](mailto:michael.rowe@ucindy.com)  
Fax:317-895-2596

Upon signature by their duly authorized representatives, this shall become a mutually binding Agreement by and between the Parties, effective as of the latest date written below.

Milestone Contractors, L.P.

By: Sean McCall  
Title: Director of Estimating

United Consulting Inc.

By: MLL Brown  
Title: VICE PRESIDENT



ENGINEERING

ENVIRONMENTAL

INSPECTION

LAND SURVEYING

LAND ACQUISITION

PLANNING

WATER & WASTEWATER

SINCE 1965

OFFICERS

William E. Hall, PE

Dave Richter, PE, PLS

Steven W. Jones

Christopher R. Pope, PE

B. Keith Bryant, PE

Michael Rowe, PE

PROFESSIONAL STAFF

Andrew T. Wolka, PE

Devin L. Stettler, AICP

Darryl P. Wineinger, PE

Adam C. Post, PE

Michael S. Cliphant, AICP

E. Rachelle Pemberton, PE

Timothy J. Coomes, PLS

Jon E. Clodfelter, PE

Steven R. Passey, PE

Kurt C. Courtney, PE

Brian J. Pierson, PE

Christopher L. Hammond, PE

Paul D. Glotzbach, PE

Brian S. Frederick, PE

Jay N. Ridens, PE

Christopher J. Dyer, PE

Matthew R. Lee, PE

William R. Curtis, PE

Jeremy A. Richardson, PE

Heather E. Kogour, PE

Adam J. Greulich, PLS

Scott M. Siple, PE

Whitney D. Neukam, PE

Caleb C. Ross, PE

Matthew A. Taylor, PE

Josh O. Betz, PLS

Darin C. Barrett, PE

Scott G. Minnich, PE

John R. Stocks, PE

Jim R. Lash, PE

Nicholas J. Kocher, PE

Jennifer L. Hart, PE

Jeffrey R. Andrews, PE

Kaitlin S. Cunningham, PE

Richard T. Bernard, PE

www.unity.com  
(317) 895-2585  
1625 N. Post Road, Indianapolis, IN 46219

April 16, 2015

Mr. Brad McCall  
Milestone Contractors, LP  
5950 S Belmont Avenue  
Indianapolis, IN 46217

RE: I-69 Major Moves 2020 Expansion Project  
**Preliminary Pre-Award Phase Services and Cost Estimate**

Dear Mr. McCall:

UNITED has prepared a preliminary scope and cost estimate for pre-award design services on the I-69 Major Moves 2020 Expansion Project. The preliminary scope and cost estimate is based on scoping conversations with you and the information available in the project's Contract Information Book, plans and available reports.

**SCOPE OF THE PROJECT**

**Section A:** I-69 from 106th Street to 0.42 mile north of SR 13, Hamilton & Madison Counties

This portion of the Project begins approximately 0.40 mile south of 116th Street at Station 263+40.00 Line "A" (RP 204+50) and ends 0.42 mile north of SR 13 at Station 810+60.00 Line "A" (RP 214+87) for a length of approximately 10.37 miles, in Hamilton and Madison Counties, Indiana. The scope of Section A shall include:

- (a) The addition of a third travel lane on the median side in each direction and resurfacing of the existing lanes and outside shoulder including up to the back of gore for each exit and entrance ramp within the Section A limits. Beyond the gore, the ramps will be reconstructed as necessary to match proposed geometry and profile;
- (b) The addition of an auxiliary lane from the 116th Street southbound entrance ramp to the future 106th Street southbound exit ramp;
- (c) The reconstruction of pavement under I-69 along SR 13;
- (d) The widening of the NB and SB I-69 bridges over Sand Creek, Mud Creek, Thorpe Creek and SR 13 and the deck replacement of the Brooks School Road bridge over I-69;
- (e) Lining and reconstruction of small structures; and
- (f) Retro-fit of the underdrain for the existing pavement.

**Section B:** I-69 Interchange Modification at Exit 210 (Campus Parkway/Southeastern Parkway), Hamilton County

This portion of the Project begins at 0.20 mile north of I-69 and ends approximately 0.20 miles south of I-69 along Campus Parkway and Southeastern Parkway. It also includes all ramps at the Campus Parkway/Southeastern Parkway Interchange. The scope of Section B includes:

- (a) The reconstruction of the I-69 Exit 210 interchange with Campus Parkway and Southeastern Parkway. The current configuration is a traditional diamond interchange. The current engineering and operational acceptability alternative identified in the FHWA interchange justification report is a double crossover diamond (DCD) interchange;
- (b) Overlaying and widening of the current bridge over I-69 to the south side of the bridge;
- (c) Addition of a sidewalk on the south side of the interchange;
- (d) Full reconstruction of the pavement to accommodate the new horizontal alignments; and
- (e) Resurfacing of the ramps.

**Section C:** I-69 from 0.42 mile north of SR 13 to SR 38, Madison County

This portion of the Project begins approximately 0.42 mile north of SR 13 at Station 810+60.00 Line "A" (RP 214+87) and ends in the vicinity of SR 38 for a length of approximately five miles in Madison County, Indiana. The scope shall include:

- (a) The addition of a third travel lane on the median side in each direction and resurfacing of the existing lanes and outside shoulder including up to the back of gore for each exit and entrance ramp within Section C limits. Beyond the gore, the ramps will be reconstructed as necessary to match proposed geometry and profile;
- (b) The widening of the NB and SB I-69 bridges to accommodate the added travel lane;
- (c) Reconstruction of small structures; and
- (d) Retro-fit of the underdrain for the existing pavement.

Descriptions of these Project features are general in nature and more precise delineations will be set forth in the RFP and draft PPA.

This letter is to document the scope of preliminary design services to be provided by UNITED to Milestone Contractors during the letting stage of the project which is defined from May 2015 to Bid Opening currently scheduled for approximately October 2015.

SCOPE OF BASIC SERVICES

The advertised plans have been certified by a professional engineer for final design. As part of the pre-award services our technical proposal does not include the recertification of the design documents provided. UNITED will do this after award of the contract and will be included in our final design fee submitted at a later date. UNITED will provide the following pre-award services.

1. MANAGEMENT / COORDINATION

a. Coordination

- i. Attended Pre-Bid Meeting and follow-up meeting (1 meeting, 2 persons)
- ii. Attend 2 Design Alternatives meeting (2 meetings, 2 persons)
- iii. Brainstorming meeting on technical approach and design alternatives (1 meeting, 4 persons)
- iv. Progress meetings and phone calls

b. Management

- i. Resource planning and coordination

2. ROADWAY/MOT

a. Review of project data and CADD files

b. Typical Section Study

- i. Determine optimal typical section to work with MOT

c. Side slope/construction limits Study

- i. Examine environmental impacts (streams, wetlands, tree clearing)
- ii. Define subgrade preparation requirements as shown in the geotechnical report
- iii. Add guardrail as necessary to eliminate R/W impacts
- iv. Run earthwork volumes
- v. Earthwork will be provided by MOT phase, in addition

d. Profile adjustments within the first two weeks

e. Present Revised Profile with calculations to INDOT for approval (in Tech Proposal)

f. Identify Guardrail locations in Tech Proposal with stationing of beginning and ending with end treatment

g. Develop MOT plan consistent with the technical provisions. MOT Details will be shown at all cross-overs, ramp phasing, interchange phasing, over bridges and other non-typical situations.

h. Road Design Assumptions:

- i. Designs will utilize AutoCAD software
- ii. Design Calculations will only be provided within the areas of design adjustments proposed by Milestone and UNITED
- iii. Pavement design is not included and design exception submittal request are not included in this scope and fee
- iv. Only guard rail locations, temporary barrier and earthwork Quantities will be provided

3. DRAINAGE

a. Preliminary evaluation of drainage.

b. Review Hydraulic Reports for feasibility to reduce culvert sizes.

c. Develop preliminary erosion control plan.

d. List of Bid Items

e. Plans will show inlet locations, pipe locations, size and depth.

f. Plans will show culvert locations, size, depth and end-section treatments.

g. Drainage Assumptions:

- i. Ditch capacity design, Underdrain design, Pipe Materials table, Structure Date Table and Drainage Cross sections will not be included at this stage.
- ii. No drainage quantities provided.
- iii. Does not include Hydraulics Report Submittal. This will occur after award.

