

AMENDMENT TO LEASE

This Amendment to Lease is made this ___ day of _____, 2015, by and among Milestone Materials, a division of Mathy Construction Company ("Milestone") and the City of La Crosse, Wisconsin, a municipal corporation ("City").

WHEREAS, the Lease between the City and Milestone provides that the site shall be used for recycling concrete, asphalt, glass, plastic and demolition materials and no other purpose without express written consent of the City, and

WHEREAS, Milestone has requested permission to sublease to a portion of the property for use as a concrete batch plant with regard to a Department of Transportation street project.

NOW, THEREFORE, IN CONSIDERATION the Lease is amended as follows:

1. Milestone has permission to sublease a portion of the property to Trierweiler Construction & Supply Co, Inc. for use as a concrete batch plant for a period of May 1, 2015 through December 31, 2015.

2. Insurance. Unless otherwise specified in this Agreement, Milestone shall, at its sole expense, maintain in effect at all times during the usage of the leased premises, insurance coverage with limits not less than those set forth below with insurers and under forms of policies set forth below.

a. *Worker's Compensation and Employers Liability Insurance.* Milestone shall cover or insure under the applicable labor laws relating to worker's compensation insurance, all of their employees in accordance with the laws of the State of Wisconsin. Milestone shall provide statutory coverage for work related injuries and employer's liability insurance with limits of at least for employers liability of one hundred thousand dollars (\$100,000.00) each accident, one hundred thousand dollars (\$100,000.00) each employee and five hundred thousand dollars (\$500,000.00) total policy limit.

b. *Commercial General Liability and Automobile Liability Insurance.* Milestone shall provide and maintain the following commercial general liability and automobile liability insurance:

(1) General Liability. One million dollars (\$1,000,000.00) per occurrence (\$2,000,000.00 general aggregate if applicable) for bodily injury, personal injury and property damage.

- (2) Automobile Liability. One million dollars (\$1,000,000.00) for bodily injury and property damage per occurrence limit covering all vehicles to be used in relationship to the Agreement.
- (3) Umbrella Liability. Five million dollars (\$5,000,000.00) following form excess of the primary General Liability, Automobile Liability and Employers Liability Coverages. Coverage is to duplicate the requirements as set forth herein.

c. *Required Provisions.* The general liability, umbrella liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

- 1) The City, its elected and appointed officials, officers, employees or authorized representatives or volunteers are to be given additional insured status (via ISO endorsement CG 2010, CG 2033, or insurer's equivalent for general liability coverage) as respects: liability arising out of activities performed by or on behalf of Milestone; products and completed operations of Milestone; premises occupied or used by Milestone; and vehicles owned, leased, hired or borrowed by Milestone. The coverage shall contain no special limitations on the scope of protection afforded to the City, its elected and appointed officials, officers, employees or authorized representatives or volunteers. Except for the workers compensation policy, each insurance policy shall contain a waiver of subrogation endorsement in favor of the City.
- 2) For any claims related to this Lease or usage of the leased premises, Milestone shall be primary insurance as respects the City, its elected and appointed officials, officers, employees or authorized representatives or volunteers. Any insurance, self-insurance, or other coverage maintained by the City, its elected and appointed officers, officials, employees or authorized representatives or volunteers shall not contribute to the primary insurance.
- 3) Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the City, its elected and appointed officers, employees or authorized representatives or volunteers.

- 4) Milestone's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
 - 5) Each insurance policy required by this Lease shall state, or be endorsed to the state, that coverage shall not be canceled by the insurance carrier or Milestone, except after sixty (60) days (ten (10) days for non-payment of premium) prior written notice by U.S. mail has been given to the City.
 - 6) Such liability insurance shall indemnify the City, its elected and appointed officials, officers, employees or authorized representatives or volunteers against loss from liability imposed by law upon, or assumed under contract by, Milestone for damages on account of such bodily injury, (including death), property damage personal injury, completed operations, and products liability.
 - 7) The general liability policy shall cover bodily injury and property damage liability, owned and non-owned equipment, blanket contractual liability, completed operations. The automobile liability policy shall cover all owned, non-owned, and hired vehicles.
 - 8) All of the insurance shall be provided on policy forms and through companies satisfactory to the City, and shall have a minimum AM Best's rating of A- VIII.
- d. *Deductibles and Self-Insured Retentions.* Any deductible or self-insured retention must be declared to and approved by the City. At the option of the City, the insurer shall either reduce or eliminate such deductibles or self-insured retentions.
- e. *Evidences of Insurance.* Prior to execution of the Agreement, Milestone shall file with the City a certificate of insurance (Accord Form 25-S or equivalent) signed by the insurer's representative evidencing the coverage required by this Agreement. Such evidence shall include an additional insured endorsement signed by the insurer's representative. Such evidence shall also include confirmation that coverage includes or has been modified to include all required provisions as detailed herein.
- f. *Sub-Leases.* In the event that Milestone employ other lessees (sub-lessees) as part of the leased premises usage covered by this Lease, it shall be Milestone's responsibility to require and confirm that each sub-lessee meets the minimum insurance requirements specified above.

3. This Amendment contains the entire agreement between the parties with respect to the subject matter herein. There are no representations, agreements or understandings, whether oral or written, between or among the parties relating to the subject matter of this Amendment which are not fully expressed herein.

4. Except as modified by this Amendment, all of the provisions of the Lease shall remain in full force and effect. This Amendment may not be modified except pursuant to written instrument signed by the parties.

5. Each party to this Amendment represents and warrants that it and its signatories below have the full right, power, legal capacity and authority to enter into and perform the parties' respective obligations hereunder and that such obligation shall be binding upon such party without the requirement of the approval or consent of any other party or entity in connection herewith, except as otherwise provided within this Amendment.

6. Should any part, term, portion or provision of this Amendment or the application thereof to any person or circumstance be in conflict with any state, federal or local law or otherwise be rendered unenforceable, it shall be deemed severable and shall not effect the remaining provisions provided that such remaining provisions can be construed in substance to continue to constitute the agreement that the parties intended to enter in the first instance.

7. This Amendment shall be governed by the laws of the State of Wisconsin as to interpretation, performance and choice of law and shall be deemed to have been drafted through the combined efforts of both parties with equal bargaining strength and any action at law or inequity relating to this Amendment shall be instituted exclusively in the courts of the State of Wisconsin, venued in La Crosse County. Each party waives its right to a change of venue.

IN WITNESS WHEREOF, the parties hereto have executed this agreement by the duly authorized representatives as to the date and year first above written.

CITY OF LA CROSSE

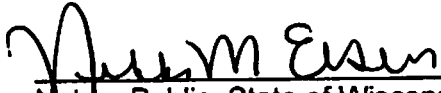
BY: Timothy Kabat
Timothy Kabat, Mayor

BY: Teri Lehnke

03-27-15

Teri Lehrke, City Clerk


Subscribed and sworn to before me
this 9th day of July, 2015.


Notary Public, State of Wisconsin
My Commission: 6/23/17

MILESTONE MATERIALS, a division of
Mathy Construction Company

BY: 

Subscribed and sworn to before me
this 15th day of April, 2015.


Notary Public, State of Wisconsin
My Commission: 15 permanent