

MICHIGAN DEPARTMENT OF TRANSPORTATION
CITY OF BATTLE CREEK
CONTRACT FOR A FEDERAL/STATE/LOCAL
AIRPORT PROJECT
UNDER THE BLOCK GRANT PROGRAM

This Contract is made and entered into this date of _____ by and between the Michigan Department of Transportation (MDOT) and City of Battle Creek (SPONSOR) for the purpose of fixing the rights and obligations of the parties in agreeing to the following undertaking at the W.K. Kellogg Airport, whose associated city is Battle Creek, Michigan, such undertaking (PROJECT) estimated in detail in Exhibit 1, dated May 23, 2018 attached hereto and made a part hereof.

PROJECT DESCRIPTION: REHABILITATE TAXIWAY C PHASE II (FROM TWY D TO RWY 5L) INCLUDING D CONNECTOR; INSTALL TAXIWAY LIGHTING C PHASE II (FROM TWY D TO RWY 5L) INCLUDING D CONNECTOR - CONSTRUCTION.

Recitals:

The PROJECT is eligible for federal funding under the federal Airport Improvement Program, pursuant to 49 USC 47101 *et seq.*, including 47128; and

MDOT has received a block grant from the Federal Aviation Administration (FAA) for airport development projects; and

MDOT is responsible for the allocation and management of block grant funds pursuant to the above noted act; and

Information required by 2 CFR Part 200 is attached to this Contract as Attachment X.

The parties agree that:

1. The term "PROJECT COST," as used herein, is defined in Attachment(s) 6, attached hereto and made a part hereof. The PROJECT COST will also include administrative costs incurred by MDOT in connection with the PROJECT. Administrative costs incurred by the SPONSOR are not eligible PROJECT COSTS.

THE SPONSOR WILL:

2. Enter into a contract with a consultant for each element of the PROJECT that requires expertise. The consultant will be selected in conformity with FAA Advisory Circular 150/5100-14. MDOT will select the consultant for each element of the PROJECT that involves preparation of environmental documentation. The SPONSOR will select the consultant for all other aspects of the PROJECT. All consultant contracts will be submitted to MDOT for review and approval. Any such approvals will not be construed as a warranty of the consultant's qualifications, professional standing, ability to perform the work being subcontracted, or financial integrity. The SPONSOR will neither award a consultant contract nor authorize the consultant to proceed prior to receiving written approval of the contract from MDOT. Any change to the consultant contract will require prior written approval from MDOT. In the event that the consultant contract is terminated, the SPONSOR will give immediate written notice to MDOT.
3. Make payment to MDOT for the SPONSOR's share of the PROJECT COSTS within thirty (30) days of the billing date. MDOT will not make payments for any PROJECT work prior to receipt of payment from the SPONSOR for the SPONSOR's share of that item of the PROJECT work.

Eligible PROJECT COSTS that are paid by the SPONSOR may be submitted for credit toward the SPONSOR's share of the PROJECT COST provided that they are submitted within one hundred eighty (180) days of the date the costs were incurred or within one hundred eighty (180) days of the date of award of this Contract by the parties, whichever is later. Documentation of the PROJECT COST will include copies of the invoices on which the SPONSOR will write the amounts paid, the check numbers, the voucher numbers, and the dates of the checks. Each invoice will be signed by an official of the SPONSOR as proof of payment. The amount of the SPONSOR billing will be reduced by the amount of the eligible credit, based on documentation submitted, provided it is submitted prior to the date of the billing. Should it be determined that the SPONSOR has been given credit for payment of ineligible items of work, the SPONSOR will be billed an amount to ensure that the SPONSOR share of PROJECT COSTS is covered.

The SPONSOR pledges sufficient funds to meet its obligations under this Contract.

4. With regard to audits and record-keeping:
 - a. The SPONSOR will establish and maintain accurate records, in accordance with generally accepted accounting principles, of all expenses incurred for which payment is sought or made under this Contract (RECORDS). Separate accounts will be established and maintained for all costs incurred under this Contract.

