

NORTH CAROLINA

**LOCALLY ADMINISTERED PROJECT – STATE
SMALL CONSTRUCTION AGREEMENT**

LENOIR COUNTY

DATE: 9/29/2011

NORTH CAROLINA DEPARTMENT OF
TRANSPORTATION

AND

WBS Elements: 43435

NORTH CAROLINA GLOBAL TRANSPARK
AUTHORITY

THIS AGREEMENT is made and entered into on the last date executed below, by and between the North Carolina Department of Transportation, an agency of the State of North Carolina, hereinafter referred to as the “Department” and North Carolina Global TransPark Authority, hereinafter referred to as the “Authority”.

WITNESSETH:

WHEREAS, the parties have agreed to make certain improvements within the Authority under WBS Element 43435 in Lenoir County in accordance with policies and procedures approved by the Department; and,

WHEREAS, this Agreement is made under the authority granted to the Department by the North Carolina General Assembly under the General Statutes of North Carolina (NCGS) Section 136 and Section 6.5 (d)(4) of Session Law 2011-145, to participate in the funding of the Project from receipts and credit balance funds; and,

WHEREAS, the Department and the Authority have agreed that the jurisdictional limits of the Parties, as of the date of the awarding of the contract for the construction of the above-mentioned Project, are to be used in determining the duties, responsibilities, rights and legal obligations of the parties hereto for the purposes of this Agreement; and,

WHEREAS, the parties to this Agreement have approved the construction of said Project with cost participation and responsibilities for the Project as hereinafter set out under the authority granted to the Authority by the North Carolina General Assembly including, but not limited to, the following legislation: General Statutes of North Carolina (NCGS) Section 63A-2, 63A2(21), 63A-4, 63A-4(6), 63A-11(D) and 63A-24, and,

NOW, THEREFORE, the parties hereto, each in consideration of the promises and undertakings of the other as herein provided, do hereby covenant and agree, each with the other, as follows:

SCOPE OF PROJECT

1. The Project consists of the renovation of GTP-1, a 120,000 square foot warehouse facility, to be converted for industrial fabrication. The facility is located at 2101 John Mewborne Road, Global TransPark, in Kinston, North Carolina, (hereinafter the "Project").

PLANNING AND DESIGN

2. The Authority, via its construction and Construction Agent, known as Spirit AeroSystems, shall oversee the preparation of environmental and/or planning document and require that any environmental permits needed for the Project are obtained. All work shall be done in accordance with specifications, policies and procedures and the plans and specifications approved by the Authority.

UTILITIES

3. It is understood that there are no water and sewer lines to be adjusted or relocated at this time. If during the project it becomes necessary to adjust or relocate water and/or sewer lines a separate Utility Agreement will be prepared at the appropriate time.

RIGHT OF WAY

4. It is understood by all parties hereto that all work shall be contained within existing property owned by the Authority.

CONSTRUCTION

5. The Authority shall construct, or cause to be constructed, the Project in accordance with the plans and specifications of said Project as provided by the design-build contractor, as approved by the Authority and the Construction Agent known as Spirit AeroSystems. The Authority shall

enter into and shall administer the construction contract for said Project and the procedures set out herein below shall be followed:

- A. The Authority shall follow North Carolina General Statutes N.C.G.S. §63A-2(21), -11(d), & -24 and Administrative Policies of the Authority pertaining to sole-sourcing the construction project and for utilizing its sales-tax exemption for all material purchases more than \$5,000.00.
- B. The construction oversight will be furnished by the Authority. Said work shall be accomplished in accordance with the provisions of this Agreement.
- C. The Authority shall employ a construction consultant to conduct or oversee the conduct of inspections, sampling and testing as required by governmental authority with regulations applicable to this project.
- D. During construction of the Project, if any changes in the plans are necessary, such changes must be approved in writing by the Authority and Construction Agent, via email or otherwise, prior to the work being performed.
- E. All materials incorporated in the Project and workmanship performed by the contractor shall be in reasonable close conformity with the Standards and Specifications approved by the Authority and Construction Agent.
- F. Upon completion of the Project, the Authority shall receive a complete set of "As-Constructed" plans which will be retained at the Authority, available upon request from the Department.
- G. Prior to the final acceptance and payment by the Department, the Department may make a final inspection of the completed work.
- H. If any project construction takes place outside the Authority property, the Authority shall provide and maintain adequate barricades, signs, signal lights, flagmen, and other warning devices for the protection of traffic in conformance with standards and specifications of the Department and the current edition of the Manual on Uniform Traffic Control Devices for Streets and Highways published by the Federal Highway Administration.
- I. In the event the Project is not let to contract within six (6) months after receiving final approval of construction plans and proposals from the DOA, the Authority shall be

responsible for documenting to the Department justification for project delay and that the Project remains in compliance with the terms of this Agreement, the approved plans and specifications, and current building codes.

