
Contract

THIS AGREEMENT, dated the _____ of _____, 2021, between County of Los Alamos (Party of the First Part, hereinafter called the Owner) and Maxwell Asphalt, Inc., a Utah Corporation (Party of the Second Part, hereinafter called the Contractor).

WITNESSETH: That the said Contractor has agreed and by these presents does agree with the said Owner, for the consideration herein mentioned in his/her proposal and under the penalty expressed in Bonds, hereto attached, to furnish all equipment, tools, material, skill and labor of every description necessary to carry out and complete in good, firm, substantial, and workmanlike manner, the work specified in strict conformity with the Drawings, and the Specifications hereinafter set forth. The work covered by this Agreement includes all work shown on the plans and specifications and listed in the attached Proposal, for Alternate 1 of the Rehabilitate Runway 9-27, Taxiways, & Apron (Crack Seal, Seal Coat, & Remarkings) project at the Los Alamos County Airport.

The Contractor shall commence the work with adequate force and equipment on a date to be specified in a written order of the Owner and shall complete the work within forty-five (45) calendar days from and including said date. The Contractor shall fully guarantee his/her workmanship and materials furnished for a period of one year following the date of final acceptance of the work. The performance and payment bonds shall remain in full force for this one year period. As a condition of final acceptance, the Contractor shall have executed, and submit to the Owner, the "Warranty of Construction" and the "Lien and Claims Release" forms that have been attached to this contract document.

If said work is not completed within the time stated above, the Contractor shall be liable and hereby agrees to pay to the Owner as liquidated damages and not as a penalty, the amount of Two Thousand Dollars (\$2,000.00) per calendar day for each and every part of a day thereafter that said work remains substantially uncompleted.

The Owner shall pay and the Contractor shall receive the unit prices stipulated in the Contractor's Proposal hereto attached as full compensation for everything furnished and done by the Contractor in the estimated total of Eight Hundred Eighty Thousand Two Hundred dollars and zero cents (\$880,200.00), based on the quantities completed in an acceptable manner, which sum shall be paid in the manner and terms specified in the Contract Documents, but, before issuance of certificates of payments if the Contractor shall not have submitted evidence satisfactory to the Owner that all payrolls, materials, bills, and other indebtedness connected with the work have been paid, the Owner may withhold, in addition to the retained percentages such amount or amounts as may be necessary to pay just claims for labor and services rendered and materials in and about the work, and such amount or amounts withheld or retained may be applied by the Owner to the payment of such just claim. Items of work called out in the plans or specifications, that are not specifically listed in the bid form, shall be considered as incidental to a listed bid item(s), or to the project as a whole.

It is further mutually agreed between the parties hereto that if, at any time after the execution of this agreement and the surety bond hereto attached for its faithful performance, the first party shall deem the surety or sureties upon such bonds to be unsatisfactory, or if, for any reason, such bonds cease to be adequate to cover the performance of the work, the second party shall at its expense, within five days after the receipt of notice from the first party so to furnish an additional bond or bonds in such form and amount, and with surety or sureties as shall be satisfactory to the first party. In such event, no further payment to the second

party shall be deemed to be due under this agreement until such new or additional security for the faithful performance of the work shall be furnished in a manner and form satisfactory to the first party.

In the event that it should become necessary, any question or controversy regarding formation, construction, interpretation, validity, and enforcement of this Agreement, and the rights or obligations of the signatory parties hereto, shall be resolved only by lawfully instituted proceedings in the Circuit Court of the County of Los Alamos, New Mexico, and the substantive law of the state of New Mexico or federal law, where applicable, shall govern resolution of any such question or controversy. In the event any provisions of this Agreement shall be held to be invalid or unenforceable, the remaining provisions shall be valid and binding upon the parties.

The _____ of the _____ was authorized to sign this Agreement on behalf of said _____ by Resolution of said _____ -adopted on the _____ day of _____ 2021.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in quadruplicate, the _____ day of _____, 2021.

