

CONTRACT

NORTH BUSINESS DEVELOPMENT AREA
EDA PROJECT NUMBER No. 06-01-05315
Mn/DOT Project No. 6901-159

THIS AGREEMENT is made and is in effect as of this ____ day of _____, 2009, by and between the Duluth Airport Authority, (the "OWNER") and _____, (the "CONTRACTOR").

THE PARTIES AGREE AS FOLLOWS: The Contractor, for and in consideration of the mutual promises contained herein, and the payment to Contractor of amount not to exceed

(\$ _____) based on the bid, Exhibit A, which is hereby made a part of this contract and appended hereto, agrees to competently perform the various items of work and construct the projects therein indicated at Duluth International Airport (the "Airport") in accordance with Exhibit B, attached hereto, the Contract Documents and Specifications dated August 18, 2009, and Bid Documents dated 08-18-2009.

Said Exhibit B is hereby made a part of and basis of this agreement, which defines the scope of work thereof, and a true copy of said plans and specifications is now on file in the office of the Owner.

The parties further agree as follows:

1. That in consideration of the foregoing, the Owner hereby agrees to pay to the Contractor, promptly and according to the requirements of the specifications, the amount set forth above subject to the conditions as set forth in Exhibit A and Exhibit B.
2. That it is understood that the parties named herein are the only persons interested in this contract as principals. The parties do not intend to create any third party beneficiaries to this contract. No employee or agent of contractor shall be an employee or agent of Owner for any purpose.
3. That the Contractor has examined the site of the proposed work, plans and specifications, special provisions, and contract documents in order that the Contractor might become familiar with the character, quality, and quantity of the work to be performed, the materials to be furnished and the requirements of the specification, special provisions and contract documents.
4. That the Contractor certifies to be in compliance with all Human Rights, Affirmative Action and Equal Opportunity Requirements of state, federal, or local laws, all applicable drug

and alcohol regulations, including the DAA drug and alcohol policy, and all other laws, rules, and regulations as are included in the Instruction to Bidders and Contract and Labor Provisions, or are otherwise applicable to Contractor. Violation of any of these rules is grounds to void this contract.

5. That in the event any surety upon any bond furnished in connection with this contract becomes unacceptable to the Owner, or if any such surety shall fail to furnish reports as to its financial condition from time to time as requested by the Owner, the Contractor agrees to furnish promptly such additional surety as may be required from time to time to protect the interests of the Owner or of persons supplying labor or materials in the prosecution of the work contemplated by the contract.
6. That the Contractor shall not commence any work to be performed under this contract until the Contractor has obtained from responsible insurance companies all insurance required as set forth in the Supplementary General requirements contained in Exhibit B. The Owner and the City of Duluth (the "City") shall be named as additional insureds on the commercial general liability and automobile liability policies. The Contractor shall maintain this insurance in full force and effect until the work to be performed under this Contract has been accepted by the Owner.
7. That should it become necessary to change any feature of the project from the specifications of Exhibit B, this shall be done by written and dated supplemental agreement (change order). The Contractor shall not start working on any work requiring a supplemental agreement until the written agreement setting forth the adjusted prices shall be dated and executed by the Owner and the Contractor.
8. That the Contractor at all times shall observe and comply with all Federal, State, Territory or Possessions, and local laws, codes, ordinances, and regulations in any manner affecting the conduct of the work, including MSA 471.425 on prompt payment to subcontractors, and the Contractor and his surety shall indemnify and hold harmless the Owner and the City from and against all claims, suits, liabilities, judgments, costs, damages and expenses, including reasonable attorneys' fees, which may accrue against, be charged to, or recovered from Owner or the City by reason of, or on account of, any personal injuries, property damage or other claim for damages or performance, arising from the use of, or occupancy of, performance of work or operations at the Airport by Contractor, and all subcontractors, officers, agents, or employees, and on ten (10) days written notice from the Owner, the Contractor will appear and defend all lawsuits against said Owner or City growing out of said injuries or damages. The provisions of this paragraph apply to any claim, for response costs, contribution, or damages, which arise out of the release or threatened release of a pollutant, contaminant, or hazardous substance.