- J. The Authority shall complete construction of the Project, in accordance with the terms of this Agreement within two (2) years of execution of this Agreement. If the Authority has not completed its responsibilities to meet normal business standards and practices pursuant to any written forms or requirements which have been provided, the unexpended balance of funds may be recalled by the Department and assigned to other Projects by the Board of Transportation and the Authority shall reimburse costs incurred by the Department associated with the Project.

CONSTRUCTION SUBCONTRACTOR GUIDELINES

- 7. Any construction contract entered into with another party to perform work associated with the requirements of this Agreement shall contain appropriate provisions regarding the utilization of minority business enterprises, women's business enterprises, and disabled business enterprises as required by GS 63-A19.
 - A. Failure to comply with these requirements will result in funding being withheld until such time as these requirements are met.

FUNDING

- 8. Subject to compliance by the Authority with the provisions set forth in this Agreement, and the availability of funds, the Department shall reimburse the Authority for the actual Construction costs, including contract administration costs as approved by the Department, up to a maximum amount of \$5,000,000. Reimbursement to the Authority shall be made upon approval of the invoice by the Secretary of Transportation's Strategic Initiative's Coordinator and the Department's Fiscal Section.
 - A. The Authority may bill the Department on a monthly basis for actual costs by submitting an itemized invoice and requested documentation to the Department. By submittal of said invoice, the Authority certifies that it has adhered to all applicable state laws and regulations as set forth in this Agreement. Invoices are payable upon receipt with final reimbursement

made upon completion of the Project or reimbursement of the maximum amount of \$5,000,000.

- B. Work performed directly by the Authority or its Construction Agent, known as Spirit AreaSystems, referred to as "Force Account", is only allowed when there is a finding of cost effectiveness for the work to be performed by some method other than contract awarded by competitive bidding process. Written approval from the Strategic Initiative's Coordinator is required prior to the use of force account by the Authority. Said invoices for force account work shall show a summary of labor, labor additives, equipment, materials and other qualifying costs in conformance with the standards for allowable costs set forth in Office of Management and Budget (OMB) Circular A-87 (www.whitehouse.gov/omb/circulars/a087/a087.html). Reimbursement shall be based on actual cost incurred with the exception of equipment owned by the Authority or its Project partners. Reimbursement rates for equipment owned by the Authority or its Project partners cannot exceed the Department's rates in effect for the time period in which the work is performed.
- C. In accordance with OMB Circular A-133, "Audits of States, Local Governments and Non-Profit Organizations" (www.whitehouse.gov/omb/circulars/a133/a133.html) dated June 27, 2003, the Authority shall arrange for an annual independent financial and compliance audit of its fiscal operations. The Authority shall furnish the Department with a copy of the annual independent audit report within thirty (30) days of completion of the report, but not later than nine (9) months after the Authority's fiscal year ends.
- D. The Authority shall maintain all books, documents, papers, accounting records, and such other evidence as may be appropriate to substantiate costs incurred under this Agreement. Further, the Authority shall make such materials available at its office at all reasonable times during the contract period, and for five (5) years from the date of final payment under this Agreement, for inspection and audit by the Department's Fiscal Section.
- E. The Authority agrees that it shall bear all costs for which it is unable to substantiate actual costs.
- F. Failure on the part of the Authority to comply with any of these provisions may be grounds for the Department to terminate participation in the costs of that affected portion of the Project.

- G. All invoices associated with the Project must be submitted within six months of the completion of the Project to be eligible for reimbursement by the Department.
- H. The Project must progress in a satisfactory manner as determined by the Department. If the Project does not remain active, the Department reserves the right to de-obligate said funding.
- I. The expenses incurred by the Department for reviews, approvals, inspections and other tasks set forth in this Agreement are an eligible Project cost and charged to allocated Project funding.

MAINTENANCE

- 9. Upon completion of the Project, improvements shall be owned and maintained by the Authority.

