



Roll Call Number

22-0002

Agenda Item Number

10

Date February 21, 2022

APPROVAL OF FIRST AMENDMENT TO THE AGREEMENT BETWEEN THE CITY OF DES MOINES AND THE DES MOINES AIRPORT AUTHORITY REGARDING THE IOWA DEPARTMENT OF TRANSPORTATION (IDOT) REVITALIZE IOWA'S SOUND ECONOMY (RISE) GRANT TO THE DES MOINES AIRPORT AUTHORITY FOR THE COWLES DRIVE RECONSTRUCTION PROGRAM (PHASE 2 AND 3) AT THE DES MOINES INTERNATIONAL AIRPORT AND APPROVAL OF PRIVATE CONSTRUCTION CONTRACT BETWEEN DES MOINES AIRPORT AUTHORITY AND ELDER CORPORATION FOR INSTALLATION OF SANITARY SEWER AND CURB AND GUTTER REPLACEMENT ALONG FLEUR DRIVE.

WHEREAS, on January 25, 2021, under Roll Call No. 21-0070, the City Council authorized submittal of a Revitalizing Iowa's Sound Economy ("RISE") grant application for the Des Moines Airport Authority's Cowles Drive Reconstruction Program within the Des Moines International Airport; and

WHEREAS, an original grant application was approved on April 14, 2020 and the Iowa Department of Transportation (DOT) awarded \$4,862,344 to the Des Moines Airport Authority for Phase 1 of the Cowles Drive Reconstruction Program; and

WHEREAS, a subsequent grant application was approved on June 8, 2021 and the DOT awarded \$4,862,344 to the Des Moines Airport Authority for Phases 2 and 3 of the Cowles Drive Reconstruction Program; and

WHEREAS, the Iowa DOT prepared an addendum to Iowa Department of Transportation Agreement 2020-R-014 between the City of Des Moines (aka, Project Sponsor), the Des Moines Airport Authority (aka, Recipient) and the Iowa Department of Transportation (DOT) for Phases 2 and 3; and

WHEREAS, on October 4, 2021, under Roll Call 21-1456, the addendum to Iowa Department of Transportation Agreement 2020-R-014 for a Revitalize Iowa's Sound Economy Program (RISE) Project, and related agreement between the City of Des Moines and Des Moines Airport Authority was approved that provides that the Authority must perform all obligations for constructing and financing the Project without obligation on part of the City agreement; and

WHEREAS, the first amendment to the Agreement between the City and the Authority is required because, as design progressed, it was determined that some of the Phase 2 and 3 improvements would encroach into City's right-of-way when it was originally thought the City's right-of-way would not be impacted.



Roll Call Number

22-0222

Agenda Item Number

10

Date February 21, 2022

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Des Moines, Iowa, that:

1. The attached first amendment to the City-Authority Agreement is hereby approved and the Mayor is authorized and directed to execute the agreement and the City Clerk is authorized to attest to the Mayor's signature.
2. The Private Construction Contract in the amount of \$166,162.50, between the Des Moines Airport Authority, as Owner, and Elder Corporation, as Contractor for the improvements described as Installation of Sanitary Sewer Pipes SA-7, SA-8 and SA-9, Sanitary Sewer Structures MH-7, MH-8 and MH-9, Storm Sewer Structures S-29, PCC curb & gutter Replacement along Fleur Drive as shown on City Plan File numbers 640-001/199 is hereby approved.
3. The City Manager or his designees are hereby authorized and directed to administer the Agreements on behalf of the City and to monitor compliance with the terms and conditions of the Agreement.

(Council Letter Number 22-054 attached)

Moved by *Latto* to adopt.

Second by *Boesen*

FORM APPROVED: *s/Kathleen Vanderpool*
Kathleen Vanderpool
Deputy City Attorney

Funding Source: Airport Authority



Roll Call Number

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10

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SLN

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE	✓			
BOESEN	✓			
GATTO	✓			
MANDELBAUM	✓			
SHEUMAKER	✓			
VOSS	✓			
WESTERGAARD	✓			
TOTAL	7			

CERTIFICATE

I, P. KAY CMELIK, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

MOTION CARRIED

APPROVED

J. M. Franklin Cownie Mayor

P. Kay Cmelik

City Clerk

**FIRST AMENDMENT TO AGREEMENT REGARDING IOWA DEPARTMENT OF
TRANSPORTATION RISE GRANT TO THE DES MOINES AIRPORT AUTHORITY**
Between
The City of Des Moines and the Des Moines Airport Authority

Cowles Drive – Phase 2 & 3

PREAMBLE

THIS FIRST AMENDMENT to the Agreement regarding Iowa Department of Transportation RISE Grant to the Des Moines Airport Authority, Cowles Drive Phase 2 and 3 (hereinafter "Amendment") is made and entered into, effective on the date herein provided, by and between the City of Des Moines, Iowa, a municipal corporation organized and existing under the laws of the State of Iowa (hereinafter "CITY"); and the Des Moines Airport Authority, an aviation authority created pursuant to Iowa Code Chapter 330A (hereinafter "AUTHORITY").

WHEREAS, the Agreement regarding Iowa Department of Transportation RISE Grant to the Des Moines Airport Authority (hereinafter "Agreement") was approved by the City Council of Des Moines, Iowa on October 4, 2021, by Resolution 21-1456 and by the Des Moines Airport Authority on September 14, 2021; and

WHEREAS, at the time the Agreement was negotiated, the AUTHORITY had advised the CITY that there were no improvements in the CITY's right-of-way that required acceptance by the CITY; and

WHEREAS, at some time during the design the AUTHORITY became aware that improvements in the CITY's right-of-way would be necessary, that the improvements would be intended to be accepted by the CITY and that a Private Construction Agreement would be required; and

WHEREAS, the improvements to be constructed within the CITY's right-of-way and intended to be accepted by the CITY are described as follows:

Installation of Sanitary Sewer Pipes SA-7, SA-8 and SA-9, Sanitary Sewer Structures MH-7, MH-8 and MH-9, Storm Sewer Structures S-29, PCC curb & Gutter Replacement Along Fleur Drive, as shown on City Plan File numbers 640-001/199.