#### 4. STRUCTURES

- a. Preliminary evaluation of beam designs and structure depths.
- b. Develop preliminary MSE wall profiles to indicate approximate wall area, a three line diagram. It is not anticipated cross-sections will be available for Tech. Proposal.
- c. Approximate Shear Stud, Threaded Tie Bar and Drilled Hole count (con. & steel), Splice and detail weight estimates for steel beams.
- d. Provide detailor sketch of rehabilitated steel beam support at End Bents.
- e. Elastomeric pad counts and sizes shall be provided.
- f. Provide typical reinforcing rates for concrete elements (lbs/cys).
- g. Provide estimated pile lengths, types, sleeves, tips, etc.
- h. Plans as shown in Section 7, showing dimensions of new elements and beam types.
- i. Structure Assumptions
  - i. For the Main Street Bridge, there will be enough information in Parsons' plans for Milestone to quantify the Items shown in the spreadsheet that Parsons created for 1-69 Section 5 Pursuit. Any items shown in that spreadsheet that cannot be quantified from the plans will be provided by Parsons.
  - ii. For all other the bridges the deliverables and quantities will be comparable to the 1-65 Lafayette Design Build.
  - iii. No other quantities other than described above will be provided.

#### 5. SIGNING, LIGHTING, TRAFFC SIGNALS and ITS

- a. Preliminary evaluation of signing design provided by INDOT.
- b. Preliminary evaluation of ITS design provided by INDOT. Determine if any conflicts may be eliminated.
- c. List of preliminary Bid Items and preliminary quantities for Signing, Lighting and Signals.
- d. Signing Assumptions:
  - i. Non-standard sign structures or foundation design is not included.
  - ii. Services required for Design Alternatives is not included in this scope and fee and will be evaluated as Design Alternatives develop.

#### 6. GEOTECHNICAL SERVICES

- a. Preliminary recommendations as needed and coordination.
- b. Temporary Pavement Design.

## 7. TECHNICAL PROPOSAL SUBMISSION

The Technical Proposal shall include preliminary plans, the Design/Builder's project schedule, and a traffic control plan in accordance with the following:

### Preliminary Plans (4 Sets and 1 CD)

Road plans shall conform to Department plan preparation guidelines for preliminary field check plans (IDM 14-2.01(05)) except as noted and shall include the following:

- a. Title Sheet
- b. Index Sheet: General notes as required and index of sheets
- c. Typical Sections: Typical sections shall be provided that reflect the Department provided options for either HMA or PCCP or both.
- d. Route Survey Plat (as provided by the Department)
- e. Plat No. 1 (as provided by the Department)
- f. Interchange Geometric Tie-In Detail Sheets (as applicable)
- g. Reference Point Tie-Ups and Section Corners
- h. Maintenance of Traffic Layout: Typical sections, phasing layout, advance signing, detour routes.
- i. Plan and Profile Sheets: Project limits, alignments and profiles, drainage features, roadside barrier locations, right-of-way
- j. Ramp Profiles (as applicable)
- k. Superelevation Diagrams (as applicable)
- l. Construction Detail Sheets: (as applicable, including drainage structure layout)
- m. Retaining Wall Layout with Summary of Wall Types (as applicable)
- n. Small Structure Layout and General Plan (as applicable)
- o. Temporary Erosion Control Details and Table
- p. Noise Barrier Layout and Details

Cross-sections are not required to be submitted with the preliminary road plans.

Bridge Replacement Plans shall conform to Department plans preparation guidelines for preliminary field check plans (IDM 14-2.05(03)) except as noted and shall include the following:

- a. Title Sheet
- b. Index Sheet: General notes as required and index of sheets.
- c. Layout Sheet
- d. General Plan
- e. Preliminary Plan of Substructure
- f. Preliminary Framing Plan (as applicable)
- g. Preliminary Plan of Superstructure
- h. Preliminary Approach Slab Details (as applicable)

Bridge Rehabilitation Plans shall conform to Department plans preparation guidelines for preliminary field check plans (IDM 14-2.05(03)) except as noted and shall include the following:

- a. Title Sheet
- b. Index Sheet: General notes as required and index of sheets.
- c. Maintenance of Traffic Layout
- d. General Plan

- e. Removal Plan with details (as applicable)
- f. Preliminary Plan of Substructure (as applicable)
- g. Preliminary Plan of Superstructure (as applicable)
- h. Preliminary Approach Slab Details (as applicable)

Signing Plans shall conform to Department plan preparation guidelines for final field check plans (IDM 14-2.06(03)) except as noted and shall include the following:

- a. Title Sheet
- b. Index and General Notes
- c. Existing Sign Details (as applicable)
- d. Proposed Sign Details
- e. Panel Sign Details
- f. Sheet Sign Details
- g. Miscellaneous Sign Details
- h. Sign Summary Tables

In addition, UNITED shall submit a Level One Design Criteria Checklist and supporting calculations for any design element in the Technical Proposal that is a revision to the element provided in the contract documents.

Please acknowledge that the cost estimating, quantity surveys and other predictions of expected project costs are based upon only limited and conceptual design development derived from the contents and requirements of the RFP and are subject to change.

#### PROJECT SCHEDULE

As directed by Milestone, UNITED has already started pre-award services beginning with the IFA-required "Statement of Qualifications" as early as Friday, March 20, 2015. Technical plans are estimated to be submitted in **September 2015**. Pre-award services are estimated to be completed in **October 2015** when Cost Proposals are submitted. All dates are subject to change pending revisions in the scope and/or project schedule to be include in the IFA-advertised RFP.

#### COMPENSATION

The estimated cost of services as defined above will be \$225,000. Payment is contingent upon Technical Proposal acceptance from INDOT.

If you have any questions or comments, please contact our office at your convenience.

Sincerely,  
**UNITED CONSULTING**



Christopher L. Hammond, P.E.  
Transportation Department Manager

Enclosures

c: File MK 15-469 Agmt.

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# Agreement Between Design-Builder and Designer

This **AGREEMENT** is made as of the \_\_\_ day of \_\_\_\_\_ in the year of 20\_\_\_, by and between the following parties, for services in connection with the Project identified below:

**DESIGN-BUILDER:**  
*Milestone Contractors L.P.*

**DESIGNER:**  
*United Consulting Engineers, Inc.*

**OWNER:**  
*Indiana Finance Authority*

**PROJECT:**  
*I-69 Major Moves 2020 Expansion Project*

In consideration of the mutual covenants and obligations contained herein, Design-Builder and Designer agree as set forth herein.

## **Article 1**

### **General**

#### **1.1 Basic Purpose**

1.1.1 Design-Builder has contracted with Owner to provide the services of a licensed design professional to perform all necessary design services for the Project as set forth in the Exhibit "A". Designer, through itself and its Design Consultants, has agreed to provide such engineering and other services required by this Agreement and the other Contract Documents. Design-Builder and Designer further agree that to the extent Public-Private Agreement (PPA) relates to the Designer's Services and the terms and conditions under which the Services shall be performed hereunder and except as may be modified herein, Designer shall have the same rights, responsibilities, and obligations as to Design-Builder as Design-Builder by the Public-Private Agreement has against and to Owner.

1.1.2 The Design-Builder referred to in this agreement shall be Milestone Contractors L.P. of Indiana with an office located at 5950 South Belmont Avenue, Indianapolis, IN 46217. The Designer referred to in this agreement shall be United Consulting Engineers, Inc., an Indiana corporation with an office located at 1625 N. Post Road, Indianapolis, IN 46219.

#### **1.2 Basic Definitions**

1.2.1 Terms used in this Agreement shall have the meanings set forth in the Public-Private Agreement between Owner and Design-Builder unless otherwise provided herein, with the following specific terms defined as follows:

1.2.1.1 *Additional Services* refers to those services identified in Section 2.8 hereof.

1.2.1.2 *Agreement* refers to this executed contract between Design-Builder and Designer.

1.2.1.3 *Construction Phase Services* refers to those services identified in Section 2.7 hereof.

1.2.1.4 *Day* or *Days* shall mean calendar days unless otherwise specifically noted in the Contract Documents.

1.2.1.5 *Public-Private Agreement* refers to the contract between Design-Builder and Owner for the design and construction of the Project and all exhibits, attachments, and other Contract Documents enumerated and incorporated therein.

1.2.1.6 *Design Consultant* is a qualified, licensed design professional who is not an employee of Designer, but is retained by Designer, or employed or retained by anyone under contract with Designer, to furnish design services required under the Contract Documents.

1.2.1.7 *Design Phase Services* refers to those services set forth in Sections 2.5 and 2.6 hereof.

1.2.1.8 *Design Schedule* refers to the schedule setting forth the dates by which Designer must perform the various Services required herein, consistent with the Project Schedule.

1.2.1.9 *Designer's Fee* shall refer to the compensation due Designer for the performance of the Services as set forth herein.

1.2.1.10 *Hazardous Conditions* are any materials, wastes, substances and chemicals deemed to be hazardous under applicable Legal Requirements, or the handling, storage, remediation, or disposal of which are regulated by applicable Legal Requirements.