9. That it is further understood and agreed by the parties to this contract that the work specified herein shall be commenced in accordance with the Schematic Phasing Schedule as listed in the Bid Documents, sheet C004. The time of commencing and completion of said work is the essence of this Contract and the contractor shall complete all work in accordance with the Schematic Phasing Schedule. Liquidated damages shall be assessed as listed in the Contract Documents and Specifications: General Provisions, 80-08 Failure to Complete Work on Time on page GP-40 (\$2,000.00 per Calendar Day).
10. The books, records, documents and accounting procedures and practices of the Contractor as they relate to this Agreement are subject to examination of the Owner, the City, and either the Legislative Auditor or the State Auditor, as appropriate, for a period of six (6) years following termination or expiration of this Agreement.
11. Reynolds Smith and Hills, Inc. as the architect/engineer, will provide administration of this contract and will be the Owner's representative for purposes of this contract; provided, however, that the Owner's Executive Director will be the Owner's representative for purposes of Paragraph 13.
12. The Contractor shall not contract with a proposed person or entity to whom the Owner reasonably objects.
13. In addition to the events of default set forth in Paragraph a through l in Section 80-09 of Exhibit B, it shall be deemed to be an event of default by the Contractor if the Contractor fails to observe or perform any of the terms, provisions, conditions, covenants or agreements required to be observed or performed under this Contract or so fails to administer the work as to endanger the performance of this Contract.

The Owner's Executive Director shall have the discretion to implement one or more of the following remedies in the event of a default:

- A. Terminate this Agreement immediately upon written notice.
- B. Provide Contractor with written notice of default setting forth a time period within which to cure the default, and if such default is not cured to the satisfaction of the Executive Director within said time period, the Executive Director may immediately terminate this Contract.
- C. Take the prosecution of the work out of the hands of the Contractor or surety, appropriate or use any or all materials and equipment that have been mobilized for use in the work and are acceptable, enter into an agreement(s) for the completion of said Contract according to the terms and provisions thereof, and/or use such other methods as in the

opinion of the Executive Director will be required for the completion of said Contract in an acceptable manner. All costs and charges incurred by the Owner, together with the cost of completing the work under contract, will be deducted from any monies due or which may become due the Contractor. If such expense exceeds the sum which would have been payable under the Contract, then the Contractor and the surety shall be liable and shall pay to the Owner the amount of such excess.

- D. Seek and be entitled to injunctive or declaratory relief to prevent violation of the terms and conditions of this Agreement or compel Contractor's performance of its obligations hereunder.
- E. Seek such other legal or equitable relief as a court of competent jurisdiction may determine is available to Owner.

The remedies provided under this Contract shall be deemed to be cumulative and non-exclusive and the election of one remedy shall not be deemed to be the waiver of any other remedy with regard to any event of default under this Contract.

To the extent there is a conflict between this Paragraph 13 and Section 80-09 of Exhibit B, this Paragraph 13 shall be deemed controlling.

- 14. Any waiver by any party of any provision of this contract shall not imply a subsequent waiver of that or any other provision.
- 15. This contract is made in the State of Minnesota and shall be construed and interpreted in accordance with the laws of the State of Minnesota.
- 16. Notice to the Owner or the Contractor provided for herein shall be sufficient if sent by the regular United States mail, postage prepaid, addressed to the Owner as follows: Duluth Airport Authority, 4701 Grinden Dr., Duluth, MN 55811 and addressed to the Contractor as follows: _____, or to such other respective persons or addresses as the parties may designate to each other in writing from time to time.
- 17. This contract, including all attachments, constitutes the entire contract between the Owner and the Contractor and supersedes all prior written oral agreements and negotiations between the parties relating to the subject matter hereto.
- 18. The Contractor represents to the Owner that the officers of the Company who executed this Agreement on its behalf are fully authorized to do so, and that this Agreement when thus executed by said officers of the Company on its behalf will constitute and be the

binding obligation and agreement of the Company in accordance with the terms and conditions hereof.

The parties hereto have duly executed this Agreement for the purpose herein expressed this _____ day of _____, 2009.