WHEREAS, the parties desire to amend the Agreement to recognize the improvements that need to be constructed in the CITY right-of-way, the conditions for acceptance by the CITY and the requirement for a Private Construction Agreement;

NOW, THEREFORE, the CITY and the AUTHORITY do hereby agree to amend the Agreement to include the following:

1. A new Section 2 is added to the Agreement as follows:

Section 2. Improvements within City Right-of-Way

1. For all work to be performed within the CITY's right-of-way, AUTHORITY shall obtain CITY's written approval of all plans and specifications for such work. The construction of improvements within the CITY's right-of-way shall be carried out through the Private Construction Agreement, Attachment 1, reasonably approved by the CITY between AUTHORITY and a contractor of AUTHORITY's choice.

2. AUTHORITY shall perform work within the CITY's right-of-way to the reasonable satisfaction of CITY, making and installing all such improvements in compliance with its previously approved plans and specifications.

3. The cost of all the improvements within the CITY's right-of way, including but not limited to any inspection or administration costs incurred by the CITY, shall be at the sole cost and expense of the AUTHORITY and the AUTHORITY shall reimburse the CITY for such costs.

4. CITY shall have and possess final rights of approval, acting reasonably, of all plans, specifications, and construction within the CITY's right-of-way. Said approvals shall not constitute the necessary permits or licenses of applicable governmental agencies, which shall be the responsibility of the AUTHORITY to obtain.

5. The Private Construction Agreement must be reviewed and approved by the City Engineer and City Attorney. AUTHORITY agrees and shall be responsible for ensuring its Contractor agrees to the following and the terms of the Private Construction Agreement, set forth as Attachment No. 1, as a condition to commencement of construction within CITY right-of-way:

a. SUDAS Standard Specifications, 2021 Edition, including the City of Des Moines General Supplemental Specifications, and the Manual on Uniform Traffic Control Devices (MUTCD), apply to the project under this contract and Contractor shall construct the project and improvements in accordance with the SUDAS Standard Specifications, 2021 Edition, which were adopted by the City of Des Moines on May 10, 2021 under Roll Call Number 21-0672, as further revised by the City of Des Moines General Supplemental Specifications to the SUDAS Standard Specification, 2021 Edition, all special provisions included in said Contract Documents and all applicable laws, regulations and codes. This contract includes all Contract Documents, as defined in the SUDAS Standard Specifications. Contractor shall complete the work comprising the improvements or project as specified in the plans that the AUTHORITY has filed in the office of the City Engineer ("Engineer"). The Contractor shall complete the work in strict accordance with the Contract Documents.

b. AUTHORITY shall provide the CITY with a copy of the final, certified plans and specifications for the work to be performed within the CITY's right-of-way, and the construction shall be performed and completed in accordance with the plans and specifications approved by the City Engineer.

c. Any proposed changes to the plans and specifications must be submitted to the City Engineer for review and are subject to the City Engineer's written approval prior to related work occurring.

d. AUTHORITY and Contractor shall comply with all normal procedures required by the CITY. AUTHORITY and Contractor agree to furnish all engineering work lines and grades and copies of the Contract Documents needed for the improvement. AUTHORITY or Contractor shall hire a licensed surveyor to do all survey work needed for this contract including construction staking and an as-built survey. The Surveyor must contact the CITY regarding format and information required on the as-built survey.

The AUTHORITY, as the RISE Recipient, is responsible for all inspection and material testing for the construction. The CITY reserves the right to inspect all work and do material testing for all construction within the City's right of way. Project inspection reports and material reports will be provided to the CITY as requested.

e. AUTHORITY and Contractor shall contact the CITY's Engineering Department at 515-283-4177 seventy-two (72) hours, before beginning construction and coordinate for inspection. Contractor shall notify AUTHORITY and the City Engineer in writing when all construction work, including the punch list and final cleanup, is completed so that the City Engineer can make a final inspection of the work and the AUTHORITY can order the as-built survey.

f. Contractor shall ensure that no mechanic's liens or other liens are filed against the property, and contractor will take whatever steps are necessary to promptly remove any liens filed by anyone pertaining to the construction of the improvements.

g. Contractor shall provide a Performance, Payment and Maintenance Bond in a form acceptable to the CITY in the full amount of the construction contract with the maintenance period lasting at least four (4) years that includes the CITY as an Obligee under the Bond.

h. Contractor shall procure and maintain insurance coverage with limits no less than those required under SUDAS Division I, Section 1070, 3.02 Insurance Requirements and will be required to defend, indemnify, and hold harmless the CITY and its officers, agents, and employees as per the below:

To the fullest extent permitted by law, CONTRACTOR agrees to defend, pay on behalf of, indemnify, and hold harmless the CITY against any and all claims, demands, suits, damages or losses, together with any and all outlay and expense connected therewith including, but not limited to, attorneys' fees and court costs that may be asserted or claimed against, recovered from or suffered by the CITY by reason of any injury or loss including, but not limited to, personal injury, bodily injury including death, property damage including loss of use thereof, and economic damages that arise out of or are in any way connected or associated with CONTRACTOR'S work or services under this Contract, including that of its officers, agents, employees, subcontractors and others under the control of CONTRACTOR, except to the extent caused by or resulting from the negligent act or omission of the CITY or the CITY'S employees, consultants, agents or others for whom the CITY is responsible.

CONTRACTOR'S obligation to indemnify the CITY contained in this Contract is not limited by the amount or type of damages, compensation or benefits payable under any workers' compensation acts, disability benefit acts, or other employee benefits acts.

The CITY shall not be liable or in any way responsible for any injury, damage, liability, claim, loss or expense incurred by CONTRACTOR arising out of or in any way connected or associated with CONTRACTOR'S work or services, including that of its officers, agents, employees, subcontractors and others under the control of CONTRACTOR, except to the extent caused by or resulting from the negligent act or omission of the CITY or the CITY'S employees, consultants, agents or others for whom the CITY is responsible.

CONTRACTOR expressly assumes responsibility for any and all damage caused to CITY property arising out of or in any way connected or associated with CONTRACTOR'S work or services under this Contract, including that of its officers, agents, employees, subcontractors and others under the control of CONTRACTOR.