1.2.1.11 *Legal Requirements* are all applicable federal, state and local laws, codes, ordinances, rules, regulations, orders and decrees of any government or quasi-government entity having jurisdiction over the Project or Site, the practices involved in the Project or Site, or any Services.

1.2.1.12 *Owner's Project Criteria* are those criteria developed by or for Owner to describe Owner's program, requirements and objectives for the Project, including use, space, price, time, site and expandability requirements, as well as submittal requirements and other requirements governing Design-Builder's performance of the Public-Private Agreement. Owner's Project Criteria may include conceptual documents, design criteria, performance requirements and other Project-specific technical materials and requirements.

1.2.1.13 *Project Schedule* refers to the schedule setting forth the dates by which the various stages of both the design and construction of the Project must be performed so as to satisfy Design-Builder's obligations to Owner.

1.2.1.14 *Site* is the land or premises on which the Project is located.

1.2.1.15 *Subcontractor* is any person or entity retained by Design-Builder as an independent contractor to perform a portion of the construction work for the Project and shall include materialmen and suppliers.

1.2.1.16 *Sub-Subcontractor* is any person or entity retained by a Subcontractor as an independent contractor to perform any portion of the Subcontractor's work and shall include materialmen and suppliers.

1.2.1.17 *Substantial Completion* is the date on which the Project, or an agreed upon portion of the Project, is sufficiently complete so that Owner can occupy and use the Project or a portion thereof for its intended purposes.

1.2.1.8 *Services* shall include all Proposal Phase Services, Design Phase Services, Construction Phase Services and Additional Services required by the Contract Documents or as may be authorized in writing by Design-Builder.

### 1.3 Contract Documents

1.3.1 The Contract Documents are comprised of the following: (*see below*)

1.3.1.1 All written modifications, amendments and change orders to this Agreement;

1.3.1.2 This Agreement, including Exhibit A – Scope of Services, Exhibit B – Insurance Coverage and attachments, executed by Design-Builder and Designer; Exhibit C – Key Personnel.

1.3.1.3 Written Supplementary Conditions, if any, executed by Design-Builder and Designer;

1.3.1.4 The Public-Private Agreement, but only to the extent the Public-Private Agreement relates to the Services and the terms and conditions under which the Services shall be performed; and

1.3.1.5 The following other documents, if any: Public-Private Agreement for I-69 Major Moves 2020 Expansion Project.

### 1.4 Interpretation and Intent

1.4.1 The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted consistent with construction and design industry standards. In the event of any inconsistency, conflict, or ambiguity between or among the Contract Documents, the Contract Documents shall take precedence in the order in which they are listed in Section 1.3 hereof.

### 1.5 Mutual Obligations and Acknowledgments

1.5.1 Design-Builder and Designer commit at all times to cooperate fully with each other, and proceed on the basis of trust and good faith, to permit each party to realize the benefits afforded under the Contract Documents. Design-Builder and Designer shall perform their respective responsibilities, obligations and services in a timely manner to facilitate the other's timely and efficient performance and so as not to delay or interfere with the other's performance of its obligations under the Contract Documents.

1.5.2 Design-Builder and Designer acknowledge that they have cooperated with each other in the procurement of the Public-Private Agreement. In so cooperating, Design-Builder and Designer have met to review, discuss, and familiarize themselves with the Public-Private Agreement, including Design-Builder's budget and pricing assumptions, based on Designer's estimated quantities, used in its final negotiations of the Public-Private Agreement with Owner, as well as all documents incorporated therein and attached thereto, including, as applicable, (i) Owner's Project Criteria; and (ii) Design-Builder's Proposal.

1.5.3 Design-Builder and Designer mutually agree that time is of the essence with respect to the dates and times set forth in the Design Schedule, Project Schedule and Contract Documents.

### 1.6 Entire Agreement

1.6.1 The Contract Documents, all of which are incorporated by reference into this Agreement, form the entire agreement between Design-Builder and Designer and are as fully binding on the parties as if repeated herein. No oral representations or other agreements have been made by the parties except as specifically stated in the Contract Documents.

## Article 2 Designer's Services and Responsibilities

### 2.1 General

2.1.1 Designer shall, consistent with applicable state licensing laws, provide the Services, including engineering and other design professional services, required by Exhibit "A". Designer agrees that such Services shall be provided through qualified, licensed design professionals who are either (i) employed by Designer or (ii) procured by Designer from qualified, licensed Design Consultants.

2.1.2 Designer shall not engage the services of any Design Consultant without first obtaining the approval of Design-Builder, which approval shall not

be unreasonably withheld. Designer agrees that each Design Consultant shall be fully bound to Designer in the same manner as Designer is bound to Design-Builder for all the requirements of the Contract Documents to the extent applicable to the Design Consultant's scope of services. Designer shall at all times be responsible for the services performed by its Design Consultants, and shall coordinate the services of its Design Consultants to satisfy Designer's obligations under the Contract Documents. Nothing in this Agreement shall relieve Designer from responsibility for the services performed by its Design Consultants, or create any legal or contractual relationship between Design-Builder and any Design Consultant.

**2.1.3** If Design-Builder or Owner performs other work on the Project with separate design professionals under Design-Builder's or Owner's control, Designer agrees to reasonably cooperate and coordinate its activities with those of such separate design professionals so that the Project can be completed in an orderly and coordinated manner and without disruption.

**2.1.4** Designer shall only communicate with Owner, Subcontractor(s), or Sub-Subcontractors through Design-Builder unless the parties agree otherwise.

**2.1.5** Within seven (7) days after execution of this Agreement, Design-Builder and Designer will meet to discuss issues affecting the administration of the Services and to implement the necessary procedures, including but not limited to those relating to the schedule for the Services, schedule updates, review of submittals, and payment, to facilitate the ability of the parties to perform their obligations under the Contract Documents and allow Designer to meet its obligations to design the Project consistent with the Contract Documents, without compromising any professional obligations of Designer.

## **2.2 Standard of Care**

**2.2.1** The standard of care for all design professional services performed by Designer and its Design Consultants pursuant to this Agreement shall be the care and skill ordinarily used by members of the design profession practicing under similar conditions at the same time and locality of the Project.

## **2.3 Legal Requirements**

**2.3.1** Designer agrees to perform the Services in accordance with all applicable Legal Requirements including but not limited to all rules and regulations imposed by the Owner.

**2.3.2** Designer's Fee and/or the Design Schedule shall be adjusted to compensate Designer for the effects, if any, of any changes in the Legal Requirements enacted after the date of the Agreement affecting the performance of the Services. Such effects may include, without limitation, revisions Designer is required to make to the Construction Documents because of changes in Legal Requirements.

## **2.4 Designer's Personnel**

**2.4.1** Designer agrees that the Key Personnel assigned to perform the Services shall be as listed in Exhibit "C". Designer shall not change such personnel without Design-Builder's prior approval.

**2.4.2** Designer's Representative shall be reasonably available to Design-Builder and shall have the necessary expertise and experience required to supervise the Services. Designer's Representative shall communicate regularly with Design-Builder and shall be vested with the authority to act on behalf of Designer. Designer shall replace its Representative upon the reasonable request of Design-Builder.

## **2.5 Government Approvals and Permits**

**2.5.1** Designer shall obtain and pay for the permits, approvals, and licenses, as required by the Public-Private Agreement.

**2.5.2** Designer shall provide reasonable assistance to Design-Builder and Owner in obtaining any permits, approvals, and licenses which are not Designer's obligation to obtain, but which are required for the construction of the Project.

**2.5.3** Designer shall make revisions, which fall within the Designer's professional responsibility, to the Construction Documents necessary to secure permits, approvals, and licenses, including those which have been denied for failure of the Construction Documents to meet Legal Requirements. If such revisions are necessary for reasons beyond the control of Designer or its Design Consultants, Designer shall be compensated for such revisions as a change to this Agreement. If revisions are for reasons beyond the control of the Design-Builder, Designer shall be compensated to the extent recovered by Design-Builder.

## **2.6 Design Development Services**

**2.6.1** In accordance with the times set forth in the Design Schedule, Designer shall submit to Design-Builder all interim design submissions and revisions as required by the Contract Documents. Such design

submissions shall be in the form and quantity called for in the Contract Documents and may include design criteria, drawings, diagrams and specifications setting forth the Project requirements. Design-Builder and Designer agree that prior to the scheduled date for submitting all design submissions to Owner, Design-Builder and Designer will hold meetings for the purpose of discussing and monitoring the design for consistency with the requirements of the Contract Documents and other assumptions.