- b. The SPONSOR will maintain the RECORDS for at least six (6) years from the date of final payment made by MDOT under this Contract. In the event of a dispute with regard to allowable expenses or any other issue under this Contract, the SPONSOR will thereafter continue to maintain the RECORDS at least until that dispute has been finally decided and the time for all available challenges or appeals of that decision has expired.
 - c. MDOT or its representative may inspect, copy, scan, or audit the RECORDS at any reasonable time after giving reasonable notice.
 - d. If any part of the work is subcontracted, the SPONSOR will assure compliance with subsections (a), (b), and (c) above for all subcontracted work.
5. Provide and will require its subcontractors to provide access by MDOT or its representatives to all technical data, accounting records, reports, and documents pertaining to this Contract. Copies of technical data, reports, and other documents will be provided by the SPONSOR or its subcontractors to MDOT upon request. The SPONSOR agrees to permit representatives of MDOT to inspect the progress of all PROJECT work at any reasonable time. Such inspections are for the exclusive use of MDOT and are not intended to relieve or negate any of the SPONSOR's obligations and duties contained in this Contract. All technical data, reports, and documents will be maintained for a period of six (6) years from the date of final payment.
 6. In the performance of the PROJECT herein enumerated, by itself, by a subcontractor, or by anyone acting on its behalf, comply with any and all applicable state, federal, and local statutes, ordinances, and regulations. The SPONSOR further agrees to obtain all permits that are applicable to the entry into and the performance of this Contract.

The SPONSOR agrees to comply with the General Conditions and Special Conditions set forth in Appendix F, attached hereto and made a part hereof.

In addition, the SPONSOR agrees to accomplish the PROJECT in compliance with all applicable FAA Assurances, Advisory Circulars, and Certifications.

7. The SPONSOR agrees that the costs reported to MDOT for this Contract will represent only those items that are properly chargeable in accordance with this Contract. The SPONSOR also certifies that it has read the Contract terms and has made itself aware of the applicable laws, regulations, and terms of this Contract that apply to the reporting of costs incurred under the terms of this Contract.

MDOT WILL:

8. Bill the SPONSOR for the SPONSOR's share of the estimated PROJECT COST. MDOT will bill the SPONSOR for the SPONSOR's share of additional estimated PROJECT COSTS for changes approved in accordance with Section 13 at the time of award of the amendment for approved work.

9. Upon receipt of payment requests approved by the SPONSOR, make payment for eligible PROJECT COSTS. MDOT will seek reimbursement from the FAA through the block grant issued to MDOT for funds expended on eligible PROJECT COSTS.

MDOT will not make payment for any PROJECT work prior to receipt of payment from the SPONSOR for the SPONSOR's share of that item of PROJECT work.

10. Make final accounting to the SPONSOR upon completion of the PROJECT, payment of all PROJECT COSTS, and completion of necessary audits. Any excesses or deficiencies will be returned or billed to the SPONSOR.

IT IS FURTHER AGREED THAT:

11. The PROJECT COST participation is estimated to be as shown below and as shown in the attached Exhibit 1. The PROJECT COST participation shown in Exhibit 1 is to be considered an estimate. The actual MDOT, FAA, and SPONSOR shares of the PROJECT COST will be determined at the time of financial closure of the FAA grant.

Federal Share	\$2,917,066.00
Maximum MDOT Share	\$162,059.00
SPONSOR Share	\$377,475.00
<i>Estimated</i> PROJECT COST	\$3,456,600.00

12. The PROJECT COST will be met in part with federal funds granted to MDOT by the FAA through the block grant program and in part with MDOT funds. Upon final settlement of cost, the federal funds will be applied to the federally-funded parts of this Contract at a rate not to exceed ninety-five percent (95%) up to and not to exceed the maximum federal obligations shown in Section 11 or as revised in a budget letter, as set forth in Section 13. Those parts beyond the federal funding maximum may be eligible for state funds at a rate not to exceed ninety percent (90%) up to and not to exceed the maximum MDOT obligation shown in Section 11.

For portions of the PROJECT for which only MDOT and SPONSOR funds will be applied to the final settlement, MDOT funds will be at a rate not to exceed ninety percent (90%), and the total MDOT funds applied toward the PROJECT COST may be up to but will not exceed the maximum MDOT obligations shown in Section 11 or as revised in a budget letter, as set forth in Section 13. Any items of PROJECT COST not funded by FAA or MDOT funds will be the sole responsibility of the SPONSOR.

MDOT funds in this Contract made available through legislative appropriation are based on projected revenue estimates. MDOT may reduce the amount of this Contract if the revenue actually received is insufficient to support the appropriation under which this Contract is made.