CONTRACTOR shall ensure that its activities on CITY property will be performed and supervised by adequately trained and qualified personnel and CONTRACTOR will observe all applicable safety rules.

i. The City Engineer shall be permitted to inspect all work on the improvements as additional oversight of the construction process. The CITY's final acceptance of the construction or work will occur when City Council accepts the work based on the City Engineer's written final approval that the project has been constructed, cleaned up, and completed in apparent substantial compliance with the Contract Documents. The AUTHORITY shall provide a written certification from a professional engineer licensed to practice in the State of Iowa that the work was completed in substantial compliance with the CITY approved plans and specifications. Final acceptance does not constitute an acceptance of any unauthorized work, or acceptance of defective work or improper material. Notwithstanding the ability of the CITY to inspect the construction, the AUTHORITY shall have full responsibility to ensure that the construction is completed in accordance with the plans and specifications provided to the CITY.

j. The AUTHORITY and Contractor shall obtain all federal, state, and local permits and pay all fees necessary for the contract work including, but not limited to, building, grading, and NPDES permits. The AUTHORITY shall pay the CITY's administrative, inspection, and testing costs, if any.

k. The AUTHORITY shall ensure its Contractor will not discriminate against any employees or applicants for employment on the basis of age, race, religion, creed, color, sex, sexual orientation, gender identity, national origin, ancestry or disability. Contractor shall include such non-discrimination provision in all subcontracts for the project.

l. The CITY is a third-party beneficiary of this contract.

2. Attachment No. 1, Attached to this Amendment, is added to the Agreement.

Except as provided in this Amendment, all provisions of the Agreement remain in full force and effect.

This Amendment is effective upon approval and execution by both parties.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed by their proper officers, duly authorized, therefore.

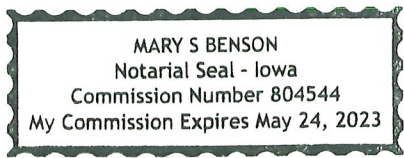
DES MOINES AIRPORT AUTHORITY

Mark Feldmann, Board Chairperson
Mark Feldmann, Board Chairperson

STATE OF IOWA)
) ss:
COUNTY OF POLK)

On this 8th day of February, 2022, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared MARK FELDMANN, to me personally known, who being by me duly sworn, did say that he is a BOARD CHAIRPERSON of the DES MOINES AIRPORT AUTHORITY, that the seal affixed to the foregoing instrument is the seal of the corporation; that the instrument was signed and sealed on behalf of the corporation, by authority of its Board of Directors, and MARK FELDMANN acknowledged the execution of the instrument to be the voluntary act and deed of the corporation, by it and by her voluntarily executed.

Mary S. Benson
Notary Public in the State of Iowa



CITY OF DES MOINES, IOWA

T. M. Franklin Cownie
T. M. Franklin Cownie, Mayor

ATTEST:

P. Kay Cmelik
P. Kay Cmelik, City Clerk

TV APPROVED AS TO FORM:

Kathleen Vanderpool
Kathleen Vanderpool, Deputy City Attorney

STATE OF IOWA)
) ss:
COUNTY OF POLK)

On this 21st day of February, 2022, before me, the undersigned, a Notary Public, personally appeared T. M. Franklin Cownie and P. Kay Cmelik to me personally know, who, being by me duly sworn, did state that they are the MAYOR and CITY CLERK, respectively, of the City of Des Moines, Iowa; that the seal affixed to the foregoing instrument is the seal of the corporation, and that the instrument was signed and sealed on behalf of the corporation, by authority of its City Council as contained in the Resolution adopted under Roll Call No. 22-0222 dated February 21, 2022, and that T. M. Franklin Cownie and P. Kay Cmelik acknowledged the execution of the instrument to be the voluntary act and deed of the municipal corporation, by it voluntarily executed.

Sandi L. Deery
Notary Public in the State of Iowa



Attachment No. 1 – Private Construction Contract (City of Des Moines) and City Bond form.



PRIVATE CONSTRUCTION CONTRACT

THIS PRIVATE CONSTRUCTION CONTRACT (hereinafter "Contract"), made and entered into on the 8th day of February, 2022, by and between Elder Corporation, (hereinafter called the "Contractor"), and Des Moines Airport Authority, an Iowa aviation authority created pursuant to Iowa Code chapter 330A, (hereinafter called the "Owner").

WHEREAS, the Owner owns property in the City of Des Moines (hereinafter called the "City" or "Jurisdiction") which requires improvements, as described herein, be constructed for development of the property; and

WHEREAS, the improvements are being constructed at Owner's sole cost and expense; and

WHEREAS, the Contactor is responsible for constructing the improvements as set forth in this Contract; and

WHEREAS, this Contract is to set forth the responsibilities of the Owner and Contractor for construction of the improvements and the conditions and requirements that are to be met before the acceptance of the improvements by the City.

WITNESSETH: That the Contractor and Owner, for the consideration stated herein, agree as follows:

ARTICLE I: DESIGN

Owner represents and agrees that the improvements have been designed in accordance with the current edition of SUDAS (Statewide Urban Standard Design and Specifications) and all other applicable laws, regulations, codes, ordinances and City approved design references.

ARTICLE II: SCOPE OF WORK

The Contractor hereby agrees to complete the work comprising the below referenced improvements as specified in the Contract Documents, which are officially on file in the office of the City Engineer. This Contract includes all Contract Documents, as defined in the SUDAS Standard Specifications, 2021 Edition for the construction of the following improvements:

City improvements include the installation of Sanitary Sewer Pipes SA-7, SA-8 and SA-9, Sanitary Sewer Structures MH-7, MH-8 and MH-9, Storm Sewer Structures S-29, PCC curb & Gutter Replacement Along Fleur Drive, as shown on Plan File numbers 640-001/199, Airport Authority Plan Files numbers: 2021/599 thru 748.

In accordance with City Plan File Numbers 640 – 001/199, Authority Plan Files numbers: 2021/599 thru 748

The Quantity of work to be done is estimated as shown on Attachment A. The Contractor further agrees to complete the work in strict accordance with said Contract and Contract Documents, and to guarantee the work and improvements as required by law and for the time required in said Contract and Contract Documents, after its acknowledgment of completion and acceptance by the City of Des Moines, Iowa, hereinafter called the "Jurisdiction".