**2.6.2** In accordance with the Contract Documents and with the times set forth in the Design Schedule, Designer shall submit to Design-Builder Construction Documents setting forth in detail drawings and specifications describing the requirements for construction of the Project. The Construction Documents shall be consistent with the latest set of interim design submittals; as such submittals may have been modified in a design review meeting. Designer shall provide the Construction Documents in the form and quantity called for in the Contract Documents. Designer shall perform agreed upon revisions and submit revised Construction Documents to Design-Builder for Design-Builder's and Owner's approval.

**2.6.3** Designer shall attend and participate in such meetings as are held between Owner and Design-Builder to discuss interim design submissions and the Construction Documents. If requested, Designer shall identify during such meetings, among other things, the evolution of the design and any significant changes or deviations from the Contract Documents, or, if applicable, previously submitted design submissions. Minutes of the meetings will be maintained by Design-Builder and provided to all attendees for review.

**2.6.4** Design-Builder's and Owner's approvals of interim design submittals and the Construction Documents are for the purpose of mutually establishing a conformed set of Construction Documents compatible with the requirements of the Contract Documents. The review and/or approval by either Design-Builder or Owner of any interim design submittal or the Construction Documents shall not be deemed to transfer any design liability from Designer to Design-Builder or Owner.

**2.6.5** Designer will, at its own cost, revise any interim design submittal or the Construction Documents to correct the Designer's errors, mistakes or omissions. Such revisions shall be performed timely and so as not to jeopardize the Design Schedule and/or the Project Schedule.

**2.6.6** Designer shall be responsible for paying all royalties and licensing fees for patented or copyrighted

materials, methods or systems specified by Designer and incorporated into the Project.

## **2.7 Construction Phase Services**

**2.7.1** Designer shall timely provide requested clarifications and interpretations of the Construction Documents, which shall be consistent with the intent of, and reasonably inferable from, the Contract Documents. Designer shall make all revisions to the Construction Documents necessary for the proper construction of the Project.

**2.7.2** Designer shall review and approve such submittals, including shop drawings, product data and samples, as may be required by the Public-Private Agreement or Design-Builder. Designer shall expeditiously inform Design-Builder of any revisions that are necessary as a condition to Designer's approval of submittals. The time within which Designer shall review and respond to submittals will be as established at the meeting required by Section 2.1.5 hereof. Designer's review and approval shall not relieve Design-Builder or Subcontractors of responsibility for construction means and methods or safety precautions.

**2.7.3** Designer shall review, and if acceptable approve, substitutions for materials or equipment proposed by Design-Builder.

**2.7.4** Designer shall, if requested by Design-Builder, review any inspection reports or tests involving the construction of the Project and provide its comments to Design-Builder. Designer is not responsible for the accuracy or completeness of the tests or inspections.

**2.7.5** The Design-Builder shall contract with a qualified firm to provide quality control and to determine if the construction is proceeding in accordance with the Construction Documents.

**2.7.6** At the request of Design-Builder, Designer shall attend meetings with Design-Builder and Owner and/or Subcontractor(s) and Sub-Subcontractors to discuss design issues which may arise during construction.

**2.7.7** Designer's provision of the Construction Phase Services shall not be construed to make Designer responsible for (i) the acts or omissions of Design-Builder, any Subcontractors, or any Sub-Subcontractors, (ii) the means, methods, sequences, and techniques of construction of the Project or (iii) safety precautions and programs in connection with the construction of the Project. Nothing in this Agreement shall create any legal or contractual relationship

between Designer and any Subcontractor or Sub-Subcontractor.

## **2.8 Additional Services**

**2.8.1** Additional Services, if any, agreed upon by the parties shall be set forth in amendments to this Agreement, for which additional compensation shall also be negotiated.

## **Article 3**

### **Design-Builder's Services and Responsibilities**

#### **3.1 Timely Reviews, Approvals and Submittals**

**3.1.1** Design-Builder shall provide timely reviews and approvals of all interim design submittals and Construction Documents consistent with the turnaround times set forth in the Design Schedule, or as agreed to by the parties at the meeting required under Section 2.1.5 hereof.

**3.1.2** Design-Builder shall timely submit to Designer all submittals, including shop drawings, product data and samples, for Designer's review and approval consistent with the Project Schedule, or as agreed to by the parties at the meeting required under Section 2.1.5 hereof.

**3.1.3** Design-Builder shall provide timely notice to Designer of any delays to the Project caused by Designer.

#### **3.2 Design-Builder's Representative**

**3.2.1** Design-Builder's Representative shall be responsible for providing Design-Builder-supplied information and approvals in a timely manner to permit Designer to fulfill its obligations under the Contract Documents.

#### **3.3 Furnishing of Services and Information**

**3.3.1** Unless expressly stated to the contrary in the Contract Documents, and to the extent Design-Builder has received such items from Owner, Design-Builder shall provide for Designer's information the items listed below. Design-Builder does not warrant the accuracy or completeness of such items, provided, however, that Designer is entitled to rely upon such items to the same extent Design-Builder is entitled to rely upon such items in the Public-Private Agreement:

**3.3.1.1** Surveys describing the property, boundaries, topography and reference points for use

during construction, including existing service and utility lines;

**3.3.1.2** Geotechnical studies describing subsurface conditions, and other surveys describing other latent or concealed physical conditions at the Site;

**3.3.1.3** Temporary and permanent easements, zoning and other requirements and encumbrances affecting land use, or necessary to permit the proper design and construction of the Project and enable Designer to perform the Services;

**3.3.1.4** A legal description of the Site;

**3.3.1.5** As-built and record drawings of any existing structures at the Site;

**3.3.1.6** Environmental studies, reports and impact statements describing the environmental conditions, including Hazardous Conditions, in existence at the Site;

**3.3.1.7** Owner's Project Criteria;

**3.3.1.8** All permits, approvals and licenses required set forth in the Owner's Public-Private Agreement and;

**3.3.1.9** Test and inspection reports.

**3.3.2** Design-Builder shall provide Designer with a copy of the Public-Private Agreement, including all exhibits, attachments, and other Contract Documents enumerated and incorporated therein.

**3.3.3** Design-Builder shall provide all cost estimating and scheduling services related to the construction of the Project and shall be responsible for mistakes or miscalculations of market conditions that result in construction costs that are contrary to Design-Builder's budget and pricing assumptions.

**3.3.4** Upon Designer's reasonable request, Design-Builder shall provide Designer with information in Design-Builder's possession regarding Owner's financial ability to pay for the Services set forth in this Agreement.

**3.3.5** Design-Builder shall provide Designer with the Project Schedule and appropriate updates thereto.

**3.3.6** Design-Builder shall provide administration of the Public-Private Agreement, and promptly forward any communications to Owner from Designer that may impact the Services.

**3.3.7** Design-Builder shall provide Designer reasonable access to the Project and the Site.

### **3.4 Notification of Errors**

3.4.1 Design-Builder shall notify Designer of any errors, inconsistencies, or omissions Design-Builder or Owner discovers in the Services, including any interim design submissions, Construction Documents or other Services. Notwithstanding anything to the contrary in this Agreement, nothing in this Agreement shall relieve Designer of responsibility for errors, inconsistencies, or omissions in the Services.

### **3.5 Attendance at Design Meetings**

3.5.1 Design-Builder shall afford Designer and its Design Consultants the opportunity to attend all necessary design meetings with Owner, Subcontractor(s) and/or Sub-Subcontractors.

## **Article 4** **Ownership of Work Product**

### **4.1 Work Product**

4.1.1 All drawings, specifications and other documents and electronic data furnished by Designer to Design-Builder under this Agreement ("Work Product") are deemed to be instruments of service and Designer shall retain ownership and property interests therein provided, however, that Designer hereby grants Design-Builder, upon Design-Builder's payment to Designer of amounts properly due under this Agreement, a limited license to use the Work Product in connection with completing this Project.

### **4.2 Agreement to Grant Limited License to Owner**

4.2.1 Designer has reviewed the Public-Private Agreement and is fully aware of the limited licenses to use the Work Product which may be granted to Owner therein. Designer accepts and agrees to Owner's rights with respect to the Work Product contained in the Public-Private Agreement.

### **4.3 Indemnification for Use of Work Product**

4.3.1 If either Design-Builder or Designer uses the Work Product on any other project, such party agrees that it shall do so at its sole risk and without liability or legal exposure to the other party, Owner, or anyone working through them. Such party further agrees that it shall defend, indemnify and hold harmless the other party and Owner from and against any and all claims, damages, liabilities, losses and

expenses, including attorneys' fees, resulting from such use of the Work Product on another project.

## **Article 5** **Time of Performance**

### **5.1 Date of Commencement**

5.1.1 The Services shall commence five (5) days after Designer's receipt of Design-Builder's Notice to Proceed ("Date of Commencement") unless the parties mutually agree otherwise in writing.

