



RESOLUTION

APPROVED

NO. 80

THIS RESOLUTION AUTHORIZES THE CITY MANAGER TO EXECUTE A LEASE WITH THE UNITED STATES OF AMERICA ON BEHALF OF THE MICHIGAN AIR NATIONAL GUARD.

BATTLE CREEK, MICHIGAN 2-20-07

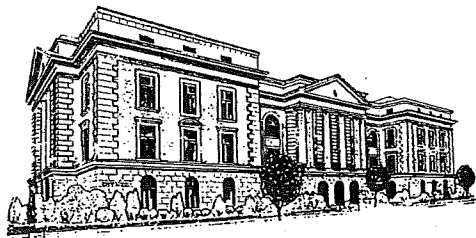
Resolved by the Commission of the City of Battle Creek:

That the City Manager is authorized to execute lease no. DACA27-5-06-733 with the United States of America which supersedes lease no. DACA27-5-86-651, as per the attached agreement.

Comm. 

Comm. 

ORIGINAL



Battle Creek City Commission
February 20, 2007 Commission Meeting

Action Summary

Staff member: Lawrence Bowron
Department: DPW - WK Kellogg Airport

Replacement of Michigan Air National Guard Airport Lease

Brief Summary:

This resolution authorizes the City Manager to execute a new lease, No. DACA27-5-06-733, with the Michigan Air National Guard. The term of the lease includes the 36 remaining years on the existing lease and an additional 50 years.

Budgetary Considerations:

The lease payment for the term of this extension is \$1.00.

History/Background:

This lease supersedes Department of the Air Force lease No. DACA27-5-86-651 which grants the Department of the Air Force on behalf of the Michigan Air National Guard, use of approximately 228.848 acres of land including taxiway F.

In order for the 110th Fighter Wing to continue its participation in the Military Construction Program it must have a minimum leasehold interest of 30 years. Under the terms of the current lease, they were getting very close to the minimum leasehold interest. The Military Construction Program is the ANG's primary funding source for all base improvements and new construction.

Content of the Resolution:

This resolution authorizes the City Manager to execute a new lease, No. DACA27-5-06-733, with the Michigan Air National Guard. The term of the lease includes the 36 remaining years on the existing lease and an additional 50 years.

Positions:

The following positions support this action –

- City Manager
- Transportation Director
- Airport Manager
- Battle Creek Unlimited

Attachments:

- 3 Original signed lease amendments
- Letter of support from City Manager
- Letter of support from Battle Creek Unlimited

ORIGINAL



April 4, 2006

Mr. Wayne Wiley, City Manager
City of Battle Creek
P.O. Box 1717
Battle Creek, Michigan 49016

Dear Mr. Wiley:

We are advised that the 110th Fighter Wing, Michigan Air National Guard is preparing to request an extension of current leases at the W.K. Kellogg Airport. Current leases are not due to expire until 2036, but Air Guard policy requires a twenty-five year interest in the leased properties, and thus, the request for extensions.

We respectfully recommend that the City of Battle Creek agree to the extensions. The City of Battle Creek was a significant player in the decision of the 2005 BRAC Commission to keep the Air Guard base open at the W.K. Kellogg Airport. This successful effort set the stage for continued use of the advanced facilities constructed at the airport by the Air National Guard.

Battle Creek Unlimited is strongly supportive of the Air Guard Base and will continue to work with Guard personnel to assure that this is one of the most modern and compatible defense installations in the U.S.

The emerging cluster of university aviation education, corporate jet overhaul and maintenance, fixed-base-operations, defense, and aircraft manufacturing should set the stage for the public and private sectors to share the most advanced technologies and training anywhere in the country.

For these reasons, the Air National Guard is and should remain an important partner in our airport development efforts.

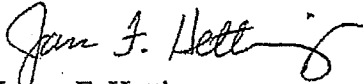
We, therefore, strongly support the request and we hope the City of Battle Creek will similarly support the request.

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April 4, 2006

If you have any questions, please feel free to contact me. Thank you very much.