SUDAS Standard Specifications, 2021 Edition, including the City of Des Moines General Supplemental Specifications, and the Manual on Uniform Traffic Control Devices (MUTCD), apply to the project under this contract and Contractor shall construct the project and improvements in accordance with the SUDAS Standard Specifications, 2021 Edition¹, which were adopted by the City of Des Moines on May 10, 2021 under Roll Call Number 21-0672, as further revised by the City of Des Moines General Supplemental Specifications² to the SUDAS Standard Specification, 2021 Edition, all special provisions included in said Contract Documents and all applicable laws, regulations and codes. This contract includes all Contract Documents, as defined in the SUDAS Standard Specifications. Contractor shall complete the work comprising the improvements or project as specified in the plans that the Owner has filed in the office of the City Engineer ("Engineer"). The Contractor shall complete the work in strict accordance with the Contract Documents.

¹ The SUDAS Standard Specification may be viewed at the Iowa SUDAS website: <http://www.iowasudas.org/manuals/manual.cfm?manual=specifications> or can be purchased online at the Iowa SUDAS website at <http://www.iowasudas.org/manuals/order-forms/>.

² [City of Des Moines General Supplemental Specifications](#)

ARTICLE III: CITY IS THIRD PARTY BENEFICIARY

The Owner and Contractor expressly agree that the City is a third-party beneficiary of this Contract. Owner and Contractor acknowledge and agree that the improvements to be constructed under this Contract are intended to be conveyed to the City. As such, Owner and Contractor expressly agree that services are being indirectly provided to the City under this Contract, that the City is a third-party beneficiary of this Contract with respect to the improvements which it is constructing and that the provisions of this Contract shall inure to the benefit of and shall be enforceable by the City as if it were the Owner hereunder. Owner and Contractor acknowledge and agree that they are contractually obligated to the City pursuant to this provision. All cost of construction of the improvements shall be at the sole cost and expense of the Owner and at no expense to the City.

ARTICLE IV: COMMENCEMENT AND COMPLETION OF WORK

The Contractor hereby agrees to commence the work not later than March 31, 2022, and to fully complete the work and improvements, all punch list items and final clean up and provide applicable as built plans not later than November 23, 2022.

ARTICLE V: APPROVAL OF PLANS AND SPECIFICATIONS

The Owner must obtain written approval of the City Engineer of the plans and specifications for the improvements. Any proposed changes to those plans and specifications or Contract Documents must be submitted to the City Engineer for review and are subject to the City Engineer's written approval prior to related work occurring. The Owner shall provide the City with a copy of the final, certified plans and specifications for the work to be performed within the City's right of way, and the construction shall be performed and completed in accordance with the plans and specifications approved by the City Engineer.

ARTICLE VI: MAINTENANCE REQUIREMENTS

The Contractor hereby agree, at their own expense:

- A. To remedy any and all defects that may develop in or result from work to be performed under the Contract within the period of four (4) years from the date of acceptance of the work under the Contract, by reason of defects in workmanship or materials used in construction of said work;
- B. To keep all work in continuous good repair; and
- C. To pay the Jurisdiction's reasonable costs of monitoring and inspecting to assure that any defects are remedied, and to repay the Jurisdiction all outlay and expense incurred as a result of Contractor's and Surety's failure to remedy any defect as required by this section.

Contractor's agreement herein made extends to defects in workmanship or materials not discovered or known to the Jurisdiction at the time such work was accepted.

ARTICLE VII: THE CONTRACT SUM

Upon performance of this Contract by the Contractor, the Owner shall pay to the Contractor the lump sum of one hundred sixty-six thousand one hundred sixty-two and 50/100 dollars (\$ 166,162.50), or the total amount based upon the actual quantities constructed and the unit prices listed on Attachment A, which payment shall be in full compensation and settlement for the work. Except as hereafter provided, the details regarding actual payment by the Owner to the Contractor for compensation for work completed shall be between the Owner and the Contractor. The City shall hold the Owner and Contractor responsible for the completion of the work and improvements, until final acceptance is made. Said final acceptance means a certificate of completion of the project, submitted by the Des Moines City Engineer to the Des Moines City Council with written acceptance by the Des Moines City Council by approval of a resolution accepting the improvements. Such certification, approval and acceptance shall not constitute an acceptance of any unauthorized work, and no approval, acceptance or payment shall constitute an acceptance of unauthorized or defective work or improper material. The Owner shall provide a written certification from a professional engineer licensed to practice in the State of Iowa that the work was completed in substantial compliance with the City approved plans and specifications. Notwithstanding the ability of the City to inspect the construction, the Owner shall have the full responsibility to ensure that the contraction is completed in accordance with the plans and specifications provided to the City.

ARTICLE VIII: GENERAL

A. ENGINEERING SERVICES AND INSPECTIONS

The Contractor agrees to comply with all procedures required by the Jurisdiction to include, but not limited to: plan check, testing, and construction inspection(s). The Jurisdiction reserves the right to inspect all work on said improvements to the same standard as if the improvement was a Jurisdiction-funded public improvement.

B. INSPECTION COORDINATION

The Owner shall provide to the City all inspection and material testing for the construction within the City right of way. Project inspection reports and material reports will be provided to the City as requested. The City reserves the right to inspect and do material testing for all construction within the City's right of way. The Owner and Contractor shall contact the Des Moines Engineering Department at 515-283-4177 (or cellular 515-208-4177), 72-hours before beginning construction and coordinate with Des Moines Engineering Department for inspection. The Contractor shall make arrangements and accommodate inspections by the Jurisdiction. Owner and Contractor shall comply with all normal procedures required by the City. The City reserves the right to inspect the construction as it deems necessary; all City costs and expenses for inspections will be reimbursed by Owner.

D. BONDS, INSURANCE AND INDEMNITY

The Contractor agrees to provide the insurance required by Section 1070, Part 3 – Bonds and Insurance, of said Standard Specifications through the period of operations covered by this Contract until acknowledgment of completion and/or acceptance by the Des Moines City Council; and the Contractor shall defend, indemnify, and hold harmless the Jurisdiction and its officers, agents, and employees in accordance with Section 1070, 3.03 Contractor's Indemnity - Contractual Liability Insurance. The Contractor agrees to provide, on the form provided, a Performance, Payment and Maintenance Bond in the full amount of this Contract with the maintenance period of four years.