### **5.2 Design Schedule**

5.2.1 Designer shall prepare and submit for Design-Builder's review and acceptance, at least three (3) days prior to the meeting required by Section 2.1.5 hereof, a schedule for the execution of the Design Phase Services in accordance with the Contract Documents. The schedule shall indicate the dates for the start and completion of the various stages of the Design Phase Services, including the dates for the design monitoring and review meetings required herein, and the dates when Design-Builder and Owner information and approvals are required, and shall take into account Design-Builder's obligations to Owner under the Public-Private Agreement. Design-Builder and Designer will jointly review Designer's schedule to determine whether it permits Design-Builder to satisfy its obligations under the Project Schedule and the Public-Private Agreement. The accepted schedule (the "Design Schedule") shall be revised as required by conditions and progress of the Project, but such revisions shall not relieve Designer of its obligations to perform the Services in accordance with the Contract Documents, subject to its rights under this Agreement. Design-Builder shall incorporate the Design Schedule into the Project Schedule.

### **5.3 Status Reports**

5.3.1 Designer shall implement an "earned value" system and a hierarchical work breakdown structure ("WBS") for purposes of tracking design progress. Each month, at a date selected by Design-Builder, Designer shall prepare a Design Status Report and submit the report to Design-Builder. The report shall contain, at a minimum, the following types of information:

5.3.1.1 Narrative – Description of work (including the work of Designer's Consultants) accomplished during the previous reporting period; the current status of design; the identification of current design issues,

including suggestions for resolution; and documentation of potential change orders.

**5.3.1.2** Earned Value Report – Tabular summary of planned and actual progress associated with each element and level of the WBS. The summary shall include, but not be limited to, computations of work scheduled and actual work performed. Graphical depictions of summary-level information shall also be provided.

**5.3.1.3** Performance Measurement Report – A tabular summary of schedule variances for each element and level of the WBS and a narrative description of management actions needed to resolve significant adverse variances. Graphical depictions of summary-level information shall also be provided.

**5.3.1.4** MWVBE Report – Utilization of Disadvantaged Business Enterprises (if tracking MWVBE utilization is a Prime Contract requirement).

**5.3.2** All reports shall be in a format approved by Design-Builder, and shall be linked to Designer's monthly invoice to Design-Builder in such a manner that earned value can be reconciled with the monthly invoice.

## **5.4 Delays**

**5.4.1** If Designer's performance of the Services are delayed for any reason so as to impact the Design Schedule or the Project Schedule, Designer shall promptly notify Design-Builder in writing of the cause(s) of such delay within sufficient time to permit Design-Builder to evaluate the potential of adjusting the Project Schedule in order to mitigate the effects of such delay or to provide timely notice to Owner in accordance with the Public-Private Agreement. If the delay is due to any act, neglect, or omission on the part of Designer, Design Consultants, or anyone for whom they are responsible, Designer shall, subject to any limitations contained herein, compensate and indemnify Design-Builder for all costs, damages, and expenses caused by the Designer's delay. If the delay is caused by Design-Builder, the Designer's Fee and the Design Schedule shall be adjusted to compensate Designer for the effects, if any, of the delay, subject to any limitations contained herein.

**5.4.2** Notwithstanding any other provision to the contrary, any delay and resulting damages that arise out of, or relate to, problems caused by Owner or for which Owner is responsible shall be resolved pursuant to Section 11.3 hereof.

**5.4.3 Designer** shall be entitled to the same Force Majeure clause or clauses relating to delays to Work due to force majeure events that the Design-Builder is entitled to in the Public-Private Agreement, as consistent and interpreted pursuant to the Public-Private Agreement.

## **Article 6 Designer's Compensation**

### **6.1 Designer's Fee**

**6.1.1** As full and complete compensation for the satisfactory performance of Basic Design Services under this Agreement, Contractor shall pay the Designer a lump sum amount of YET TO BE DETERMINED (\$TBD).

**6.1.2** Designer's compensation for design consultants' work, including design consultants' other direct cost and the management fee, is included in the lump sum amount specified in Subsection 6.1.1.

**6.1.3** For Basic Design Services that are added by change order to the Prime Contract, Design-Builder shall pay Designer a lump sum amount as specified in the change order for all of Designer's services and related costs, including the services and related costs of Designer's Design Consultants (unless the Prime Contract specifies a different method of payment in which case the provisions of the Prime Contract shall govern).

**6.1.4** Designer and Contractor shall prepare an estimate of costs for Additional Services during Construction to be included in the price proposal. Contractor shall reimburse Designer for all such services on the basis of direct labor costs times a labor multiplier of 1.15 plus the other direct costs attributed to these services.

### **6.2 Progress Payments**

**6.2.1** Design-Builder shall make monthly progress payments to Designer within ten (10) days after receipt of Designer's invoice or within ten (10) days after receipt of Owner's payment for such services, whichever is later. The terms of this Section 6.2.1 are intended to establish a reasonable time for payment. Payment by Owner to Design-Builder is a condition precedent to Design-Builder's obligation to pay Designer except to the extent that Owner's failure to pay Design-Builder is a result of Design-Builder's acts or failure to act.

**6.2.2** Invoices shall separately account for Basic Design Services, Additional Services during Construction, and other payments due (such as for Value Engineering or Hazardous Waste Engineering).

**6.2.3** Each monthly payment by Contractor to Designer for services paid on a lump sum basis shall be a share of the lump sum amount equal to the percentage of the work completed, less any amount previously invoiced for the work.

**6.2.4** For Basic Design Services that are added by change order to the Public-Private Agreement and have a lump sum method of payment, Designer's monthly invoice to Design-Builder shall be a share of the change order's lump sum amount equal to the percentage of the change order work completed, less any amounts previously invoiced for the change order.

**6.2.5** Designer's invoice to Contractor of a Design Consultant's costs shall constitute Designer's certification to Contractor that Designer has reviewed and approved the Design Consultant's costs as eligible and appropriate for payment under the terms of Designer's agreement with Design Consultant.

### **6.3 Retention on Applications for Payment**

**6.3.1** Design-Builder will not retain any funds from Designer's invoice for Payment unless Owner is retaining funds from Design-Builder's progress payments for the Services, and then only in the same amount or percentage retained from Design-Builder's progress payments as set forth in the Public-Private Agreement. Unless mutually agreed otherwise between the parties, retained amounts (if applicable) will be released to Designer three (3) days after Design-Builder's receipt of such retained amounts from Owner.

### **6.4 Withholding of Payments**

**6.4.1** If Design-Builder determines that Designer is not entitled to all or part of an invoice for Payment, it will notify Designer in writing at least five (5) days prior to the date payment is due. The notice shall indicate the specific amounts Design-Builder intends to withhold, the reasons and contractual basis for the withholding, and the specific measures Designer must take to rectify Design-Builder's concerns. Design-Builder and Designer will attempt to resolve Design-Builder's concerns prior to the date that payment is due. If the parties cannot resolve such concerns, Design-Builder shall pay Designer the uncontested amount of the invoice for Payment, and Designer may pursue its rights under the Contract Documents, including those under Article 11 hereof.

### **6.5 Final Payment**

**6.5.1** At the time Designer submits its final invoice for Payment to Design-Builder, Designer shall provide (i) all deliverables required by the Contract Documents; (ii) an affidavit that there are no claims, obligations or liens outstanding or unsatisfied for or in connection with the Services performed by Designer and Designer's Design Consultants which will in any way affect Design-Builder's or Owner's interests; (iii) a general release executed by Designer waiving, upon receipt of final payment by Designer, all claims, except those claims previously made in writing to Design-Builder and remaining unsettled at the time of final payment; and (iv) certificates of insurance confirming that required coverages will remain in effect consistent with the requirements of the Contract Documents. Design-Builder shall make payment on Designer's properly submitted and accurate final invoice for Payment within ten (10) days after Design-Builder's receipt of final payment from Owner on account of Designer's final invoice for Payment, provided also that Designer has satisfied the requirements for final payment set forth herein.

### **6.6 Interest**

**6.6.1** Payments due and unpaid under this Agreement shall bear interest commencing five (5) days after payment is due at the rate of one percent (1 %) per annum.

### **6.7 Designer's Payment Obligations**

**6.7.1** Designer will pay Design Consultants, in accordance with its contractual obligations to such parties, all the amounts Designer has received from Design-Builder on account of their services. Designer will impose similar requirements on Design Consultants to pay those parties with whom they have contracted. Designer will indemnify and defend Owner and Design-Builder against any claims for payment and mechanic's liens imposed because of the Designer's services.