DULUTH AIRPORT AUTHORITY

By _____
Nancy Norr
President

By _____
(Contractor)

By _____
John Eagleton
Secretary

Approved as to form

Joan Christensen
Assistant City Attorney



DULUTH AIRPORT AUTHORITY
PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS: That we:

_____ (contractor's name)

(hereinafter called the "Contractor") located at: _____

_____ (contractor's address)

and _____ (surety's name)

(a corporation holding a certificate of the Insurance Commissioner of the State of Minnesota showing that it is authorized to contract as a surety, hereinafter called the "Surety") located at:

_____ (surety's address)

are held and firmly bound unto the Duluth Airport Authority (hereinafter called the "Owner"), in the penal sum of _____ Dollars (\$_____) for the payment of which we bind ourselves, our heirs, executors and administrators, successors and assigns, for the faithful performance of a written contract for the purpose of:

_____ according to plans, profiles, and specifications thereto annexed. A copy of that contract is incorporated herein by reference and is made a part hereof as if fully copied herein.

NOW, THEREFORE, THE CONDITIONS OF THIS OBLIGATION ARE SUCH That,

- A) If the Contractor shall in all respects comply with the terms and conditions of the Contract (which includes the contract documents) and such alterations as may be made in said contract as documents therein provide for, and shall complete the contract in accordance with its terms,
- B) If the Contractor shall indemnify, defend and save harmless the owner from all costs, expenses, damages, injury or conduct, want or care or skill, negligence or default, including patent infringement on the part of the Contractor, agents or employees, in the execution or performance of the contract,
- C) If the Contractor shall indemnify the owner for all costs that may accrue on account of the enforcing of the terms of the bond, if action is brought on the bond, including reasonable attorney's fees, in any case where such action is successfully maintained,

D) If the Contractor shall comply with all laws pertaining to doing the work under the contract,

Then, this obligation shall be void; the Contractor and Surety jointly and severally agree to pay to the Owner any difference between the sum to which the Contractor will be entitled on the completion of the contract and that which the Owner may be obliged to pay for the completion of the work by contract or otherwise, and any damages, direct or indirect, or consequential, which the Owner may sustain on account of the work, or on account of the failure of the Contractor to properly and in all things, keep and execute all of the provisions of the Contract, provided however that Surety's liability to pay damages is limited to the amount of the Performance Bond as set forth above.

And, the said Contractor and Surety hereby further bind themselves, their successors, executors, administrators and assigns, jointly and severally, that they will employ and fully protect the said Owner against and will pay any and all amounts, damages, costs and judgements which may be recovered against or which the Owner may be called upon to pay to any person or corporation by reason of any damage arising from the performance of said work, repair or maintenance thereof, or the manner of doing the same, or the neglect of the said Contractor or his agents or servants, or the improper performance of the said work by the Contractor or his agents or servants, or the infringements of any patent rights by reason of the use of any material furnished or work done, as aforesaid, or otherwise. For the purpose of this paragraph, a subcontractor shall be deemed to be the agent or employee of the Contractor to the extent of his subcontract.

The Contractor and the Sureties do hereby expressly waive any objection that might be interposed as to the right of the Owner to require a bond containing the foregoing provisions, and they do hereby further expressly waive any defense which they or either and any of them might interpose to an action brought hereon by any person, firm, or corporation, including subcontractors, materialmen and third persons, for work, labor, services, supplies or material performed, rendered or furnished as aforesaid, upon the ground that there is no law authorizing the Owner to require the foregoing provisions to be placed in this bond.

And the Surety, for value received, hereby stipulates and agrees that the obligations of the Surety and this bond shall in no way be impaired or affected by any extension of time, modification, omission, addition or change in or to the contract or the work to be performed thereunder, or by any payment thereunder before the time required therein, or by any waiver of any provision thereof, or by any assignment, subletting or other transfer thereof, or of any part thereof, or of any work to be performed, or of any moneys due or to become due thereunder; and the said Surety does hereby waive notice of any and all such extensions, modifications, omissions, additions, changes, payments, waivers, assignments, subcontracts and transfers, and hereby stipulates and agrees that any and all things done and omitted to be done by and in relation to executors, administrators, successors, assignees, subcontractors and other transferees, shall have the same effect as to said Surety as though done or omitted to be done by and in relation to the Contractor.