To the fullest extent permitted by law, Contractor agrees to defend, pay on behalf of, indemnify, and hold harmless the City against any and all claims, demands, suits, damages or losses, together with any and all outlay and expense connected therewith including, but not limited to, attorneys' fees and court costs that may be asserted or claimed against, recovered from or suffered by the City by reason of any injury or loss including, but not limited to, personal injury, bodily injury including death, property damage including loss of use thereof, and economic damages that arise out of or are in any way connected or associated with Contractor's work or services under this Contract, including that of its officers, agents, employees, subcontractors and others under the control of Contractor, except to the extent caused by or resulting from the negligent act or omission of the City or the City's employees, consultants, agents or others for whom the City is responsible.

Contractor's obligation to indemnify the City contained in this Contract is not limited by the amount or type of damages, compensation or benefits payable under any workers' compensation acts, disability benefit acts, or other employee benefits acts.

The City shall not be liable or in any way responsible for any injury, damage, liability, claim, loss or expense incurred by Contractor arising out of or in any way connected or associated with Contractor's work or services, including that of its officers, agents, employees, subcontractors and others under the control of Contractor, except to the extent caused by or resulting from the negligent act or omission of the City or the City's employees, consultants, agents or others for whom the City is responsible.

Contractor expressly assumes responsibility for any and all damage caused to City property arising out of or in any way connected or associated with Contractor's work or services under this Contract, including that of its officers, agents, employees, subcontractors and others under the control of Contractor.

Contractor shall ensure that its activities on City property will be performed and supervised by adequately trained and qualified personnel and Contractor will observe all applicable safety rules.

E. NON-DISCRIMINATION

The Contractor hereby acknowledges and agrees to comply with any and all applicable provisions of the Des Moines Human Rights Ordinance, Chapter 62 of the Des Moines Municipal Code. The Contractor specifically agrees not to discriminate against any employees or applicants for employment on the basis of age, race, religion, creed, color, sex, sexual orientation, gender identity, national origin, ancestry, disability or familial status. The Contractor further agrees to include this provision in all subcontracts for this project.

F. PUNCH LIST ITEMS AND FINAL COMPLETION

The Contractor is responsible for timely completion of the improvements in accordance with Article III, including construction of the improvements, completion of all punch list items, final cleanup and providing the as-built survey to the City that also indicates whether the surveyor was required to file a monument preservation certification in accordance with Iowa Code 355.11. Contractor shall notify Owner and the City Engineer in writing when all construction work, including the punch list and final cleanup, is completed so that the City Engineer can make a final inspection of the work and the Owner can order the as-built survey. **All those items must be completed by the dates set forth in Article IV, or the Contractor will be in violation of this Contract.**

G. CITY'S STANDARD FORM CONTRACT CONTROLS

The Owner and the Contractor acknowledge that this Contract has been prepared utilizing a standard City of Des Moines contract form provided by the City or downloaded from the City's website in PDF (Portable Document Format). The Owner and Contractor represent that no changes have been made to the form of this Contract other than to insert required information and text in text boxes provided for that purpose, and they agree that unauthorized changes made to the form of the contract shall not be binding on them or on the City and that the form of the contract as it appears on the City's website shall govern and be binding on the parties to this Contract.

H. SURVEY MONUMENT PRESERVATION

Owner and Contractor agree to furnish all engineering work lines and grades and copies of the Contract Documents needed for the improvement. Authority or Contractor shall hire a licensed surveyor to do all the survey work needed for the contract including construction staking and an as-built survey. The Owner and Contractor shall require the surveyor contact the City regarding formation and information required on the as-built survey. The Owner and Contractor are responsible to fully comply with Section 355.6A of the Iowa Code and shall hire or cause to be hired a licensed professional surveyor to determine if a monument (such as a property corner, section corner, survey control) is likely to be disturbed or removed prior to construction and provide that information to the City before construction begins. The surveyor shall locate and preserve the monuments likely to be disturbed or removed, in the manner provided in section 355.6A. In accordance with Iowa Code 355.11, United States Public Land Survey Corner Monuments shall be preserved and/or replaced.

I. NPDES PERMIT AND STORM WATER POLLUTION PREVENTION PLAN REQUIREMENTS

If the work under this Contract disturbs one or more total acres, this Contract is subject to Section 402(b) of the Clean Water Act and Iowa Code Section 455B.174 and Iowa Administrative Code 567-64.4 (projects disturbing one or more total acres) and requires inclusion in the National Pollution Discharge Elimination System (NPDES) General Permit No. 2, or an individual NPDES Permit for stormwater (also storm water) discharge associated with industrial activity for construction activities. All work shall be in accordance with Section 9040 – Erosion and Sediment Control of the SUDAS Standard Specifications. The revisions to Section 9040 – Erosion and Sediment Control that are included in the City of Des Moines General Supplemental Specifications to the current SUDAS Standard Specification, as referenced above, shall not apply. The Owner, and its Contractor, shall be totally responsible for all Erosion and Sediment Control work including preparing the storm water pollution prevention plan, publications, notices, fees, fines, and all stormwater pollution prevention work.

J. AS BUILT SURVEY

The Owner shall have a licensed surveyor do all the survey work needed for this Work, including an as-built survey which shall be provided to the City. The format for the as-built survey shall be in a format required by the City and shall provide all information required by the City.



H. NO LIENS

Contractor shall ensure that no mechanic's liens or other liens are filed against the property, and contractor will take whatever steps are necessary to promptly remove any liens filed by anyone pertaining to the construction of the improvements.

I. PERMITS

The Owner and the Contractor shall obtain all federal, state and local permits and pay all fees necessary for the contract work including, but not limited to, building, grading and NPDES permits.

IN WITNESS WHEREOF, the Parties hereto have caused this Instrument to be executed in four (4) original counterparts as of the day and year first above written.