### **6.8 Project Records**

**6.8.1** Designer shall maintain a complete set of all books, records and documents prepared or employed by Designer with respect to the Project. Design-Builder has the right to conduct an audit of Designer's records relating in any way to the Project. This right, by the Design-Builder does not apply to Basic Services included in the lump sum. During the performance of the Services and for a period of seven (7) years after the earlier to occur of: (i) the date Owner Final Acceptance is achieved; or (ii) the termination date, Design-Builder shall be afforded access from time to

time, upon reasonable notice, to Designer's records, books, and documents for purposes of complying or verifying compliance with the Contract and Legal Requirements.

## **6.9 Audit of Force Account**

**6.9.1** Where the payment method for any Work is on a Force Account basis, such examination and audit rights shall include all books, records, documents and other evidence and accounting principles and practices sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred for the performance of such Work. If an audit indicates the Contractor has been over-credited under a previous progress report or progress payment, that over-credit will be credited against current progress reports or payments.

## **Article 7**

### **Termination and Designer's Right to Stop Services**

#### **7.1 Design-Builder's Right to Terminate for Convenience**

**7.1.1** If Owner terminates Design-Builder for any reason, then Design-Builder may terminate this Agreement. In such event, Design-Builder shall pay Designer for the Designer's completed services, whether used by the Design-Builder, the Owner, or not used at all.

#### **7.2 Design-Builder's Right to Terminate for Cause**

**7.2.1** If Designer persistently fails to (i) comply with this Agreement, (ii) timely pay, without cause, its Design Consultants, (iii) prosecute the Services with promptness and diligence to ensure that the Services are completed by the times set forth in the Design Schedule or the Project Schedule, (iv) provide qualified, licensed design professionals, or (v) perform material obligations under the Contract Documents, then Design-Builder shall have the rights, in addition to any other rights and remedies provided in the Contract Documents or by law, set forth in Sections 7.2.2 and 7.2.3 below.

**7.2.2** Upon the occurrence of an event set forth in Section 7.2.1 above, Design-Builder may provide written notice to Designer that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within seven (7) days of

Designer's receipt of such notice. If Designer fails to cure, or reasonably commence to cure, such problem, then Design-Builder may give a second written notice to Designer of its intent to terminate within an additional seven (7) day period. If Designer, within such second seven (7) day period, fails to cure, or reasonably commence to cure, such problem, then Design-Builder may declare the Agreement terminated for default by providing written notice to Designer of such declaration.

**7.2.3** Upon declaring the Agreement terminated pursuant to Section 7.2.2 above, Design-Builder may complete the Services in whatever fashion it deems most efficient, and shall have the right to use the existing Work Product for purposes of completing the project. To the extent Design-Builder has been adversely impacted by Designer's default and termination, Design-Builder shall be entitled to recover against Designer the Design-Builder's costs and expense. Such costs and expense shall include the cost of completing the Services and reasonable expenses, including attorney's fees, incurred by Design-Builder in connection with the re-procurement and defense of claims arising from Designer's default, subject to the waiver of consequential damages set forth in Section 11.7 hereof.

#### **7.3 Designer's Right to Stop Services**

**7.3.1** If (i) Owner fails to pay amounts due Design-Builder under the Public-Private Agreement for Services performed by Designer, such failure is not due to the fault of Designer, and Designer has not been paid such amounts due, or (ii) Design-Builder fails to pay any amounts due Designer under this Agreement, Designer may, in addition to any other rights afforded under the Contract Documents or at law, stop work in accordance with Section 7.3.2 below.

**7.3.2** Should either of the events set forth in Section 7.3.1 above occur, Designer has the right to provide Design-Builder with written notice that Designer will stop work unless said failure to pay is cured within seven (7) days from Design-Builder's receipt of Designer's notice. If Design-Builder does not cure the problem within such seven (7) day period, Designer may stop work. In such case, Designer shall be entitled to make a claim for adjustment to the Designer's Fee and the Design Schedule to the extent it has been adversely impacted by such stoppage. To the extent Design-Builder's failure to pay is related to a dispute between the parties, the dispute will be resolved in accordance with Article 11, and the parties will continue performance in accordance with Section 11.6.

#### **7.4 Designer's Right to Terminate for Cause**

**7.4.1** Designer, in addition to any other rights and remedies afforded under the Contract Documents or at law, may terminate the Agreement for cause in accordance with Section 7.3.2 if Design-Builder has failed to cure the problems set forth in Section 7.3.2 within thirty (30) days after Designer has stopped work.

**7.4.2** Upon the occurrence of the event set forth in Section 7.4.1 above, Designer may provide written notice to Design-Builder that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within seven (7) days of Design-Builder's receipt of such notice. If Design-Builder fails to cure, or reasonably commence to cure, such problem, then Designer may give a second written notice to Design-Builder of its intent to terminate within an additional seven (7) day period. If Design-Builder, within such second seven (7) day period, fails to cure, or reasonably commence to cure, such problem, then Designer may declare the Agreement terminated for default by providing written notice to Design-Builder of such declaration.

## **7.5 Bankruptcy of Design-Builder or Designer**

**7.5.1** If either Design-Builder or Designer institutes or has instituted against it a case under the United States Bankruptcy Code (such party being referred to as the "Bankrupt Party"), such event may impair or frustrate the Bankrupt Party's ability to perform its obligations under the Contract Documents. Accordingly, should such event occur:

**7.5.1.1** The Bankrupt Party, its trustee or other successor, shall furnish, upon request of the non-Bankrupt Party, adequate assurance of the ability of the Bankrupt Party to perform all future material obligations under the Contract Documents, which assurances shall be provided within ten (10) days after receiving notice of the request; and

**7.5.1.2** The Bankrupt Party shall file an appropriate action within the bankruptcy court to seek assumption or rejection of the Agreement within sixty (60) days of the institution of the bankruptcy filing and shall diligently prosecute such action.

**7.5.1.3** If the Bankrupt Party fails to comply with its foregoing obligations, the non-Bankrupt Party shall be entitled to request the bankruptcy court to reject the Agreement, declare the Agreement terminated and pursue any other recourse available to the non-Bankrupt Party under this Article 7.

**7.5.2** The rights and remedies under Section 7.5.1 above shall not be deemed to limit the ability of the non-Bankrupt Party to seek any other rights and remedies provided by the Contract Documents or by law, including its ability to seek relief from any automatic stays under the United States Bankruptcy Code.

## **Article 8** **Representatives of the Parties**

### **8.1 Design-Builder's Representatives**

**8.1.1** Design-Builder designates the individual listed below as its Senior Representative ("Design-Builder's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Section 11.4 hereof:

**8.1.2** Design-Builder designates the individual listed below as its Design-Builder's Representative, which individual has the authority and responsibility set forth in Section 3.2 hereof:

Brad McCall  
5950 S Belmont Ave  
Indianapolis, IN 46217  
317-788-6885  
Email:Brad.McCall@milestonelp.com

### **8.2 Designer's Representatives**

**8.2.1** Designer designates the individual listed below as its Senior Representative ("Designer's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Section 11.4 hereof:

**8.2.2** Designer designates the individual listed below as its Designer's Representative, which individual has the authority and responsibility set forth in Section 2.4.2 hereof:

Michael Rowe, P.E.  
1625 N. Post Road  
Indianapolis, IN  
317-895-2585  
Email:michaelr@ucindy.com

## **Article 9** **Insurance**

### **9.1 Designer's Insurance Requirements**

**9.1.1** Designer is responsible for procuring and maintaining, from insurance companies authorized to do business in the state in which the Project is located, the insurance coverages set forth in Exhibit "B" for certain claims which may arise from or out of the performance of this Agreement and the obligations under the Contract Documents

**9.1.2** Designer shall require its Design Consultants to procure and maintain, from insurance companies authorized to do business in the state in which the Project is located, the insurance coverages set forth in Exhibit "B".

**9.1.3** Designer's and its Design Consultants' insurance coverage set forth in Exhibit "B" and the Designer's subconsultant agreements shall specifically delete any design-build or similar exclusions that could compromise coverages because of the design-build delivery of the Project.

**9.1.4** To the extent Design-Builder requires Designer to provide professional liability insurance for claims arising from the negligent performance of design services by Designer or Design Consultants, the coverage limits, duration and other specifics of such insurance shall be set forth in the Exhibits attached pursuant to Sections 9.1.1 and 9.1.2 above. Any professional liability insurance shall specifically delete any design-build or similar exclusions that could compromise coverages because of the design-build delivery of the project. Such policies shall be provided prior to the commencement of any design services hereunder.

**9.1.5** Prior to commencing any services hereunder, Designer shall provide Design-Builder with certificates evidencing that (i) all insurance obligations required by the Contract Documents are in full force and in effect and will remain in effect for the duration required by the Contract Documents and (ii) no insurance coverage will be canceled, renewal refused, or materially changed unless at least thirty (30) days prior written notice is given to Design-Builder.