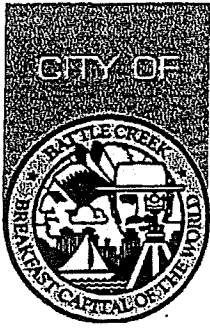
Sincerely,



James F. Hettinger
President and CEO

CC: Major Eric J. Oswald, Michigan National Guard
Honorable John Godfrey, Mayor
Larry Bowren, Airport Manager
Jan Burland

ORIGINAL



BATTLE CREEK
CITY MANAGER

April 11, 2006

Major Eric J. Oswald
Base Civil Engineer
110th Fighter Wing CES/CE
3585 Mustang Avenue
Battle Creek, MI 49015-5512

Dear Major Oswald:

This letter is in response to your request dated February 8, 2006, wherein you informed us that your office is in the process of preparing a Real Estate Package that requires an extension or renewal of your current land leases from the City of Battle Creek. As we understand it, the requested extension is necessary for the 110th Fighter Wing CES/CE to continue its participation in the Military Construction Program.

We would like to express our sincere interest in working together with the 110th Fighter Wing to ensure the continued mutual success enjoyed by both of our agencies. To that end, we have no objections, in principal, to extending or renewing any of the existing leases held by the United States of America (Government) on behalf of the Michigan Air National Guard. The Government shall not assign any of these leases in any event and/or shall not sublet the described premises to any non-DoD agency with prior approval of the Lessor (City of Battle Creek).

We understand that in due time the Army Corps of Engineers will contact the City to work out all of the necessary details. Until that time, please do not hesitate to contact our office should you need additional assistance.

Sincerely,

Wayne D. Wiley
City Manager

Cc: Mayor Godfrey
Larry Bowron
Jim Hettinger
Greg Zanotti

04-19-06 07:41 OUT

Golden Service

10 N. Division St., Suite 206 • P.O. Box 1717 • Battle Creek, Michigan • 49016-1717
(269) 966-3378 • Fax (269) 966-6654 • Web: battlecreek.org

LAND LEASE
FOR PRIVATELY OWNED PROPERTY
LEASE BETWEEN
CITY OF BATTLE CREEK, MICHIGAN
AND
THE UNITED STATES OF AMERICA

1. This LEASE, made and entered into this _____ day of _____ in the year of 2007.

by: City of Battle Creek, Michigan

address: Post Office Box 1717
Battle Creek, MI 49016-1717

and whose interest in the property is that of the owner, hereinafter called the **Lessor**, and the **UNITED STATES OF AMERICA**, hereinafter called the **Lessee**.

In consideration for **RENT** the parties promise and agree as follows:

2. **PROPERTY:** The Lessor leases to the Lessee the following described property:

The use of approximately 228.848 acres of land, more particularly described as Parcel 3 (44.61 acres), Parcel 4 (159.43 acres), Parcel 5 (21.30 acres), and Taxiway F (3.508 acres) and shown on Exhibits A and B, attached and made a part of this agreement, for use and benefit of the air units of the Michigan Air National Guard/Air Force and/or in the event air units of the Michigan Air National Guard are inducted into the federal military service, for military aviation purposes of the Federal Governments.

3. **LEASE TERM:** The Lessee shall have the right to have and to hold the said premises, or any portion thereof, for a term ending September 17, 2086. The Lessee shall have the right to renew this lease under the same terms, conditions and consideration provided herein.

4. **RENTAL:** The Lessee shall pay the Lessor rent at the following rate: \$1 per the term.

5. **OWNERSHIP:** The Lessor warrants that he is the rightful and legal owner of the property and has the legal right to enter into this lease. If the title of the Lessor shall fail, or it be discovered that the Lessor did not have authority to lease the property, the lease shall terminate. The Lessor, the Lessor's heirs, executors, administrators, successors, or assigns agree to indemnify the Lessee by reason of such failure and to **refund all rentals paid**.

LEASE NO. DACA27-5-06-733
SUPERSEDING LEASE NO. DACA27-5-86-651
W. K. KELLOGG AIRPORT, MI

6. **EXCLUSIVE USE:** The Lessor shall not interfere with or restrict the Lessee, or its representatives in the use and enjoyment of the leased property, nor shall the Lessor erect any fence, wall, partition or any construction upon the leased, property except as otherwise agreed to in writing by the Lessee.