OWNER	CONTRACTOR
<u>Des Moines Airport Authority</u>	<u>Elder Corporation</u>
Owner's Name	Contractor's Name
By <u></u>	By <u></u>
Signature	Signature
<u>Mark Feldmann</u>	<u>Brent Thompson</u>
Printed Name	Printed Name
<u>Board Chairperson</u>	<u>Vice President</u>
Title	Title
<u>5800 Fleur Drive, Suite 207</u>	<u>5088 East University Avenue</u>
Address	Address
<u>Des Moines, IA 50321</u>	<u>Des Moines, IA 50327</u>
City, State, Zip Code	City, State, Zip Code
<u>515-256-5100</u>	<u>515-266-3111</u>
Telephone Number	Telephone Number
<u></u>	<u>Brent.Thompson@eldercorp.com</u>
Email Address	Email Address
Type or print the name and title of the company's owner, president, CEO, etc. if a different person than entered above.	Type or print the name and title of the company's owner, president, CEO, etc. if a different person than entered above.
<u></u>	<u>J. Elder II</u>
Name	Name
<u></u>	<u>President</u>
Title	Title

CONTRACTOR IDENTIFICATION INFORMATION To Be Provided By:

1. All Contractors: Contractor's public registration number issued by the Iowa Commissioner of Labor pursuant to Section 91C.5 of the Iowa Code: C-130634.
2. Out-of-State Contractors: Contractor's Bond (State of Iowa, Division of Labor, Out-of-State Contractor Project Bond) pursuant to Section 91C.7 of the Iowa Code
Bond No: _____
Name of Surety: _____

NOTE: All signatures on this contract must be original signatures in ink; copies or facsimile of any signature will not be accepted.

ATTACHMENT A

In accordance with Article II: Scope of Work, the Quantity of work to be done is estimated on this Private Construction Contract Attachment A as listed below.

In accordance with Article IV: The Contract Sum is the compensation to be paid by the Owner to the Contractor.

- If the Contractor is to be paid based upon a lump sum price, this amount should be entered on the Contract and only the Item Number, Description, and Quantity of the work as shown on the construction plans need to be listed below.
- If the Contractor is to be paid based upon the total amount of the actual quantities constructed instead of based upon a lump sum price, then the Item Number, Description, and Estimated Quantities of work as shown on the construction plans as well as the Unit Prices, and Total Prices are to be listed below, and the total contract sum should be entered in the space provided for the contract sum on the Contract.

Item No.	Description	Quantity	Unit Price	Total Price
4.2	SANITARY SEWER GRAVITY MAIN, TRENCHED, PVC, 15 IN.	650 LF	\$182.00	\$118,300.00
6.1	MANHOLE, SANITARY SEWER, SW-301, 48 IN.	3 EA	\$5,400.00	\$16,200.00
6.3	MANHOLE, STORM SEWER, SW-402, 4'X4'	1 EA	\$17,000.00	\$17,000.00
7.1	CURB AND GUTTER, PCC, 2.5'	497 LF	\$29.50	\$14,661.50
TOTAL CONTRACT SUM:				\$166,162.50

OWNER'S CORPORATE ACKNOWLEDGEMENT

STATE OF IOWA)
) ss:
COUNTY OF POLK)

On this 0th day of February, 2022, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Mark Feldman to me personally known, who being by me duly sworn, did say that she is a BOARD CHAIRPERSON of the DES MOINES AIRPORT AUTHORITY, that the seal affixed to the foregoing instrument is the seal of the corporation; that the instrument was signed and sealed on behalf of the corporation, by authority of its Board of Directors, and acknowledged the execution of the instrument to be the voluntary act and deed of the corporation, by it and by her voluntarily executed.

Mary S. Benson
Notary Public in the State of Iowa
My commission expires 05/24/2023



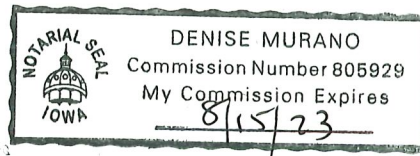
CONTRACTOR'S CORPORATE ACKNOWLEDGEMENT

State of Iowa)

Polk County) SS

On this 8th day of February, 2022, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Brent Thompson and N/A, to me known, who, being by me duly sworn, did say that they are the Vice President, and N/A, respectively, of the corporation executing the foregoing instrument; that (no seal has been procured by) (~~the seal affixed thereto is the seal of~~) the corporation; that said instrument was signed (~~and sealed~~) on behalf of the corporation by authority of this Board of Directors; that Brent Thompson and N/A acknowledged the execution of the instrument to be the voluntary act and deed of the corporation, by it and by them voluntarily executed.

Denise Murano
Notary Public in and for the State of Iowa
My commission expires August 15, 2023



ENGINEERING DEPARTMENT
CITY OF DES MOINES, IA



PERFORMANCE, PAYMENT & MAINTENANCE BOND
FOR CONSTRUCTION OF COWLES DRIVE PHASE 2/3 PROJECT - CITY IMPROVEMENTS

KNOW ALL MEN BY THESE PRESENTS:

That we, Elder Corporation, as Principal (hereinafter the “Contractor” or “Principal”) and Merchants Bonding Company (Mutual) as Surety are held and firmly bound unto the City of Des Moines, Iowa, as Obligee (hereinafter referred to as the “Jurisdiction”), and to all persons who may be injured by any breach of any of the conditions of this bond in the penal sum of one hundred sixty-six thousand one hundred sixty-two and 50/100 dollars (\$166,162.50), lawful money of the United States, for the payment of which sum, well and truly to be made, we bind ourselves, our heirs, legal representative and assigns, jointly or severally, firmly by these presents.

The conditions of the above obligations are such that whereas said Contractor entered into a Private Construction Contract with the Des Moines Airport Authority (hereinafter the “Owner”), hearing date the 8th day of February, 2022, including all subsequent amendments (hereinafter the “Contract”) wherein said Contractor undertakes and agrees to construct the following described improvements:

City improvements include the installation of Sanitary Sewer Pipes SA-7, SA-8 and SA-9, Sanitary Sewer Structures MH-7, MH-8 and MH-9, Storm Sewer Structures S-29, PCC curb & Gutter Replacement Along Fleur Drive, as shown on City Plan File numbers 640-001/199.