13. The PROJECT COST shown in Section 11 is the maximum obligation of MDOT and federal funds under this Contract. The maximum obligation of MDOT and federal funds may be adjusted to an amount less than the maximums shown in Section 11 through a budget letter issued by MDOT. A budget letter will be used when updated cost estimates for the PROJECT reflect a change in the amount of funds needed to fund all PROJECT COSTS. The budget letter will be signed by the Administrator of the Airports Division of the Office of Aeronautics.

A budget letter will also be used to add or delete work items from the PROJECT description, provided that the costs do not exceed the maximum obligations of Section 11. If the total amount of the PROJECT COST exceeds the maximum obligations shown in Section 11, the PROJECT scope will have to be reduced or a written amendment to this Contract to provide additional funds will have to be awarded by the parties before the work is started.

14. In the event it is determined by MDOT that there will be either insufficient funds or insufficient time to properly administer such funds for the entire PROJECT or portions thereof, MDOT, prior to advertising or authorizing work performance, may cancel the PROJECT or any portion thereof by giving written notice to the SPONSOR. In the event this occurs, this Contract will be void and of no effect with respect to the canceled portion of the PROJECT. Any SPONSOR deposits on the canceled portion less PROJECT COSTS incurred on the canceled portions will be refunded following receipt of a letter from the SPONSOR requesting that excess funds be returned or at the time of financial closure, whichever comes first.
15. In the event that an audit performed by or on behalf of MDOT indicates an adjustment to the costs reported under this Contract or questions the allowability of an item of expense, MDOT will promptly submit to the SPONSOR a Notice of Audit Results and a copy of the audit report, which may supplement or modify any tentative findings verbally communicated to the SPONSOR at the completion of an audit.

Within sixty (60) days after the date of the Notice of Audit Results, the SPONSOR will (a) respond in writing to the responsible Bureau of MDOT indicating whether or not it concurs with the audit report, (b) clearly explain the nature and basis for any disagreement as to a disallowed item of expense, and (c) submit to MDOT a written explanation as to any questioned or no opinion expressed item of expense (RESPONSE). The RESPONSE will be clearly stated and will provide any supporting documentation necessary to resolve any disagreement or questioned or no opinion expressed item of expense. Where the documentation is voluminous, the SPONSOR may supply appropriate excerpts and make alternate arrangements to conveniently and reasonably make that documentation available for review by MDOT. The RESPONSE will refer to and apply the language of the Contract. The SPONSOR agrees that failure to submit a RESPONSE within the sixty (60) day period constitutes agreement with any disallowance of an item of expense and authorizes MDOT to finally disallow any items of questioned or no opinion expressed cost.

MDOT will make its decision with regard to any Notice of Audit Results and RESPONSE within one hundred twenty (120) days after the date of the Notice of Audit Results. If MDOT determines that an overpayment has been made to the SPONSOR, the SPONSOR will repay that amount to MDOT or reach agreement with MDOT on a repayment schedule within thirty (30) days after the date of an invoice from MDOT. If the SPONSOR fails to repay the overpayment or reach agreement with MDOT on a repayment schedule within the thirty (30) day period, the SPONSOR agrees that MDOT will deduct all or a portion of the overpayment from any funds then or thereafter payable by MDOT to the SPONSOR under this Contract or any other agreement or payable to the SPONSOR under the terms of 1951 PA 51, as applicable. Interest will be assessed on any partial payments or repayment schedules based on the unpaid balance at the end of each month until the balance is paid in full. The assessment of interest will begin thirty (30) days from the date of the invoice. The rate of interest will be based on the Michigan Department of Treasury common cash funds interest earnings. The rate of interest will be reviewed annually by MDOT and adjusted as necessary based on the Michigan Department of Treasury common cash funds interest earnings. The SPONSOR expressly consents to this withholding or offsetting of funds under those circumstances, reserving the right to file a lawsuit in the Court of Claims to contest MDOT's decision only as to any item of expense the disallowance of which was disputed by the SPONSOR in a timely filed RESPONSE.

16. Failure on the part of the SPONSOR to comply with any of the conditions of this Contract may be considered cause for placing the SPONSOR in a state of noncompliance, thereby making the SPONSOR ineligible for future federal and/or state funds until such time as the noncompliance issues are resolved. In addition, this failure may constitute grounds for cancellation of the PROJECT and/or repayment of all grant amounts on a pro rata basis, if the PROJECT has begun. In this section, pro rata means proration of the cost of the PROJECT over twenty (20) years, if the PROJECT has not yet begun.
17. Any approvals, acceptances, reviews, and inspections of any nature by MDOT will not be construed as a warranty or assumption of liability on the part of MDOT. It is expressly understood and agreed that any such approvals, acceptances, reviews, and inspections are for the sole and exclusive purposes of MDOT, which is acting in a governmental capacity under this Contract, and that such approvals, acceptances, reviews, and inspections are a governmental function incidental to the PROJECT under this Contract.