7. **TERMINATION:**

a. The Lessee may terminate this lease at any time in whole or in part, by giving **thirty (30) days** notice in writing to the Lessor and no rental shall be due for payment after the effective date of termination. Said notice shall be the day after the date of mailing, or hand delivery. The monthly rental shall be adjusted in proportion with the reduction of space on a Partial Termination and shall be calculated pro rata unit of measure for the remaining lease area premises.

b. Termination in whole or in part shall be effective upon written notice, however, the parties may enter into supplemental agreement to resolve certain issues arising from the tenancy and its termination, in whole or in part.

c. *The Lessor has no termination rights.*

8. **ALTERATIONS/RESTORATION/RELEASE OF LIABILITY:** The Lessee shall have the right, during the existence of this lease, to make alterations, attach fixtures, and erect additions, structures, or signs, in or upon the premises hereby leased, which fixtures, additions, or structures, so placed in, upon or attached to the said premises shall be and remain the property of the Lessee and may be removed or left in place at the option of the Lessee. The Lessor hereby releases and forever discharges the Lessee, it's officers, employees and/or contractors from any and all liability, claims or demands for site restoration of the leased premises.

9. **DAMAGES:** The Lessee shall not be responsible for combat or war related damages to the leased premises; the Lessee shall be liable only for damage resulting from negligence or misconduct of Lessee personnel. The Lessee shall not be liable for any loss, destruction or damage to the premises beyond the control and without the fault of negligence of the Lessee, including, but not limited to acts of nature, fire, lightning, floods, or severe weather. The parties agree that any settlement of damages by the Lessee if any, shall be done at termination of the lease.

10. **PROPERTY INVENTORY:** As of the starting date of this lease, a joint inventory and condition report of all personal property of the Lessor included in this lease, and also a joint physical survey and inspection report of the real property shall be made, said reports to reflect the then present condition, and to be signed on behalf of the parties.

LEASE NO. DACA27-5-06-733
SUPERSEDING LEASE NO. DACA27-5-86-651
W. K. KELLOGG AIRPORT, MI

11. TAXES: The Lessor accepts full and sole responsibility for the payment of all taxes and other charges of a public nature which may arise in connection with this lease or which may be assessed against the property. This includes registration of the lease and payment of related charges.

12. NOTICE: Any notice under the terms of this lease shall be in writing signed by a duly authorized representative of the party giving such notice, and if given by the Lessee shall be addressed to the Lessor at:

City of Battle Creek
ATTN: City Manager
Post Office Box 1717
Battle Creek, MI 49016-1717

and if given by the Lessor shall be addressed to the Lessee at:

U.S. Army Corps of Engineers, Louisville District
ATTN: Real Estate Division
Post Office Box 59
Louisville, KY 40201-0059

13. LESSOR'S SUCCESSORS: The terms and provisions of this lease and the conditions shall bind the Lessor, and the Lessor's heirs, executors, administrators, successors, and assigns.

14. COVENANT AGAINST CONTINGENT FEES: The Lessor warrants that no person or selling agency has been employed or retained to solicit or secure this lease upon an agreement or understanding for a commission, percentage, brokerage, or a contingent fee, expecting bona fide employees or bona fide established commercial or selling agencies maintained by the Lessor for the purpose for securing business. For breach or violation of this warranty the Lessee shall have the right to annul this lease without liability or in it's discretion to deduct from the lease price or consideration the full amount of such commission, percentage, brokerage, or contingent fee.

15. OFFICIALS NOT TO BENEFIT: No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this lease or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this lease if made with a corporation for its general benefit.