In accordance with City Plan File Numbers 640 – 001/199, Authority Plan File #: 2021/559-748

(Hereinafter the “Project” or “Improvements” or “Project Improvements”)

with the work further described in the Contract, and to faithfully perform all the terms and requirements of said Contract within the time therein specified, in a good and workmanlike manner, and in accordance with the Contract. Principal and Surety agree that the Obligee is a third-party beneficiary under the Contract and the provisions of the Contract shall inure to the benefit of and shall be enforceable by the Obligee.

It is expressly understood and agreed by the Contractor and Surety in this Bond that the following provisions are a part of this Bond and are binding upon said Contractor and Surety, to-wit:

1. **PERFORMANCE:** The Contractor shall well and faithfully observe, perform, fulfill and abide by each and every covenant, condition and part of said Contract, by reference made a part hereof, for the above referenced Improvements, and shall indemnify and save harmless the Jurisdiction from all outlay and expense incurred by the Jurisdiction by reason of the Contractor’s default or failure to perform as required. The Contractor shall also be responsible for the default or failure to perform as required under the Contract by all its subcontractors, suppliers, agents, or employees furnishing materials or providing labor in the performance of the Contract.
2. **PAYMENT:** The Contractor and Surety on this Bond are hereby agreed to pay all just claims submitted by persons, firms, subcontractors, and corporations furnishing materials for or performing labor in the performance of the Contract on account of which this Bond is given, including but not limited to claims for all amounts due for labor, materials, lubricants, oil, gasoline, repairs on machinery, equipment and tools, consumed or used by the Contractor or any subcontractor, wherein the same are not satisfied out of the portion of the Contract price which the

SURETY'S BOND NO. IAC592386

Owner retains until completion of the Improvements.

- 3 MAINTENANCE: The Contractor and the Surety on this Bond hereby agree, at their own expense:
- A. To remedy any and all defects that may develop in or result from work to be performed under the Contract within the period of four (4) years from the date of acceptance of the Improvements by resolution of the City Council of the Jurisdiction, by reason of defects in workmanship or materials used in construction of said Improvements;
 - B. To keep all work in continuous good repair; and
 - C. To pay the Jurisdiction's reasonable costs of monitoring and inspecting to assure that any defects are remedied, and to repay the Jurisdiction all outlay and expense incurred as a result of Contractor's and Surety's failure to remedy any defect as required by this section.

Contractor's and Surety's agreement herein made extends to defects in workmanship or materials not discovered or known to the Jurisdiction at the time such work was accepted.

- 4 GENERAL: Every Surety on this Bond shall be deemed and held, any contract to the contrary notwithstanding, to the following provisions:
- A. To consent without notice to any extension of time to the Contractor in which to perform the Contract;
 - B. To consent without notice to any change in the Contract, which thereby increases the total Contract price and the penal sum of this bond, provided that all such changes do not, in the aggregate, involve an increase of more than twenty percent of the total Contract price, and that this bond shall then be released as to such excess increase; and
 - C. To consent without notice that this Bond shall remain in full force and effect until the Contract is completed; whether completed within the specified Contract period, within an extension thereof, or within a period of time after the Contract period has elapsed and the liquidated damages are being charged against the Contractor.

The Contractor and every Surety on this Bond shall be deemed and held bound, any contract to the contrary notwithstanding, to the following provisions:

- A. That no provision of this Bond or of any other contract shall be valid which limits to less than five years after the acceptance of the work under the Contract the right to sue on this Bond.
- B. That used herein, the phrase "all outlay and expense" is not to be limited in any way, but shall include the actual and reasonable costs and expenses incurred by the Jurisdiction including interest, benefits and overhead where applicable. Accordingly, "all outlay and expense" would include but not be limited to all contract or employee expense, all equipment usage or rental, materials, testing, outside experts, attorneys fees (including overhead expenses of the Jurisdiction's staff attorneys), and all cost and expenses of litigation as they are incurred by the Jurisdiction. It is intended the Contractor and Surety will defend and indemnify the Jurisdiction on all claims made against the Jurisdiction on account of Contractor's failure to perform as required in the Contract, that all agreements and promises set forth in the Contract, in approved changes, and in this Bond will be fulfilled, and that the Jurisdiction will be fully indemnified so that it will be put into the position it would have been in had the Contract been performed in the first instance as required.

SURETY'S BOND NO. IAC592386

- C. In the event the jurisdiction incurs any "outlay and expense" in defending itself with respect to any claim as to which the Contractor or Surety should have provided the defense, or in the enforcement of the promises given by the Contractor in the Contract, or approved changes, or in the enforcement of the promises given by the Contractor and Surety in this Bond, the Contractor and Surety agree that they will make the Jurisdiction whole for all such outlay and expense, provided that the Surety's obligation under this bond shall not exceed 125% of the penal sum of this bond.

In the event that any actions or proceedings are initiated with respect to this Bond, the parties agree that the venue thereof shall be Polk County, State of Iowa. If legal action is required by the Jurisdiction to enforce the provisions of this Bond or to collect the monetary obligation incurring to the benefit of the Jurisdiction, the Contractor and the Surety agree, jointly and severally, to pay the Jurisdiction all outlay and expense incurred therefor by the Jurisdiction. All rights, powers, and remedies of the Jurisdiction hereunder shall be cumulative and not alternative and shall be in addition to all rights, powers and remedies given to the Jurisdiction, by law. The Jurisdiction may proceed against Surety for any amount guaranteed hereunder whether action is brought against the Contractor or whether Contractor is joined in any such action or actions or not.

5. CITY'S STANDARD BOND FORM CONTROLS: The Contractor and Surety acknowledge that this bond has been prepared utilizing a Jurisdiction bond form provided by the Jurisdiction. The Contractor and Surety represent that no changes have been made to the form of the Bond other than to insert required information and text in text boxes provided for that purpose, and they agree that unauthorized changes made to the bond form shall not be binding on them or on the Jurisdiction and that the bond form as provided to the Principal and Owner by the Jurisdiction shall govern and be binding on the parties to this Bond.

NOW THEREFORE, the condition of this obligation is such that if said Principal shall faithfully perform all of the promises of the Principal, and the work as required and as set forth and provided in the Contract and in this Bond, then this obligation shall be null and void, otherwise it shall remain in full force and effect.