Any approvals, acceptances, reviews, and inspections by MDOT will not relieve the SPONSOR of its obligations hereunder, nor are such approvals, acceptances, reviews, and inspections by MDOT to be construed as a warranty as to the propriety of the SPONSOR's performance, but are undertaken for the sole use and information of MDOT.
18. In connection with the performance of PROJECT work under this Contract, the SPONSOR (hereinafter in Appendix A referred to as the "contractor") agrees to comply with the State of Michigan provisions for "Prohibition of Discrimination in State Contracts," as set forth in Appendix A, dated June 2011, attached hereto and made a part hereof. The SPONSOR (hereinafter in Appendix B referred to as the "contractor")

further agrees to comply with the Civil Rights Act of 1964, being P.L. 88-352, 78 Stat. 241, as amended, being Title 42 USC Sections 1971, 1975a-1975d, and 2000a-2000h-6, and the Regulations of the United States Department of Transportation (49 CFR Part 21) issued pursuant to said Act, including Appendix B, attached hereto and made a part hereof. These provisions will be included in all subcontracts relating to this Contract.

The SPONSOR will carry out the applicable requirements of MDOT's Disadvantaged Business Enterprise (DBE) program and 49 CFR Part 26, including, but not limited to, those requirements set forth in Appendix C, dated October 2, 2014, attached hereto and made a part hereof.

19. The SPONSOR agrees to require all prime contractors to pay each subcontractor for the satisfactory completion of work associated with the subcontract no later than ten (10) calendar days from the receipt of each payment the prime contractor receives from MDOT or the SPONSOR. The prime contractor also is required to return retainage payments to each subcontractor within ten (10) calendar days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from these time frames may occur only upon receipt of written approval from MDOT. These requirements are also applicable to all sub-tier subcontractors and will be made a part of all subcontract agreements.

This prompt payment provision is a requirement of 49 CFR, Part 26, as amended, and does not confer third-party beneficiary right or other direct right to a subcontractor against MDOT. This provision applies to both DBE and non-DBE subcontractors.

The SPONSOR further agrees that it will comply with 49 CFR, Part 26, as amended, and will report any and all DBE subcontractor payments to MDOT semi-annually in the format set forth in Appendix G, dated September 2015, attached hereto and made a part hereof, or any other format acceptable to MDOT.

20. In accordance with 1980 PA 278, MCL 423.321 *et seq.*, the SPONSOR, in the performance of this Contract, will not enter into a contract with a subcontractor, manufacturer, or supplier listed in the register maintained by the United States Department of Labor of employers who have been found in contempt of court by a federal court of appeals on not less than three (3) separate occasions involving different violations during the preceding seven (7) years for failure to correct an unfair labor practice, as prohibited by Section 8 of Chapter 372 of the National Labor Relations Act, 29 USC 158. MDOT may void this Contract if the name of the SPONSOR or the name of a subcontractor, manufacturer, or supplier utilized by the SPONSOR in the performance of this Contract subsequently appears in the register during the performance period of this Contract.
21. With regard to claims based on goods or services that were used to meet the SPONSOR's obligation to MDOT under this Contract, the SPONSOR hereby irrevocably assigns its right to pursue any claims for relief or causes of action for damages sustained by the State of Michigan or MDOT due to any violation of 15 USC, Sections 1 - 15, and/or 1984 PA 274, MCL 445.771 - 445.788, excluding Section 4a, to the State of Michigan or MDOT.

The SPONSOR shall require any subcontractors to irrevocably assign their rights to pursue any claims for relief or causes of action for damages sustained by the State of Michigan or MDOT with regard to claims based on goods or services that were used to meet the SPONSOR's obligation to MDOT under this Contract due to any violation of 15 USC, Sections 1 - 15, and/or 1984 PA 274, MCL 445.771 - 445.788, excluding Section 4a, to the State of Michigan or MDOT as a third-party beneficiary.