**9.1.6** Except as otherwise stated in Exhibit "B", the insurance policies required herein shall list Design-Builder, and all other entities required by the Contract Documents, if any, as an additional insured.

### **9.2 Waiver of Subrogation**

**9.2.1** Design-Builder and Designer waive against each other and Owner, Design Consultants, Owner's separate contractors, Subcontractors, Sub-Subcontractors, agents and employees of each and all of them, all damages covered by property insurance provided herein, except such rights as they may have to the proceeds of such insurance. Design-Builder and Designer shall, where appropriate, require similar waivers of subrogation from Design Consultants and Subcontractors and shall require each of them to include similar waivers in their contracts.

## **Article 10** **Indemnification**

### **10.1 Patent and Copyright Infringement**

**10.1.1** Designer shall defend any action or proceeding brought against Owner or Design-Builder based on any claim that the Project, or any part thereof, or the operation or use of the Project or any part thereof, constitutes infringement of any United States patent or copyright, now or hereafter issued. Design-Builder shall give prompt written notice to Designer of any such action or proceeding and will reasonably provide authority, information and assistance in the defense of same. Designer shall indemnify and hold harmless Owner and Design-Builder from and against all damages and costs, including but not limited to attorneys' fees and expenses awarded against Owner or Design-Builder in any such action or proceeding. Designer agrees to keep Design-Builder informed of all developments in the defense of such actions.

**10.1.2** If Owner is enjoined from the operation or use of the Project, or any part thereof, as the result of any patent or copyright suit, claim, or proceeding, Designer shall at its sole expense take reasonable steps to procure the right to operate or use the Project, or applicable part thereof. If Designer cannot so procure such right within a reasonable time, Designer shall promptly, at Designer's option and at Designer's expense, (i) modify the Project, or applicable part thereof, so as to avoid infringement of any patents, or copyrights, or (ii) replace said work with work that does not infringe or violate any such patent or copyright, and is consistent with the Contract Documents.

**10.1.3** Sections 10.1.1 and 10.1.2 above shall not be applicable to any suit, claim or proceeding based on infringement or violation of a patent or copyright (i) relating solely to a particular process or product of a particular manufacturer specified by Owner or Design-

Builder and not offered or recommended by Designer to Owner or Design-Builder; or (ii) arising from modifications to the Project by Owner or Design-Builder after acceptance of the Project. If the suit, claim or proceeding is based upon events set forth in the preceding sentence, Design-Builder shall defend, indemnify and hold harmless Designer to the same extent Designer is obligated to defend, indemnify and hold harmless Design-Builder in Section 10.1.1 above.

**10.1.4** The obligations set forth in this Section 10.1 shall constitute the sole agreement between the parties relating to liability for infringement or violation of any patent or copyright.

## **10.2 Designer's General Indemnification**

**10.2.1** Designer, to the fullest extent permitted by law, shall indemnify, hold harmless and defend Owner, Design-Builder and their officers, directors, employees and agents from and against claims, losses, damages, liabilities, including attorneys' fees and expenses, for bodily injury, sickness or death, and property damage or destruction (other than to the Work itself) to the extent caused by the negligent acts or omissions of Designer, anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable.

**10.2.2** If an employee of Designer, anyone employed directly or indirectly by Designer or anyone for whose acts any of them may be liable has a claim against any party indemnified pursuant to Section 10.2.1 above, Designer's indemnity obligation set forth in Section 10.2.1 above shall not be limited by any limitation on the amount of damages, compensation or benefits payable by or for Designer, or other entity under any employee benefit acts, including workers' compensation or disability acts.

## **10.3 Design-Builder's General Indemnification**

**10.3.1** Design-Builder, to the fullest extent permitted by law, shall indemnify, hold harmless and defend Designer and its officers, directors, employees and agents from and against claims, losses, damages, liabilities, including attorneys' fees and expenses, for bodily injury, sickness or death, and property damage or destruction (other than to the Work itself) to the extent resulting from the negligent acts or omissions of Design-Builder, anyone employed directly or indirectly by Design-Builder or anyone for whose acts Design-Builder may be liable.

**10.3.2** If an employee of Design-Builder, anyone employed directly or indirectly by Design-Builder or anyone for whose acts Design-Builder may be liable

has a claim against any party indemnified pursuant to Section 10.3.1 above, Design-Builder's indemnity obligation set forth in Section 10.3.1 above shall not be limited by any limitation on the amount of damages, compensation or benefits payable by or for Design-Builder or other entity under any employee benefit acts, including workers' compensation or disability acts.

## **Article 11 Contract Adjustments and Disputes**

### **11.1 Requests for Contract Adjustments and Relief**

**11.1.1** If either Designer or Design-Builder believes that it is entitled to relief against the other for any event arising out of or related to the Services or the Project, such party shall provide written notice to the other party of the basis for its claim for relief. Such notice shall be in accordance with specific notice requirements contained in applicable sections of the Contract Documents and, if possible, be made prior to incurring any cost or expense. Designer shall provide Design-Builder notice of claims for which Owner may be responsible in sufficient time for Design-Builder to meet its notice requirements to Owner set forth in the Contract Documents. In the absence of any specific notice requirement, written notice shall be given within a reasonable time, not to exceed ten (10) days, after the occurrence giving rise to the claim for relief or after the claiming party reasonably should have recognized the event or condition giving rise to the request, whichever is later. Such notice shall be in accordance with the Contract Documents and shall include sufficient information to advise the other party of the circumstances giving rise to the claim for relief, the specific contractual adjustment or relief requested and the basis of such request.

### **11.2 Dispute Avoidance and Resolution**

**11.2.1** The parties are fully committed to working with each other throughout the Project and agree to communicate regularly with each other at all times so as to avoid or minimize disputes or disagreements. If disputes or disagreements do arise, Designer and Design-Builder each commit to resolving such disputes or disagreements in an amicable, professional and expeditious manner so as to avoid unnecessary losses, delays and disruptions to the Services.

### **11.3 Disputes Involving Owner**

**11.3.1** To the extent a claim, dispute or controversy arises out of, or relates to, problems caused by Owner or for which Owner is responsible ("Owner Disputes"), such Owner Disputes shall be resolved pursuant to the dispute resolution clause set forth in the Public-Private Agreement. Both Design-Builder and Designer agree to cooperate in the presentation and prosecution or defense of Owner Disputes. If, after a request for an extension of time or additional compensation from Designer, Design-Builder believes that the event causing the delay or additional compensation is the responsibility of Owner, then Design-Builder will cooperate with and assist Designer in presenting a request for an extension of time or additional compensation to Owner.

**11.3.2** Notwithstanding any other provisions herein to the contrary, Design-Builder and Designer each agree to accept the relief as to a time extension or additional compensation obtained from Owner, if any, as well as all other aspects of the final decision following appeal or the expiration of the time for appeal, as full and final resolution of any Owner Dispute.

**11.3.3** If Design-Builder asserts a claim against Owner involving Designer, each party shall bear its own costs for outside counsel and third-party consultants retained to prosecute claims against Owner and for any other litigation costs. Each party shall present its portion of the claim to Owner.

**11.3.4** If Owner contends that the Contract Documents have been breached, or otherwise asserts a claim or set-off against Design-Builder, the party determined to be responsible for the breach either by settlement or by the trier of fact shall be responsible for all costs occasioned by the breach, including counsel and litigation costs. If the trier of fact fails to determine the relative degrees of fault of Design-Builder and Designer in connection with any claim by Owner, then Design-Builder and Designer agree that the allocation of fault shall be determined pursuant to Section 11.4.

### **11.4 Disputes Not Involving Owner**

**11.4.1** For any claim, dispute or controversy not arising out of, or relating to, problems caused by Owner or for which Owner is responsible, Designer and Design-Builder will first attempt to resolve such claim, dispute or controversy at the field level through discussions between Design-Builder's Representative and Designer's Representative.

**11.4.2** If a claim, dispute or controversy cannot be resolved through Design-Builder's Representative and Designer's Representative, Design-Builder's Senior Representative and Designer's Senior Representative, upon the request of either party, shall meet as soon as conveniently possible, but in no case later than thirty (30) days after such a request is made, to attempt to resolve such claim, dispute or controversy. Prior to any meetings between the Senior Representatives, the parties will exchange relevant information that will assist the parties in resolving the claim, dispute or controversy.

**11.4.3** If after meeting the Senior Representatives determine that the claim, dispute or controversy cannot be resolved on terms satisfactory to both parties, the parties shall submit the claim, dispute or controversy to non-binding mediation. The mediation shall be conducted by a mutually agreeable impartial mediator, or if the parties cannot so agree, a mediator designated by the American Arbitration Association ("AAA") pursuant to its Construction Industry Mediation Rules. The mediation will be governed by and conducted pursuant to a mediation agreement negotiated by the parties or, if the parties cannot so agree, by procedures established by the mediator. If mediation is unsuccessful in the resolution of the claim, dispute, or controversy within three (3) months of starting the mediation, then the Parties agree to pursue litigation. All litigation will be through the court having jurisdiction where the Project is located.