**LEASE NO. DACA27-5-06-733
SUPERSEDING LEASE NO. DACA27-5-86-651
W. K. KELLOGG AIRPORT, MI**

16. GRATUITIES:

a. The Lessee may, by written notice to the Lessor, terminate the right of the Lessor to proceed under this lease if it is found, after notice and hearing, by the Secretary of the Army or his duly authorized representative, that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the Lessor, or any agent or representative of the Lessor, to any officer, or employee of the Lessee with a view toward securing a lease or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing, of such lease; provided, that the existence of facts upon which the secretary of the Army or his duly authorized representative makes such findings shall be in issue and may be reviewed in any competent court.

b. In the event this lease is terminated as provided in paragraph (a) hereof, the Lessee shall be entitled (i) to pursue the same remedies against the Lessor as it could pursue in the event of a breach of the lease by the Lessor, and (ii) as a penalty in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by the Secretary of the Army or his duly authorized representative) which shall be not less than three nor more than ten times the costs incurred by the Lessor in providing any such gratuities to any such officer or employee.

c. The rights and remedies of the Lessee provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this lease.

17. EXAMINATION OF RECORDS: The Lessor agrees that any duly authorized representatives shall have the right until the expiration of three (3) years after final payment of the agreed rental, have access to and the right to examine any directly pertinent books, documents, papers and records of the Lessor involving transactions related to this lease.

18. MODIFICATION: No change or modification of this lease shall be effective unless it is in writing and signed by both parties to this lease.

19. SPECIAL CONDITION:

a. The Lessor, for itself, its successors and assigns, does hereby expressly waive any and all claims for restoration of the leased premises.

b. The Government shall not assign this Lease in any event and shall not sublet the demised premises in any event to any non-DoD agency with out prior approval of the Lessor

LEASE NO. DACA27-5-06-733
SUPERSEDING LEASE NO. DACA27-5-86-651
W. K. KELLOGG AIRPORT, MI

By executing this Lease, the parties agree that Lease No. DACA27-5-86-651 is hereby terminated.

IN WITNESS WHEREOF, the parties have subscribed their names as of the date first above written.

Witnesses (if required):

CITY OF BATTLE CREEK, MI

(Printed Name/Address of Witness)

(Name of the Lessor)

(Lessor's Signature)