The SPONSOR shall notify MDOT if it becomes aware that an antitrust violation with regard to claims based on goods or services that were used to meet the SPONSOR's obligation to MDOT under this Contract may have occurred or is threatened to occur. The SPONSOR shall also notify MDOT if it becomes aware of any person's intent to commence, or of commencement of, an antitrust action with regard to claims based on goods or services that were used to meet the SPONSOR's obligation to MDOT under this Contract.

22. In any instance of dispute and/or litigation concerning the PROJECT, the resolution thereof will be the sole responsibility of the party/parties to the contract that is/are the subject of the controversy. It is understood and agreed that any legal representation of the SPONSOR in any dispute and/or litigation will be the financial responsibility of the SPONSOR.
23. MDOT and the FAA will not be subject to any obligations or liabilities by contractors of the SPONSOR or their subcontractors or any other person not a party to this Contract without its specific consent and notwithstanding its concurrence in or approval of the award of any contract or subcontract or the solicitation thereof.
24. Each party to this Contract will remain responsible for any claims arising out of that party's performance of this Contract as provided by this Contract or by law.

This Contract is not intended to increase or decrease either party's liability for or immunity from tort claims.

This Contract is not intended to nor will it be interpreted as giving either party a right of indemnification, either by Contract or at law, for claims arising out of the performance of this Contract.

25. This Contract will be in effect from the date of award through twenty (20) years .
26. In case of any discrepancies between the body of this Contract and any exhibit hereto, the body of the Contract will govern.

27. This Contract will become binding on the parties and of full force and effect upon signing by the duly authorized representatives of the SPONSOR and MDOT and upon adoption of a resolution approving said Contract and authorizing the signature(s) thereto of the respective representative(s) of the SPONSOR, a certified copy of which resolution will be sent to MDOT with this Contract, as applicable.

CITY OF BATTLE CREEK

By: _____
Title:

MICHIGAN DEPARTMENT OF TRANSPORTATION

By: _____
Title: Department Director

EXHIBIT 1

W.K. KELLOGG AIRPORT
BATTLE CREEK, MICHIGAN

Project No. B-26-0008-4517
Contract No. FM 13-01-C85 & C86
Job No. 122297 & 128205

May 23, 2018

	Federal	State	Local	Total	
ADMINISTRATION	\$1,431	\$79	\$80	\$1,590	
DEPARTMENT-AERO	\$899	\$50	\$50	\$999	Job 122297
DEPARTMENT-AERO	\$532	\$29	\$30	\$591	Job 128205
ENVIRONMENTAL	\$0	\$0	\$0	\$0	
DESIGN	\$0	\$0	\$0	\$0	
CONSTRUCTION	\$2,915,635	\$161,980	\$377,395	\$3,455,010	
Rehabilitate Taxiway C Phase II (from Twy D to Rwy 5L) including D Connector (Category 1)	\$2,337,083	\$129,838	\$129,838	\$2,596,759	Job 122297
AERO - Construction (Category 1)	\$7,650	\$425	\$425	\$8,500	Job 122297
CONSULTANT - Construction (Category 1)	\$183,084	\$10,171	\$10,172	\$203,427	Job 122297
Rehabilitate Taxiway C Phase II (from Twy D to Rwy 5L) including D Connector (Category 3 LOCAL ONLY)	\$0	\$0	\$208,088	\$208,088	Job 122297
CONSULTANT - Construction (Category 3 LOCAL ONLY)	\$0	\$0	\$7,327	\$7,327	Job 122297
Install Taxiway Lighting C Phase II (from Twy D to Rwy 5L) including D Connector (Category 2)	\$369,641	\$20,536	\$20,535	\$410,712	Job 128205
AERO - Construction (Category 2)	\$2,250	\$125	\$125	\$2,500	Job 128205
CONSULTANT - Construction (Category 2)	\$15,927	\$885	\$885	\$17,697	Job 128205
TOTAL PROJECT BUDGET	\$2,917,066	\$162,059	\$377,475	\$3,456,600	

Federal Billing Breakdown:

Bill #1	\$386,795	SBGP 9215	Grant Award Date: 6/11/15	Job 122297
Bill #2	\$150,000	SBGP 9616	Grant Award Date: 8/22/16	Job 122297
Bill #3	\$1,850,000	SBGP 9817	Grant Award Date: 7/24/17	Job 122297
Bill #4	\$530,271	SBGP 10318	Grant Award Date: PENDING	Job 122297 \$141,921 & Job 128205 \$388,350

Letting Information: 04/27/18 Local let

Period of Performance End Date: 12/01/19

MAC Approval: 05/23/18