**11.4.4** Notwithstanding any requirement that the Parties negotiate or mediate, the Parties shall in the event of potential irreparable injury or emergency be entitled to seek equitable relief in the Court where the Project is located.

**11.4.5** The Parties hereby waive their right to a trial by jury in any and all disputes or claims arising out of or relating in any way to this Agreement.

**11.4.6** Designer and Design-Builder expressly agree that any action, proceeding or dispute resolution process may be joined or consolidated with any other person or entity (i) necessary to resolve the claim, dispute or controversy, or (ii) substantially involved in or affected by such claim, dispute or controversy. Both Design-Builder and Designer will include appropriate provisions in all contracts they execute with other parties in connection with the Project to require such joinder or consolidation.

**11.4.7** The prevailing party in any litigation, or any other final, binding dispute proceeding upon which the parties may agree, shall be entitled to recover from the other party reasonable attorneys' fees and expenses incurred by the prevailing party.

## **11.5 Duty to Continue Performance**

**11.5.1** Unless provided to the contrary in the Contract Documents, Designer shall continue to perform the Services and Design-Builder shall continue to satisfy its payment obligations to Designer, pending the final resolution of any dispute or disagreement between Design-Builder and Designer.

## **11.6 CONSEQUENTIAL DAMAGES**

**11.6.1** NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY (EXCEPT AS SET FORTH IN SECTION 11.7.2 BELOW), AS BETWEEN THE DESIGN-BUILDER AND THE DESIGNER, NEITHER DESIGN-BUILDER NOR DESIGNER SHALL BE LIABLE TO THE OTHER FOR THEIR OWN CONSEQUENTIAL LOSSES OR DAMAGES, WHETHER ARISING IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO LOSSES OF USE, PROFITS, BUSINESS, REPUTATION OR FINANCING. THIS WAIVER SHALL NOT APPLY TO CONSEQUENTIAL LOSSES OR DAMAGES AS PART OF A CLAIM BY A THIRD PARTY.

**11.6.2** Notwithstanding Section 11.7.1 above, Design-Builder shall be entitled to recover against Designer (i) any liquidated damages that Owner may assess against Design-Builder which are attributable to Designer, even though both parties recognize that such liquidated damages may include some damages that might otherwise be deemed to be consequential and (ii) consequential damages that may be imposed upon the Design-Builder by the Public-Private Agreement.

## **11.7 Limitation of Designer's Liability**

**11.7.1** Design-Builder shall be entitled to delay damages up to a not-to-exceed amount of 50% (fifty percent) of the Design Services Fee inclusive of liquidated damages actually paid by Design-Builder to Owner. Designer and Design-Builder will agree on a Milestone Design Schedule for which to base the liquidated damages for delay upon.

**11.7.2** Design-Builder shall be entitled to an overall limit of liability not-to-exceed the insurance limits shown in Exhibit B.

**11.7.3** Design-Builder shall be entitled to seventy-five percent (75%) of all additional cost associated with preliminary design scope to final design.

## **Article 12 Miscellaneous**

### **12.1 Assignment**

**12.1.1** Neither Designer nor Design-Builder shall, without the written consent of the other, assign, transfer or sublet any portion or part of the Services or the obligations required by the Contract Documents.

### **12.2 Successorship**

**12.2.1** Design-Builder and Designer intend that the provisions of the Contract Documents are binding upon the parties, their employees, agents, heirs, successors and assigns.

### **12.3 Governing Law**

**12.3.1** The Agreement and all Contract Documents shall be governed by the laws of the place of the Project, without giving effect to its conflict of law principles.

### **12.4 Severability**

**12.4.1** If any provision or any part of a provision of the Contract Documents shall be finally determined to be superseded, invalid, illegal, or otherwise unenforceable pursuant to any applicable Legal Requirements or court order, such determination shall not impair or otherwise affect the validity, legality, or enforceability of the remaining provision or parts of the provision of the Contract Documents, which shall remain in full force and effect as if the unenforceable provision or part were deleted.

### **12.5 No Waiver**

**12.5.1** The failure of either Design-Builder or Designer to insist, in any one or more instances, on the performance of any of the obligations required by the other under the Contract Documents shall not be construed as a waiver or relinquishment of such obligation or right with respect to future performance.

### **12.6 Headings**

**12.6.1** The headings used in this Agreement, or any other Contract Document, are for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision.

### **12.7 Notice**

**12.7.1** Whenever the Contract Documents require that notice be provided to the other party, notice will be deemed to have been validly given (i) if delivered in person to the individual intended to receive such notice, (ii) four (4) days after being sent by registered or certified mail, postage prepaid to the address indicated in the Agreement or (iii) if transmitted by facsimile, by the time stated in a machine generated confirmation that notice was received at the number of the intended recipient.

**12.8 Amendments**

**12.8.1** The Contract Documents may not be changed, altered, or amended in any way except in writing signed by a duly authorized representative of each party.

**12.9 Survival**

**12.9.1** Designer's obligations under this Agreement shall not be released, and shall specifically survive, the completion of all Services hereunder, final payment to Designer, and the termination of this Agreement for any reason.

In executing this Agreement, Design-Builder and Designer each individually represents that it has the necessary financial resources to fulfill its obligations under this Agreement, and each has the necessary corporate approvals to execute this Agreement, and perform the Services described herein.

**DESIGN-BUILDER:**

**Milestone Contractors, L.P.**

\_\_\_\_\_  
*(Name of Design-Builder)*

\_\_\_\_\_  
*(Signature)*

Printed Name: Brad McCall \_\_\_\_\_

Title: Director of Estimating \_\_\_\_\_

Date: \_\_\_\_\_

**DESIGNER:**

United Consulting Engineers, Inc.

\_\_\_\_\_  
*(Name of Designer)*

\_\_\_\_\_  
*(Signature)*

Printed Name: Michael Rowe \_\_\_\_\_

Title: Vice President \_\_\_\_\_

Date: \_\_\_\_\_

# Exhibit A Scope of Services

## Article 1 – General

Designer's scope of services includes (a) preparing and providing the design concept, the design, and the plans and specifications, including all related work and deliverables, necessary to enable Design-Builder to perform the construction work specified in the Prime Contract, except as specifically excluded herein, and (b) performing such other services as described herein. The Basic Design Services are based off the general design concept depicted in the Public-Private Agreement and Proposal.

## Article 2 –Pre-Award Phase Services

Designer shall perform pre-award phase services for the Project as described in a separate Teaming Agreement between Designer and Design-Builder, dated April 15, 2015. The Proposal was submitted by the Designer on September 21, 2015 and was successfully accepted by the Indiana Finance Authority (IFA). A schedule for the performance of the Basic Design Phase Services which will allow the project to be completed consistent with the overall Project Schedule shall be agreed to in writing by the Designer and Design-Builder.

## Article 3 – Basic Design Services

- 3.1 The following services shall be included as part of the Basic Design Phase Services:
  - 3.1.a The Designer shall prepare Conceptual, Preliminary, and Final Designs in accordance with the I-69 Major Moves 2020 Expansion Project Public Private Agreement (PPA).
  - 3.1.b Participate in partnering sessions with the Owner and the Design-Builder.
  - 3.1.c Attend and participate in meetings, design review and consultations during the performance of Basic Design Services as requested by Design-Builder or Designer in connection with the Owner's Contract.
  - 3.1.d Prepare a Quality Control Plan for Design.
  - 3.1.e Provide the Lead Engineer, Design Quality Manager and Utility Coordinator as required in the (PPA).
  - 3.1.f Subcontract Alt & Witzig Engineering, Inc. for Geotechnical Engineering Services.
  - 3.1.g Subcontract CDM Smith, Inc. for Intelligent Transportaion System Design.
  - 3.1.h Provide any additional survey required to complete the design of the project.
  - 3.1.i Provide any additional geotechnical investigations required to complete the design of the project.



## Exhibit B Insurance Coverage

### Article 1

**1.1** Designer shall maintain the following insurance throughout the term of this Agreement and thereafter as applicable:

**1.1.1** Professional Liability Insurance specific to their profession with limits not less than \$5 million per claim and in aggregate. Designer will maintain this policy for a period of five (5) years after partial acceptance of the project. Designer will cover Design Consultant's for work performed on behalf of Designer.

**Exhibit C**

**Key Personnel**

**Matt Taylor – Lead Engineer**  
**Chris Hammond – Design Quality Manager**  
**Ben Stenger – Utility Coordinator**