Signed this ____ day of _____, 20__.

Name of Principal

By

Name of Surety

By _____
Attorney-in-Fact

ACKNOWLEDGEMENTS

State of Minnesota)
) ss. Principal – Individual
County of St. Louis)

This instrument was acknowledged before me on _____
by _____.

Notary Seal

Notary Public

State of Minnesota)
) ss. Principal – Corporate or Partnership
County of St. Louis)

This instrument was acknowledged before me on _____
by _____ as _____
of _____.

Notary Seal

Notary Public

State of Minnesota)
) ss. Surety
County of St. Louis)

Be It Known, That on this _____ day of _____ A. D., 20____, came before me personally
_____, to me personally
known, who being by me duly sworn, did say that he/she is the
_____(title) of

the above named corporation which executed the foregoing bond as surety; that the seal affixed to the
foregoing instrument is the corporate seal of said corporation; that said instrument was executed in behalf
of said corporation, by authority of its Board of Directors; that said corporation hold a certificate of the
Insurance Commissioner of the State of Minnesota showing that it is authorized to contract as a surety;
and said _____acknowledged said instrument to be the free act and
deed of said corporation.

Notary Seal

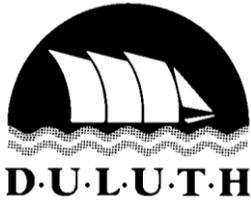
Notary Public

APPROVED AS TO FORM, CORRECTNESS AND VALIDTY HEREOF

Dated this _____ day of _____, 20 ____ Dated this _____ day of _____, 20 ____

Finance Director, Duluth MN

Assistant City Attorney, Duluth MN



**DULUTH AIRPORT AUTHORITY
PAYMENT BOND**

KNOW ALL MEN BY THESE PRESENTS: That we:

_____ (contractor's name)

(hereinafter called the "Contractor") located at: _____

_____ (contractor's address)

and _____ (surety's name)

(a corporation holding a certificate of the Insurance Commissioner of the State of Minnesota showing that it is authorized to contract as a surety, hereinafter called the "Surety") located at:

_____ (surety's address)

are held and firmly bound unto the Duluth Airport Authority (hereinafter called the "Owner"), for the benefit of persons furnishing labor and materials for the contract set forth below, in the penal sum of _____ Dollars (\$_____) for the payment of which we bind ourselves, our heirs, executors and administrators, successors and assigns, for the payment of all labor and materials supplied by any person in the performance of a written contract for the purpose of:

_____ according to plans, profiles, and specifications thereto annexed. A copy of that contract is incorporated herein by reference and is made a part hereof as if fully copied herein.

NOW, THEREFORE, THE CONDITIONS OF THIS OBLIGATION ARE SUCH That,

- A) If the Contractor shall make payments, as they may become due, to all persons supplying "labor and materials," as defined in Minnesota Statutes Section 574.26, used directly or indirectly by the Contractor, or his Subcontractor, in the prosecution of the work provided for in the contract,
- B) If the Contractor shall indemnify the owner or other claimant for all costs that may accrue on account of the enforcing of the terms of the bond, if action is brought on the bond, including reasonable attorney's fees, in any case where such action is successfully maintained,

Then, this obligation shall be void; otherwise it shall remain in full force and effect.

And, the said Contractor and Surety agree that in accordance with Minnesota Statutes Section 574.26 not only said Duluth Airport Authority, but any person furnishing "labor and materials," as defined in Minnesota Statutes 574.26, may sue on this bond for their use on account of any sums due them for anything so furnished.

The Contractor and the Sureties do hereby expressly waive any objection that might be interposed as to the right of the Owner to require a bond containing the foregoing provisions, and they do hereby further expressly waive any defense which they or either and any of them might interpose to an action brought hereon by any person, firm, or corporation, including subcontractors, materialmen and third persons, for work, labor, services, supplies or material performed, rendered or furnished as aforesaid, upon the ground that there is no law authorizing the Owner to require the foregoing provisions to be placed in this bond.