OWNER:

County of Los Alamos

Owner

1000 Central Avenue, Suite 160

Address

Los Alamos, NM 87544

ATTEST:

Signature

Name

Title

CONTRACTOR:

Maxwell Asphalt, Inc.

Contractor

650 South Delong Street

Address

Salt Lake City, UT 84104

ATTEST:

Signature

Name

Title

(SEAL)

Approved As To Form

Executed in Quadruplicate

BY: _____

(Owner's Attorney)

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Performance Bond

KNOW ALL MEN BY THESE PRESENTS, that Maxwell Asphalt, Inc as Principal, hereinafter called Contractor, and _____ a corporation duly organized under the laws of the State of _____, as Surety, hereinafter called Surety, are held and firmly bound unto the County of Los Alamos, as Oblige, hereinafter called Owner, in the amount of Eight Hundred Eighty Thousand Two Hundred dollars and zero cents (\$880,200.00), for the payment whereof Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Contractor has by written agreement dated _____ 2021, entered into a contract with Owner for Construction of Alternate 1 of the Rehabilitate Runway 9-27, Taxiways, & Apron (Crack Seal, Seal Coat, & Remarking) project and other associated items at the Los Alamos County Airport in accordance with Plans and Specifications prepared by Delta Airport Consultants, Inc., 7804 Pan American Freeway NE, Suite 4, Albuquerque, NM 87109, Telephone: (505) 797-4921, Fax: (505) 797-1725, which contract is by reference made a part hereof, and is hereinafter referred to as the Contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if Contractor shall promptly and faithfully perform said Contract, then his/her obligation shall be null and void; otherwise it shall remain in full force and effect.

The Surety hereby waives notice of any alteration or extension of time made by the Owner.

Whenever the Contractor shall be, and declared by Owner to be in default under the Contract, the Owner having performed Owner's obligations thereunder, the Surety may promptly remedy the default, or shall promptly:

1. Complete the Contract in accordance with its terms and conditions, or
2. Obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by Surety of the lowest responsible bidder, or, if the Owner elects, upon determination by the Owner and the Surety jointly of the lowest responsible bidder, arrange for a contract between such bidder and Owner, and made available as work progresses (even though there should be a default or a succession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the contract price; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term "balance of the contract price", as used in this paragraph, shall mean the total amount payable by Owner to Contractor under the Contract and any amendments thereto, less the amount properly paid by Owner to Contractor.

Any suit under this bond must be instituted before the expiration of two (2) years from the date on which final payment under the Contract falls due.

No right of action shall accrue on this bond to or for the use of any person or corporation other than the Owner named herein or the heirs, executors, administrators or successors of the Owner.

Signed and sealed this _____ day of _____, 2021.

Principal

Surety

Signature

Signature

Name

Name

Title

Title

Seal By:

Seal By:

Title

Title

(SEAL)

(SEAL)

Labor and Material Payment Bond

100% OF THE CONTRACT AMOUNT

KNOW ALL MEN BY THESE PRESENTS: that that Maxwell Asphalt, Inc as Principal, hereinafter called Contractor, and _____ a corporation duly organized under the laws of the State of _____, as Surety, hereinafter called Surety, are held and firmly bound unto the County of Los Alamos, as Oblige, hereinafter called Owner, in the amount of Eight Hundred Eighty Thousand Two Hundred dollars and zero cents (\$880,200.00), for the payment whereof Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Contractor has by written agreements dated _____, 2021, entered into a contract with Owner for Alternate 1 of the Rehabilitate Runway 9-27, Taxiways, & Apron (Crack Seal, Seal Coat, & Remarkings) project and other associated items at the Los Alamos County Airport in accordance with Performance Specifications prepared by Delta Airport Consultants, Inc., 7804 Pan American Freeway NE, Suite 4, Albuquerque, NM 87109, Telephone: (505) 797-4921, Fax: (505) 797-1725, which contract is by reference made a part hereof, and is hereinafter referred to as the Contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if Contractor shall promptly make payment to all claimants as hereinafter defined, for all labor and material, then this obligation shall be void; otherwise it shall remain in full force and effect, subject, however, to the following conditions:

1. A claimant is defined as one having a direct contract with the Contractor or with a Subcontractor of the Contractor for labor, material, or both, used or reasonably required for use in the performance of the Contract, labor, and material being construed to include that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental of equipment directly applicable to the Contract.
2. The above named Contractor and Surety hereby jointly and severally agree with the Agent that every claimant as herein defined, who has not been paid in full before the expiration of period of ninety (90) days after the date on which the last of such claimant's work or labor was done or performed, or materials were furnished by such claimant, may sue on this bond for the use of such claimant, prosecute the suit to final judgment for such sum or sums as may be justly due claimant, and have execution thereon. The Agent or Owner shall not be liable for the Payment of any costs or expenses of any such suit.
3. No suit or action shall be commenced hereunder by any claimant:
 - a) Unless claimant other than one having a direct contract with the Contractor shall have given written notice to any two of the following: The Contractor, the Agent, or the Surety above named, within ninety (90) days after such claimant did or performed the last of the work or labor, or furnished the last of the materials for which said claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were furnished, or for whom the work or labor was done or performed. Such notice shall be served by mailing the same by registered mail or certified mail, postage prepaid, in an envelope addressed to the Contractor, Owner or Surety, at any place where an office is regularly maintained for the transaction of business, or served in any manner in which legal process may be served in the state in which the aforesaid project is located, save that such service need not be made by a public officer.
 - b) After the expiration of one (1) year following the date on which Contractor ceased work on said Contract, it being understood, however, that if any limitation embodied on this bond is

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- prohibited by any law controlling the construction hereof such limitation shall be deemed to be amended so as to equal to the minimum period of limitation permitted by such law.
- c) Other than in a state court of competent jurisdiction in and for the county or other political subdivision of the state in which the project, or any part thereof, is situated, or in the United States District Court for the district in which the project, or any part thereof, is situated, and not elsewhere.
4. The amount of this bond shall be reduced by and to the extent of any payment or payments made in good faith hereunder, inclusive of the payment by Surety of mechanics' lien which may be filed of record against said improvement, whether or not claim for the amount of such lien be presented under and against this bond.

Signed and sealed this _____ day of _____ 2021.

Principal

Surety

Signature

Signature

Name

Name

Title

Title

Seal By:

Seal By:

Title

Title

(SEAL)

(SEAL)

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Warranty of Construction

Rehabilitate Runway 9-27, Taxiways, & Apron
(Crack Seal, Seal Coat, & Remarkings)

Los Alamos County Airport
Los Alamos, New Mexico

AIP Project No. 3-35-0054-017-2021 (Design and Construction)

Date of Final Acceptance: _____

_____ (Contractor, Address) hereby guarantees that all labor and material furnished and work performed under the above Contract are in accordance with the contract drawings and specifications and authorized alterations and additions thereto, and that all of the work under the Contract is free from faulty materials and improper workmanship, and guaranteed against injury from proper and usual wear, and agreeing (and we do hereby so agree) that should any defect develop during the contract guarantee period, as hereinafter defined, due to improper materials, workmanship or arrangement, we will, upon written notice, replace or re-execute such defective work, together with any other work affected in making good such defects, at the convenience of, and without expense to the Owner.

The Contractor further warrants that all manufacturer's or other warranties on all materials and equipment furnished by Contractor shall run directly to or be specifically assigned to Owner on demand. The Contractor warrants that the installation of any and all materials and equipment shall be in strict accordance with manufacturer's requirements. In the event Owner seeks to enforce a claim based upon a manufacturer's warranty and should such manufacturer then fail to honor its warranty based, in whole or in part, on a claim of defective installation, Owner shall be entitled to enforce said warranty against Contractor in accordance with the terms of said warranty, except that a claim of defective installation shall not be a defense to any such warranty claim by Owner against Contractor.

The warranty for any work repaired or replaced during the guarantee period shall run for a period of one (1) year from the date of repair or replacement.

Contractor

Subscribed and sworn before me in the State (or Commonwealth) of _____, this
_____ day of _____, 20____.

Notary Public

My Commission Expires

Lien and Claims Release

Rehabilitate Runway 9-27, Taxiways, & Apron
(Crack Seal, Seal Coat, & Remarkings)

Los Alamos County Airport
Los Alamos, New Mexico

AIP Project No. 3-35-0054-017-2021 (Design and Construction)

_____ (Contractor, Address) hereby certifies that the work for the above project has been completed in accordance with the Contract Documents, and that all previous progress payments received from the Owner on account of work performed under the Contract referred to has been applied by the undersigned to discharge in full all obligations of the undersigned incurred in connection with the work covered by prior requisitions for payment under said Contract and that all materials and equipment covered by the final requisition for payment are free and clear of all liens, claims, security interests and encumbrances. All persons, firms and partnerships who have furnished labor and/or material to date on said project have been paid.

Contractor

Subscribed and sworn before me in the State (or Commonwealth) of _____, this
_____ day of _____, 20_____.

Notary Public

My Commission Expires

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Certificate of Substantial Completion

Rehabilitate Runway 9-27, Taxiways, & Apron
(Crack Seal, Seal Coat, & Remarkings)

Los Alamos County Airport
Los Alamos, New Mexico

AIP Project No. 3-35-0054-017-2021 (Design and Construction)

Contract Date: _____

This Certificate of Substantial Completion applies to all Work under the Contract Documents and approved Change Orders for the Rehabilitate Runway 9-27, Taxiways, & Apron (Crack Seal, Seal Coat, & Remarkings) project completed by _____ (Contractor) for the County of Los Alamos.

The Work to which this Certificate applies has been inspected by authorized representatives of OWNER, CONTRACTOR, and ENGINEER, and that Work is hereby declared to be substantially complete in accordance with the Contract Documents _____ (Date).

A tentative list of items to be completed or corrected is attached hereto. This list may not be all-inclusive, and the failure to include an item in it does not alter the responsibility of CONTRACTOR to complete all the Work in accordance with the Contract Documents. The items in the tentative list shall be completed or corrected by the CONTRACTOR within thirty (30) calendar days of the above Date of Substantial Completion.

This certificate does not constitute an acceptance of Work not in accordance with the Contract Documents nor is it a release of CONTRACTOR's obligation to complete the Work in accordance with the Contract Documents.

Executed by ENGINEER _____

By: _____ Date: _____

Accepted by CONTRACTOR _____

By: _____ Date: _____

Accepted by OWNER _____

By: _____ Date: _____

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Certificate of Final Acceptance

Rehabilitate Runway 9-27, Taxiways, & Apron
(Crack Seal, Seal Coat, & Remarkings)

Los Alamos County Airport
Los Alamos, New Mexico

AIP Project No. 3-35-0054-017-2021 (Design and Construction)

Contract Date: _____

Contract Amount \$ _____

Final Construction Cost: \$ _____

This Certificate of Final Acceptance applies to all Work under the Contract Documents and approved Change Orders for the Rehabilitate Runway 9-27, Taxiways, & Apron (Crack Seal, Seal Coat, & Remarkings)

The Work to which this Certificate applies has been inspected by authorized representatives of OWNER, CONTRACTOR, and ENGINEER, and that Work is hereby accepted as complete on _____ (Date).

The following documents and information are attached to and made a part of this Certificate:

1. Warranty of Construction
2. Lien and Claims Release
3. Final DBE Accomplishments

This certificate does not constitute an acceptance of Work not in accordance with the Contract Documents nor is it a release of CONTRACTOR's obligation to complete the Work in accordance with the Contract Documents.

Executed by ENGINEER _____

By: _____ Date: _____

Accepted by CONTRACTOR _____

By: _____ Date: _____

Accepted by OWNER _____

By: _____ Date: _____

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