When a word, term, or phrase is used in this Bond, it shall be interpreted or construed first as defined in this Bond, the Contract; second, if not defined in the Bond, Contract, it shall be interpreted or construed as defined in applicable provisions of the Iowa Code; third, if not defined in the Iowa Code, it shall be interpreted or construed according to its generally accepted meaning in the construction industry; and fourth, if it has no generally accepted meaning in the construction industry, it shall be interpreted or construed according to its common or customary usage.

Failure to specify or particularize shall not exclude terms or provisions not mentioned and shall not limit liability hereunder. The Contract is hereby made a part of this Bond.

Witness our hands, in quadruplicate, this 8th day of February, 2022.

PRINCIPAL:

EDEL CORPORATION
Contractor's Name

By [Signature]
Signature

BRANT THOMPSON
Printed Name

V.P.
Title

FORM APPROVED BY:

[Signature]
[Signature]

Attorney for Jurisdiction

SURETY:

Merchants Bonding Company (Mutual)
Surety Company

[Signature]
Signature Attorney-in-Fact/Officer

Anne Crowner, Attorney-in-Fact
Name of Attorney-in-Fact/Officer

Holmes, Murphy and Associates, LLC
Company Name

2727 Grand Prairie Parkway
Company Address

Waukee, IA 50263
City, State, Zip Code

(515) 223-6800
Company Telephone Number

NOTE:

1. All signatures on this performance, maintenance & payment bond must be original signatures in ink; copies or facsimile of any signature will not be accepted.
2. This bond must be sealed with the Surety's raised, embossing seal.
3. The Certificate of Power of Attorney accompanying this bond must be valid on its face and sealed with the Surety's raised, embossing seal.
4. The name and signature of the Surety's Attorney-in-Fact/Officer entered on this bond must be exactly as listed on the Certificate or Power of Attorney accompanying this bond.

Revised 12-05-2016

MERCHANTS
BONDING COMPANY™
POWER OF ATTORNEY

Know All Persons By These Presents, that MERCHANTS BONDING COMPANY (MUTUAL) and MERCHANTS NATIONAL BONDING, INC., both being corporations of the State of Iowa (herein collectively called the "Companies") do hereby make, constitute and appoint, individually, Anne Crowner; Ashlea McCaughey; Ben Williams; Brian M Deimerly; Cameron M Burt; Cindy Bennett; Craig E Hansen; D Gregory Stitts; Dione R Young; Donald E Appleby; Douglas Muth; Ginger Hoke; Grace Rasmussen; Greg Krier; Jaimie Kangas; Jay D Friermuth; Jessica Jean Rini; Kathleen Brewer; Mark R DeWitt; Mark Sweigart; Michelle R Gruis; Sarah C Brown; Seth D Rooker; Stacie Christensen; Stacy Venn; Tim McCulloh; Todd Bengford; Wendy A Lewis

their true and lawful Attorney(s)-in-Fact, to sign its name as surety(ies) and to execute, seal and acknowledge any and all bonds, undertakings, contracts and other written instruments in the nature thereof, on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

This Power-of-Attorney is granted and is signed and sealed by facsimile under and by authority of the following By-Laws adopted by the Board of Directors of Merchants Bonding Company (Mutual) on April 23, 2011 and amended August 14, 2015 and adopted by the Board of Directors of Merchants National Bonding, Inc., on October 16, 2015.

"The President, Secretary, Treasurer, or any Assistant Treasurer or any Assistant Secretary or any Vice President shall have power and authority to appoint Attorneys-in-Fact, and to authorize them to execute on behalf of the Company, and attach the seal of the Company thereto, bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof."

"The signature of any authorized officer and the seal of the Company may be affixed by facsimile or electronic transmission to any Power of Attorney or Certification thereof authorizing the execution and delivery of any bond, undertaking, recognizance, or other suretyship obligations of the Company, and such signature and seal when so used shall have the same force and effect as though manually fixed."

In connection with obligations in favor of the Florida Department of Transportation only, it is agreed that the power and authority hereby given to the Attorney-in-Fact includes any and all consents for the release of retained percentages and/or final estimates on engineering and construction contracts required by the State of Florida Department of Transportation. It is fully understood that consenting to the State of Florida Department of Transportation making payment of the final estimate to the Contractor and/or its assignee, shall not relieve this surety company of any of its obligations under its bond.

In connection with obligations in favor of the Kentucky Department of Highways only, it is agreed that the power and authority hereby given to the Attorney-in-Fact cannot be modified or revoked unless prior written personal notice of such intent has been given to the Commissioner-Department of Highways of the Commonwealth of Kentucky at least thirty (30) days prior to the modification or revocation.

In Witness Whereof, the Companies have caused this instrument to be signed and sealed this 2nd day of August, 2021.

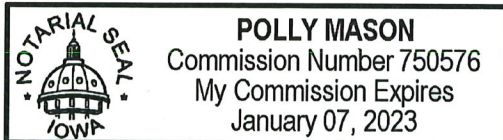


MERCHANTS BONDING COMPANY (MUTUAL)
MERCHANTS NATIONAL BONDING, INC.

By *Larry Taylor*
President

STATE OF IOWA
COUNTY OF DALLAS ss.

On this 2nd day of August 2021, before me appeared Larry Taylor, to me personally known, who being by me duly sworn did say that he is President of MERCHANTS BONDING COMPANY (MUTUAL) and MERCHANTS NATIONAL BONDING, INC.; and that the seals affixed to the foregoing instrument are the Corporate Seals of the Companies; and that the said instrument was signed and sealed in behalf of the Companies by authority of their respective Boards of Directors.



Polly Mason
Notary Public

(Expiration of notary's commission does not invalidate this instrument)

I, William Warner, Jr., Secretary of MERCHANTS BONDING COMPANY (MUTUAL) and MERCHANTS NATIONAL BONDING, INC., do hereby certify that the above and foregoing is a true and correct copy of the POWER-OF-ATTORNEY executed by said Companies, which is still in full force and effect and has not been amended or revoked.

In Witness Whereof, I have hereunto set my hand and affixed the seal of the Companies on this 8th day of February, 2022.



William Warner Jr.
Secretary