ADDITIONAL PROVISIONS

- 10. This Agreement is solely for the benefit of the identified parties to the Agreement and is not intended to give any rights, claims, or benefits to third parties or to the public at large.
- 11. It is the policy of the Department not to enter into any agreement with parties that have been debarred by any government agency. By execution of this Agreement, the Authority certifies, that neither it nor its agents or contractors are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by a governmental department or agency.
- 12. The Authority shall certify to the Department compliance with all applicable State laws and regulations and ordinances and shall indemnify the Department against any fines, assessments or other penalties resulting from noncompliance by the Authority or any entity performing work under contract with the Authority.
- 13. The Authority is solely responsible for all agreements, contracts, and work orders entered into or issued by the Authority for this Project. The Department is not responsible, for any expenses or obligations incurred for the Project except those specifically eligible in the terms of this Agreement.

14. The Authority will indemnify and hold harmless the Department and the State of North Carolina, their respective officers, directors, principals, employees, agents, successors, and assigns from and against any and all claims for damage and/or liability in connection with the Project activities performed pursuant to this Agreement including construction of the Project. The Department shall not be responsible for any damages claims, which may be initiated by third parties.
15. The Department must approve any assignment or transfer of the responsibilities of the Authority set forth in this Agreement to other parties or entities in writing.
16. If the Authority decides to terminate the Project without the concurrence of the Department, the Authority shall reimburse the Department one hundred percent (100%) of all costs expended by the Department and associated with the Project. Any notification of termination of this Project shall be in writing to the other party. Reimbursement to the Department shall be made in one lump sum payment within sixty (60) days of billing. A late payment penalty and interest shall be charged on any unpaid balance due in accordance with G.S. 147-86.23 and G.S. 105-241.21.
17. In compliance with state policy, the Authority, and/or its agent, including all contractors, subcontractors, or sub-recipients shall have a Conflict of Interest Policy and adhere to the the Authority's Women Business Enterprise, Minority Business Enterprise and Disabled Business Enterprises policy which requires goals to be set and participation to be reported, as more fully described in the Subcontractor Guidelines section of this Agreement as required by G.S. 63A-19.
18. All terms and conditions of this Agreement are dependent upon, and subject to, the allocation of funds for the purpose set forth in the Agreement and the Agreement shall automatically terminate if funds cease to be available.
19. "By Executive Order 24, issued by Governor Perdue, and N.C. G.S. § 133-32, it is unlawful for any vendor or contractor (i.e. architect, bidder, contractor, construction manager, design professional, engineer, landlord, offeror, seller, subcontractor, supplier, or vendor), to make gifts or to give favors to any State employee of the Governor's Cabinet Agencies (i.e., Administration, Commerce, Correction, Crime Control and Public Safety, Cultural Resources, Environment and Natural Resources, Health and Human Services, Juvenile Justice and Delinquency Prevention, Revenue, Transportation, and the Office of the Governor).

The parties executing this agreement hereby represent that they have the authority to do so, and have the authority to execute any supplemental documents as necessary.

IT IS UNDERSTOOD AND AGREED that the approval of the Project by the Department is subject to the conditions of this Agreement and that no expenditure of funds on the part of the Department will be made until the terms of this Agreement have been complied with on the part of the Authority.

IN WITNESS WHEREOF, this Agreement has been executed, in duplicate, the day and year heretofore set out, on the part of the Department and the North Carolina Global TransPark Authority by authority duly given.

L.S. ATTEST:

NORTH CAROLINA GLOBAL TRANSPARK
AUTHORITY

BY: Glenna King

BY: Andrea D. Waddell

TITLE: Asst. Secretary

TITLE: Executive Director

DATE: 10/25/11

"N.C.G.S. § 133-32 and Executive Order 24 prohibit the offer to, or acceptance by, any State Employee of any gift from anyone with a contract with the State, or from any person seeking to do business with the State. By execution of any response in this procurement, you attest, for your entire organization and its employees or agents, that you are not aware that any such gift has been offered, accepted, or promised by any employees of your organization."

(SEAL)

Federal Tax Identification Number

56-1767291

Remittance Address:

North Carolina Global TransPark Authority

P. O. Box 1476

Kinston, NC 28503-1476

To the extent this Agreement is a "Cooperative Agreement", as that term is defined by N.C. General Statute § 143B-24, and to the extent approval of the Department of Administration is required; based on the assurances from the parties to this agreement, approval is hereby given as indicated by my signature below. Moses Carey, Jr., Secretary of the Department of Administration

DEPARTMENT OF ADMINISTRATION

DEPARTMENT OF TRANSPORTATION

BY: Moses Carey Jr.
(Secretary of Department of Administration)

BY: [Signature]
(STATE HIGHWAY ADMINISTRATOR)

DATE: 11/3/11

DATE: 11/4/11

PRESENTED TO THE BOARD OF TRANSPORTATION ITEM O: 11-3-11