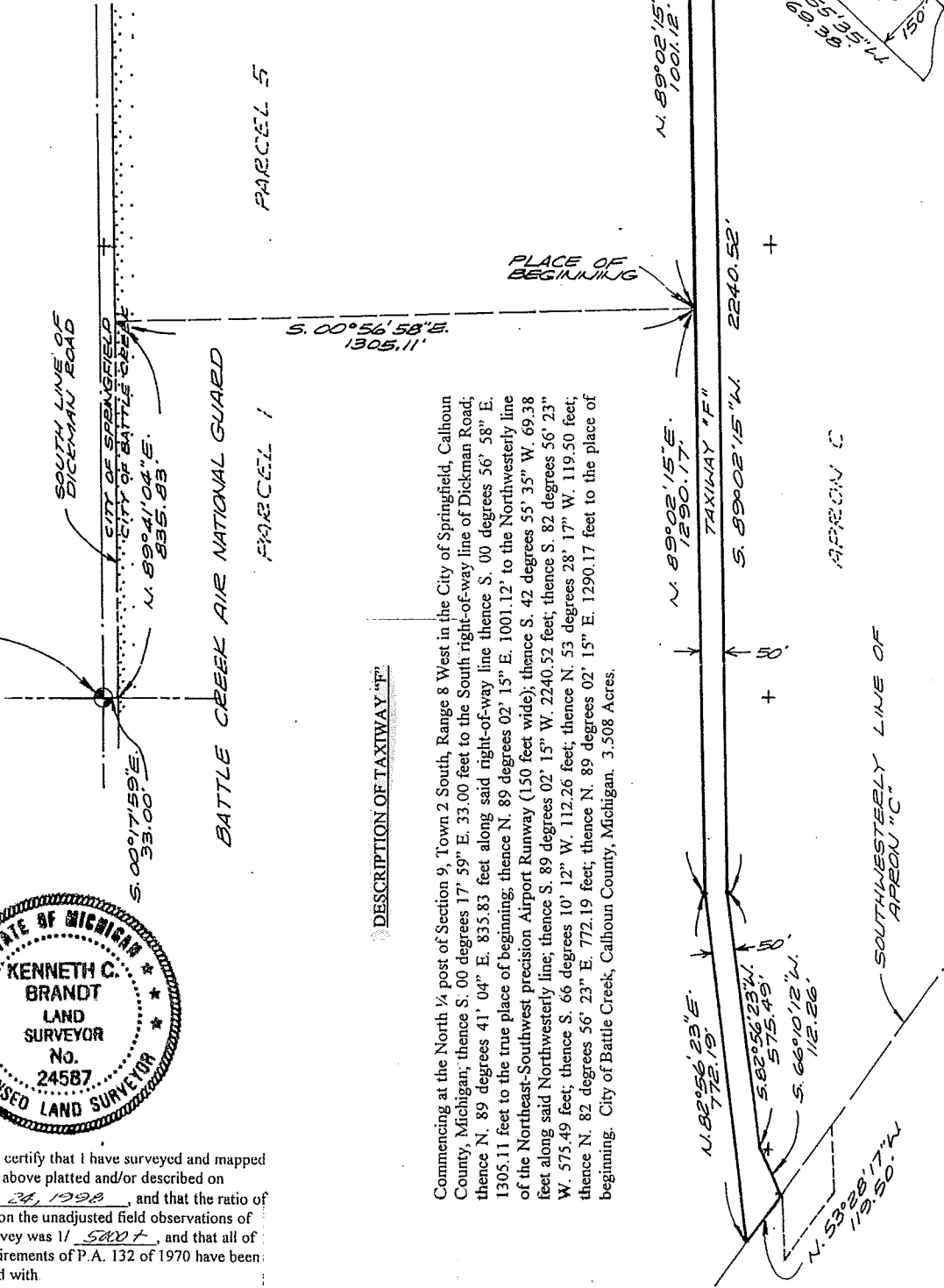
38-6004523
Tax ID Number



**THE UNITED STATES OF AMERICA,
DEPARTMENT OF THE AIR FORCE**

Gerald R. Johnson
Chief Operations Officer
Air Force Real Property Agency

NORTH 1/4 POST SECTION 9, TOWN 2 SOUTH,
RANGE 8 WEST, IN THE CITY OF SPRINGFIELD,
CALHOUN COUNTY, MICHIGAN.



PARCEL 5

BATTLE CREEK AIR NATIONAL GUARD

PARCEL 1

PARCEL C

DESCRIPTION OF TAXIWAY "F"

Commencing at the North 1/4 post of Section 9, Town 2 South, Range 8 West in the City of Springfield, Calhoun County, Michigan; thence S. 00 degrees 17' 59" E. 33.00 feet to the South right-of-way line of Dickman Road; thence N. 89 degrees 41' 04" E. 835.83 feet along said right-of-way line thence S. 00 degrees 56' 58" E. 1305.11 feet to the true place of beginning; thence N. 89 degrees 02' 15" E. 1001.12' to the Northwesterly line of the Northeast-Southwest precision Airport Runway (150 feet wide); thence S. 42 degrees 55' 35" W. 69.38 feet along said Northwesterly line; thence S. 89 degrees 02' 15" W. 2240.52 feet; thence S. 82 degrees 56' 23" W. 575.49 feet; thence S. 66 degrees 10' 12" W. 112.26 feet; thence N. 53 degrees 28' 17" W. 119.50 feet; thence N. 82 degrees 56' 23" E. 772.19 feet; thence N. 89 degrees 02' 15" E. 1290.17 feet to the place of beginning. City of Battle Creek, Calhoun County, Michigan. 3.508 Acres.



I hereby certify that I have surveyed and mapped the land above platted and/or described on July 24, 1998, and that the ratio of closure on the unadjusted field observations of such survey was 1/ 5000+, and that all of the requirements of P.A. 132 of 1970 have been complied with.

CLIENT CITY OF BATTLE CREEK				 LICENSED LAND SURVEYOR NO. 24587	
JOB NO. 98525	SCALE 1"=300'	DRAWN BY KCB	DATE 7/24/98	KENNETH C. BRANDT Professional Land Surveyor 5455 Lacey Road Dowling, MI 49050 616/758-3434	
CERTIFICATE OF SURVEY.					