And the Surety, for value received, hereby stipulates and agrees that the obligations of the Surety and this bond shall in no way be impaired or affected by any extension of time, modification, omission, addition or change in or to the contract or the work to be performed thereunder, or by any payment thereunder before the time required therein, or by any waiver of any provision thereof, or by any assignment, subletting or other transfer thereof, or of any part thereof, or of any work to be performed, or of any moneys due or to become due thereunder; and the said Surety does hereby waive notice of any and all such extensions, modifications, omissions, additions, changes, payments, waivers, assignments, subcontracts and transfers, and hereby stipulates and agrees that any and all things done and omitted to be done by and in relation to executors, administrators, successors, assignees, subcontractors and other transferees, shall have the same effect as to said Surety as though done or omitted to be done by and in relation to the Contractor.

Signed this _____ day of _____, 20____.

Name of Principal

By

Name of Surety

By _____
Attorney-in-Fact

ACKNOWLEDGEMENTS

State of Minnesota)) ss. Principal – Individual
County of St. Louis)

This instrument was acknowledged before me on _____
by _____.

Notary Seal _____
Notary Public

State of Minnesota)) ss. Principal – Corporate or Partnership
County of St. Louis)

This instrument was acknowledged before me on _____
by _____ as _____
of _____.

Notary Seal _____
Notary Public

State of Minnesota)) ss. Surety
County of St. Louis)

Be It Known, That on this _____ day of _____ A. D., 20____, came before me personally _____, to me personally known, who being by me duly sworn, did say that he/she is the _____ (title) of _____ the above named corporation which executed the foregoing bond as surety; that the seal affixed to the foregoing instrument is the corporate seal of said corporation; that said instrument was executed in behalf of said corporation, by authority of its Board of Directors; that said corporation hold a certificate of the Insurance Commissioner of the State of Minnesota showing that it is authorized to contract as a surety; and said _____ acknowledged said instrument to be the free act and deed of said corporation.

Notary Seal _____
Notary Public

APPROVED AS TO FORM, CORRECTNESS AND VALIDTY HEREOF

Dated this _____ day of _____, 20 ____ Dated this _____ day of _____, 20 ____

Finance Director Duluth MN

Assistant City Attorney, Duluth MN

FINAL RELEASE OF LIEN

KNOWN ALL MEN BY THESE PRESENTS, that the undersigned, for and in consideration of the payment of the sum of _____ Dollars (\$ _____), paid by **the Duluth Airport Authority** hereinafter referred to as "Owner", receipt of which is hereby acknowledged as total compensation for performance of the below-described Contract for Bid Schedule(s) _____, does hereby fully and completely discharge and release the Owner from and waives any and all debts, accounts, promises, damages, liens, encumbrances, causes of action, suits, bonds, judgments, claims and demands whatsoever, in law or in equity, which the undersigned ever had, now has or might hereafter have on account of labor performed, material furnished or services rendered, directly or indirectly, for the Contract between the parties dated _____, 20 ____, known as **North Business Development Area**, except for those claims, disputes and other matters arising out of or relating to said Contract which have been raised by written demand in accordance with the Contract Documents prior to this date and identified by the Contractor as unsettled in the final Application for Payment and are either in arbitration or court litigation, as the case may be, in accordance with the Contract Documents.

The undersigned further covenants that subcontractors, suppliers, and material suppliers, and any or all other persons supplying materials, supplies, service or labor used directly or indirectly in the prosecution of the work provided for in the Contract, have been paid in full for all work under this contract.

The undersigned agrees to maintain in full force and effect the provisions of the Contract Documents respecting the guaranty against defective work, and any other special guaranties required by the Contract Documents, for the terms provided in the Contract Documents, which terms shall begin to run from the date specified in the Contract Documents.

The undersigned represents and warrants that the statements contained in the foregoing Release are true and correct.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this ____ day of _____, 20 ____.

WITNESSES:

CONTRACTOR

By: _____

STATE OF _____

Title: _____

COUNTY OF _____

Sworn to and subscribed before me this . day of _____, 20 ____.

(NOTARY SEAL)

NOTARY PUBLIC
My Commission Expires: