AGREEMENT FOR CONTRACTOR SERVICES

THIS AGREEMENT is made as of the ___ day of _____ in the year 2006, between **THE CITY OF LEESBURG**, a Florida Municipal Corporation, whose address is 501 West Meadow Street, Post Office Box 490630, Leesburg, Florida 34749-0630 (hereinafter referred to as the "CITY"), and **THE MIDDLESEX CORPORATION**, whose address is One Spectacle Pond Road, Littleton, Massachusetts 01460 (hereinafter referred to as the "CONTRACTOR").

NOW, THEREFORE, in consideration of the mutual benefits accruing to the parties to this Agreement, and for other good and valuable considerations, the parties agree as follows:

1. **Services.** The CONTRACTOR shall perform the following services: **SEE EXHIBIT "A,"** which is attached and incorporated by reference herein. Nothing herein shall limit the CITY'S right to obtain proposals or services from other contractors for similar projects. The services shall be performed for an estimated price of $479,412 (based on unit pricing from **EXHIBIT "A."** However, in no event shall the actual price for the services and materials provided herein exceed $500,000 unless the CITY has executed a written change order approving any increase in price.

2. **Labor and Materials.** All work will be done in a competent and workmanlike manner, using quality, new materials. CONTRACTOR shall guarantee all materials and workmanship furnished under this agreement for a period of one (1) year from completion.

3. **Insurance.** The CONTRACTOR will maintain throughout this Agreement the following insurance: **SEE EXHIBIT "A."**

A. The original of each such policy of insurance, or a complete duplicate, shall be delivered to CITY by CONTRACTOR prior to starting work, together with evidence that the premiums have been paid.

B. All required insurance shall be provided by insurers acceptable to the CITY with an A.M. Best rating of at least "A."

C. The CONTRACTOR shall require, and shall be responsible for assuring that any and all of its subcontractors secure and maintain such insurance that are required by law to be provided on behalf of their employees and others until the completion of that subcontractors work.

D. The required insurance shall be secured and maintained for not less than the limits required by the CITY, or as required by law, whichever is greater.

E. The required insurance shall not limit the liability of the CONTRACTOR. The

CITY does not represent these coverages or amounts to be adequate or sufficient to protect the CONTRACTOR'S interests or liabilities, but are merely required minimums.

F. All liability insurance, except professional liability, shall be written on an occurrence basis.

G. The CONTRACTOR waives its right of recovery against the CITY to the extent permitted by its insurance polices.

H. Insurance required of the CONTRACTOR, or any other insurance of the CONTRACTOR shall be considered primary, and insurance of the CITY, if any, shall be considered excess as applicable to any claims, which arise out of the agreement, contract or lease.

I. Except for workers' compensation and professional liability, the CONTRACTOR'S insurance policies shall be endorsed to name the CITY OF LEESBURG as additional insured to the extent of the agreement, contract or lease.

J. The Certificate(s) of Insurance shall designate the CITY as certificate holder as follows:

City of Leesburg
Attention: Mike Thornton, Purchasing Manager
P.O. Box 490630
Leesburg, Florida 34749-0630

K. The Certificate(s) of Insurance shall include a reference to the project and/or purchase order number.

L. The Certificate(s) of Insurance shall indicate that the CITY shall be notified at least thirty (30) days in advance of cancellation.

M. The Certificate(s) of Insurance shall include all deductibles and/or self-insurance retentions for each line of insurance coverage.

N. The CONTRACTOR, at the discretion of the Risk Manager for the CITY, shall provide information regarding the amount of claims payments or reserves chargeable to the aggregate amount of the CONTRACTOR' S liability coverage(s).

4. Indemnification. The CONTRACTOR agrees to make payment of all proper charges for labor required in the aforementioned work and CONTRACTOR shall indemnify CITY and hold it

harmless from and against any loss or damage, claim or cause of action, and any attorneys' fees and court costs, arising out of: any unpaid bills for labor, services or materials furnished to this project; any failure of performance of CONTRACTOR under this Contract; or the negligence of the CONTRACTOR in the performance of its duties under this Contract, or any act or omission on the part of the CONTRACTOR, his agents, employees, or servants. CONTRACTOR shall defend, indemnify, and save harmless the CITY or any of their officers, agents, or servants and each and every one of them against and from all claims, suits, and costs of every kind and description, including attorney's fees, and from all damages to which the CITY or any of their officers, agents, or servants may be put by reason of injury to the persons or property of others resulting from the performance of CONTRACTOR'S duties under this Contract, or through the negligence of the CONTRACTOR in the performance of its duties under this Contract, or through any act or omission on the part of the CONTRACTOR, his agents, employees, or servants.

If, however, this Agreement is a "construction contract" as defined in and encompassed by the provisions of Florida Statutes § 725.06, then the following shall apply in place of the aforementioned indemnification provision:

The CONTRACTOR shall indemnify the CITY and hold it, its officers, and its employees harmless from liabilities, losses, and costs, including, but not limited to, reasonable attorney's fees to the extent caused by the negligence, recklessness, or intentional wrongful conduct of the CONTRACTOR and persons employed or utilized by the CONTRACTOR in the performance of this Agreement. The liability of the CONTRACTOR shall, however, be limited to two million and 00/100 dollars ($2,000,000.00) per occurrence, and the obligation of the CONTRACTOR to indemnify the CITY shall be limited to acts, omissions, or defaults of the CONTRACTOR; any contractors, subcontractors, sub-subcontractors, materialmen, or agents or employees of any of them, providing labor, services or materials in connection with the project; and the CITY, its officers, agents and employees, provided however that the CONTRACTOR shall not be obligated to indemnify the CITY against losses arising from the gross negligence, or willful, wanton, or intentional misconduct of the CITY, its officers, agents and employees, or against statutory violations or punitive damages except to the extent caused by or resulting from the acts or omissions of the CONTRACTOR, or any contractors, subcontractors, sub-subcontractors, materialmen; or agents or employees of any of them, providing labor, services, or materials in connection with this Agreement.

5. **Codes, Laws, and Regulations**. CONTRACTOR will comply with all applicable codes, laws, regulations, standards, and ordinances in force during the term of this Agreement.

6. **Permits, Licenses, and Fees.** CONTRACTOR will obtain and pay for all permits and licenses required by law that are associated with the CONTRACTOR's performance of the Scope of Services.

7. **Access to Records**. CONTRACTOR will maintain accounting records, in accordance with generally accepted accounting principles and practices, to substantiate all invoiced amounts. Said

records will be available for examination by the CITY during CONTRACTOR's normal business hours. Said records will be maintained for a period of three (3) years after the date of the invoice.

8. **Contingent Fees Prohibited.** The CONTRACTOR warrants that he or she has not employed or retained any company or person, other than a bona fide employee working solely for the CONTRACTOR, to solicit or secure this Agreement and that he or she has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the CONTRACTOR any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. In the event of a breach of this provision, the CITY shall have the right to terminate this Agreement without further liability, and at its discretion, deduct from the contract price, or otherwise recover, the full amount of any such fee, commission, percentage, gift or consideration paid in breach of this Agreement.

9. **Payment.** The CITY shall compensate CONTRACTOR for services performed under this Agreement at a total price of $479,412. The cost of the services shall not exceed this amount unless the CITY has executed a written change order approving any increase in price. CITY shall compensate CONTRACTOR for their services consistent with the payment instructions and requirements provided in the General Conditions of the Invitation to Bid, LB-06-05. No other costs or services shall be billed to the CITY.

10. **Ownership of Documents.** All data, specifications, calculations, estimates, plans, drawings, construction documents, photographs, summaries, reports, memoranda, and other documents, instruments, information and material prepared or accumulated by the CONTRACTOR (or by such sub-consultants and specialty consultants) in rendering services hereunder shall be the sole property of the CITY who may have access to the reproducible copies at no additional cost other than printing. Provided, that the CONTRACTOR shall in no way be liable or legally responsible to anyone for the CITY's use of any such materials for another PROJECT, or following termination. All original documents shall be permanently kept on file at the office of the CONTRACTOR.

11. **Independent Contractor.** The CONTRACTOR agrees that he or she is an independent contractor and not an agent, joint venturer, or employee of the CITY, and nothing in this Agreement shall be construed to be inconsistent with this relationship or status. None of the benefits provided by the CITY to its employees, including but not limited to, workers' compensation insurance, unemployment insurance, or retirement benefits, are available from the CITY to the CONTRACTOR. CONTRACTOR will be responsible for paying its own Federal income tax and self-employment tax, or any other taxes applicable to the compensation paid under this Agreement. The CONTRACTOR shall be solely and entirely responsible for his or her acts during the performance of this Agreement.

12. **Assignment.** Neither party shall have the power to assign any of the duties or rights or any claim arising out of or related to the Agreement, whether arising in tort, contract, or otherwise, without

the written consent of the other party. These conditions and the entire Agreement are binding on the heirs, successors, and assigns of the parties hereto.

13. No Third Party Beneficiaries. This Agreement gives no rights or benefits to anyone other than the CONTRACTOR and the CITY.

14. Jurisdiction. The laws of the State of Florida shall govern the validity of this Agreement, its interpretation and performance, and any other claims related to it. In the event of any litigation arising under or construing this Agreement, venue shall lie only in Lake County, Florida.

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15. Term and Termination. The term of this Agreement shall be for a period of one (1) year from the date of execution. This Agreement may be renewed for two (2) additional one (1) year terms upon written agreement of the parties hereto. All or part of this Agreement may be terminated by the CITY for its convenience on fifteen (15) days written notice to the CONTRACTOR. In such event, the CONTRACTOR will be entitled to compensation for services competently performed up to the date of termination.

mutual

16. Nonappropriation. The CONTRACTOR understands and agrees that this Contract is subject to the availability of funds to the CITY to purchase the specified products/services. As used herein, a "nonappropriation" shall be defined as an occurrence wherein the CITY, in any fiscal period, does not allocate funds in its budget for the purchase of the specified products/services or other amounts owed pursuant to this Contract, from the source of funding which the CITY anticipates using to pay its obligations hereunder, and the CITY has no other funds, from sources other than ad valorem taxes, which it deems to be available to pay its obligations under this Contract. The CITY may terminate this Contract, with no further liability to the CONTRACTOR, effective the first day of a fiscal period provided that:

(a) a nonappropriation has occurred, and
(b) the CITY has provided the CONTRACTOR with written notice of termination not less than fifteen (15) days before the proposed termination date.

Upon the occurrence of such nonappropriation the CITY shall not be obligated for payment for any fiscal period for which funds have not been appropriated.

17. Contact Person. The primary contact person under this Agreement for the CONTRACTOR shall be Robert Pereira III. The primary contact person under this Agreement for the CITY shall be James Salter.

18. Approval of Personnel. The CITY reserves the right to approve the contact person and the persons actually performing the CONTRACTOR services on behalf of CONTRACTOR pursuant to this Agreement. If CITY, in its sole discretion, is dissatisfied with the contact person or the person or persons actually performing the services on behalf of CONTRACTOR pursuant to this Agreement, CITY may require CONTRACTOR assign a different person or persons be designated to be the contact person or to perform the CONTRACTOR services hereunder.

19. Disclosure of Conflict: The CONTRACTOR has an obligation to disclose to the CITY any situation that, while acting pursuant to this Agreement, would create a potential conflict of interest between the CONTRACTOR and his duties under this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the respective dates under each signature.

"CONTRACTOR"

THE MIDDLESEX CORPORATION

By: _____

Its: President
Vice

Date: 5-17-2006

"CITY"

THE CITY OF LEESBURG, FLORIDA

By: _____
Mayor / Commissioner

Attest: _____
City Clerk

APPROVED AS TO FORM:

Date: _____
CITY ATTORNEY

EXHIBIT "A"
SCOPE OF SERVICES

I. **Special Conditions**. The special conditions from the Invitation to Bid LB–06-05, which are located on pages 11–15 of the Invitation to Bid packet are incorporated by referenced herein.

II. **Technical Specifications**. The technical specifications from the Invitation Bid LB–06-05, which are located on pages 18–25 of the Invitation to Bid packet are incorporated by reference herein.

III. **Insurance and Indemnity**. The insurance and indemnity requirements from the Invitation to Bid LB–06-05, which are located on pages 26–29 of the Invitation to Bid packet are incorporated by reference herein.

IV. **General Conditions**. The general conditions from the Invitation to Bid LB–06-05, which are located on pages 48–70 of the Invitation to Bid packet are incorporated by reference herein.

V. **Miscellaneous Requirements**.

1. The contractor shall possess all the appropriate licenses, permits and tariffs required by various governmental agencies having jurisdiction over such services. A copy of all required licenses shall be submitted to the City upon request.

2. The City or its authorized representatives reserve the right to obtain all documentation deemed appropriate to verify the Contractor meeting all regulations and specification requirements.

3. Any damage to facilities, equipment or property, due to the incompetence or negligence of the Contractor's personnel, including subcontractors, that occurs, shall be the responsibility of the Contractor. The Contractor shall reimburse the owner of the damaged facility, equipment or property for any cost to repair damage, beyond reasonable wear, caused by the Contractor.

4. The Contractor agrees that it shall be held responsible for having theretofore examined the site, the location and/or route of all proposed work and for having satisfied itself as to the character of such location and./or route of surface and underground obstructions, the nature of the ground and water table conditions and all other physical characteristics of the job, in order that it may include in the prices which it proposes, all costs pertaining to the work and thereby provide for the satisfactory completion thereof, including the removal, relocation or replacement of any objects or obstructions which will be encountered in doing the proposed work.

Exhibit "A"

City of Leesburg Resurfacing

Base Bid:	Qty.	Unit	U/P	Total
Areas 1 & 2 Milling 0"-1.25"	32000	SY	$1.80	$57,600.00
Areas 1 & 2 Asphalt Paving	2200	TN	$98.25	$216,150.00
Project Administration	1	LS	$13,000.00	$13,000.00
Mobilization	1	LS	$7,000.00	$7,000.00
Bonds and Insurance	1	LS	$6,000.00	$6,000.00
Maint. Of Traffic	1	LS	$9,000.00	$9,000.00
Additional Streets:				
Griffin Rd. Milling	6180	SY	$1.80	$11,124.00
Griffin Rd. Asphalt Paving	433	TN	$98.25	$42,542.25
Griffin Rd. Proj. Admin.	1	LS	$2,348.40	$2,348.40
Griffin Rd. Mobilization	1	LS	$1,236.00	$1,236.00
Griffin Rd. Bonds and Ins.	1	LS	$1,050.60	$1,050.60
Griffin Rd. Maint. Of Traffic	1	LS	$1,606.80	$1,606.80
Lee Rd. Milling	9490	SY	$1.80	$17,082.00
Lee Rd. Asphalt Paving	665	TN	$98.25	$65,336.25
Lee Rd. Proj. Admin.	1	LS	$3,606.20	$3,606.20
Lee Rd. Proj.Mobilization	1	LS	$1,898.00	$1,898.00
Lee Rd. Bonds and Ins.	1	LS	$1,613.30	$1,613.30
Lee Rd. Maint. Of Traffic	1	LS	$2,467.40	$2,467.40
				$460,661.20