

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 **AMERISEAL OF OHIO, INC.**, whose address is 200 Wellar Drive, Smithville, Ohio 44677, (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 receipt and sufficiency of which is hereby acknowledged, 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 a price not to exceed \$150,000. The cost of the services shall not exceed this amount unless the CITY has executed a written change order approving any increase in price. Said price includes all labor, equipment and materials needed to complete the project as described herein.

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 policies.

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 it 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 it 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. CITY shall compensate CONTRACTOR for its services in accordance with **EXHIBIT "B"**, which is attached hereto and incorporated by reference. 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 it 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.

15. Term and Termination. CONTRACTOR shall commence work within 15 days of its receipt of the notice to proceed. All work to be provided under this Agreement shall be completed by December 1, 2006. 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.

16. Contact Person. The primary contact person under this Agreement for the CONTRACTOR shall be _____. The primary contact person under this Agreement for the CITY shall be Charlie Weller.

17. Approval of CONTRACTORS. 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.

18. 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.

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

"CITY"

THE CITY OF LEESBURG, FLORIDA

BY: _____

Mayor

Date: _____

Attest: _____

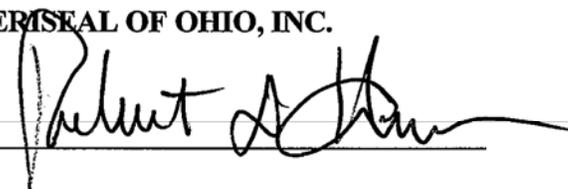
City Clerk

Approved as to form and content:

City Attorney

"CONTRACTOR"

AMERISEAL OF OHIO, INC.

BY:  _____

Date: 9-22-06

EXHIBIT "A"
SCOPE OF SERVICES

I. PROJECT OVERVIEW.

- A. PROJECT DESCRIPTION:** The project consists of applying a Thermoplastic Coal Tar Emulsion Slurry Seal Surface treatment to the City of Leesburg International Airport's Aircraft Apron and repainting of the pavement markings in the same pattern at they presently exist. The area of the apron is approximately 32,000 square yards and the area of pavement marking is approximately 7,300 square feet. The application of the Thermoplastic Coal Tar Emulsion Slurry Seal Surface will be done in accordance with FAA Engineering Brief 35.
- B. PAVEMENT PRECOATING:** The apron will be cleaned, cracks will be cleaned and filled, and prime seal will be applied on the total area of the apron will receive a prime seal of emulsion as specified in the FAA Engineering Brief 35. After the prime seal has dried, all areas of the apron where the surface has eroded ¼" or more in depth, will be covered with the "Type B" Thermoplastic Coal Tar Emulsion Slurry Seal to fill the eroded areas. The area of the eroded pavement is approximately 3,800 square yards.
- C. SURFACE APPLICATION:** After the preparation surfacing has dried, the entire apron will be resurfaced with "Type B" Slurry Seal according to the FAA Engineering Brief 35 specifications for the Thermoplastic Coal Tar Emulsion Slurry Seal.
- D. PAVEMENT MARKING:** There is approximately 4,000 Square feet of yellow paint to include Type I beads; 2,000 square feet of red paint with Type 1 beads and 1,300 square feet of pavement signs painted on the pavement in the manner and location as they exist now. The paint will be FAA approved Latex type paint, applied according to the manufactures specification and uniformly and evenly covering the surfacing.

II. SCOPE OF SERVICES.

A. THERMOPLASTIC COAL-TAR EMULSION SLURRY SEAL

1. DESCRIPTION

- 1.1 This item shall consist of an application of a thermoplastic coal-tar emulsion slurry seal, with mineral aggregate, applied on an existing, previously prepared asphalt or concrete surface in accordance with these specifications for the areas shown on the plans or as designated by the Engineer. The material is intended for use as a fuel resistant sealer which will improve the surface texture of the pavement.

2. MATERIALS

- 2.1 AGGREGATE. The aggregate shall consist of clean, hard durable, uncoated particles. Free from lumps of clay and all organic matters. The aggregates for Type A & B slurry shall be crushed natural stone which conforms to the gradations in Table I. When tested in accordance with ASTM C 136. And have a percentage of wear not more than 40 percent when tested in accordance with ASTM C 131.

Samples of aggregates shall be submitted by the Contractor prior to the start of production. During production, the sampling point intervals will be designated by the engineer. The samples will be the basis of approval from the standpoint of the quality requirements of the section.

TABLE I GRADATION OF AGGREGATE

Sieve Sizes	% by Weight Passing Sieves	
	Type A	Type B
No. 4	100	100
No. 8	80-90	100
No. 16 (1.18mm)	55-70	80-90
No. 30 (0.60mm)	35-60	40-60
No. 50 (0.30mm)	25-45	25-40
No. 100 (0.15mm)	15-25	10-20
No. 200 (0.075mm)	5-20	10-20

- 2.2 BITUMINOUS MATERIALS. The emulsion material shall be a thermoplastic coat tar emulsion made up of polymer resins and coal-tar conforming to the requirements of ASTM D3320. The thermoplastic emulsion shall be manufactured as a complete product which can be tested at the manufacturing plant. The water content of the emulsion shall not exceed $48\% \pm 1\%$ when tested in accordance with ASTM D244, paragraph 3. A dried film of emulsion shall contain a minimum of 89% of the combination of the polymerized coal-tar with the remaining percentage being inorganic filler. The dried emulsion shall have a softening point greater than 212 degrees F (100 degrees C) when tested in accordance with ASTM D36. A film of the dried emulsion material, eight (8) mils thick, shall stretch five (5) times its original length at 70 degrees F (21 degrees C) without breaking and recover 35% of this length in one minute. It shall be the responsibility of the contractor to submit to the engineer prior to production a data sheet with this information on the material to be used for placement of the Test Section for this project (Section 4 of this

specification). Date of the test and name of the certified laboratory is requested.

- 2.3 WATER. The water used in mixing shall be potable and free from harmful soluble salts. The temperature of the water added during mixing shall be at least 50 degrees F (10 degrees C). The ph of the water added during mixing shall conform to the requirements of the emulsion manufacturer.

3. COMPOSITION AND APPLICATION

- 3.1 COMPOSITION. The aggregate shall be mixed with the thermoplastic emulsion at the following rates of pounds of aggregate per gallon of emulsion.

Type A	Type B
21-23 lbs.	19-21 lbs.

- 3.2 JOB MIX FORMULA. The engineer shall specify the type and formula according to the desired result for the project. The Contractor shall submit the proportions of water, emulsion and aggregate proposed for use to the Engineer prior to the start of operations. A copy of the mix design and test data required by this specification shall be submitted to the Engineer for approval along with the above. No slurry seal shall be produced for payment until a job mix formula has been approved in writing by the Engineer.

A batch mix design shall be specified by the engineer based upon a 100-gallon thermoplastic coal-tar emulsion, the proposed amount of aggregate and water. This mix design shall meet the requirements of Section 3.1.

- 3.3 APPLICATION. The thermoplastic emulsion slurry seal shall be applied in one coat at a minimum application rate of 9-10 pounds of slurry for Type A; and 7 pounds of slurry for Type B; per square yard. The application rate submitted with the job mix formula shall be verified and/or adjusted during placement of the test section. The submitted application rate provided for in Section 3.2, will be as selected from Section 3.1 and translated to the equivalent rate measurable by gallons of slurry per square yard.

4. TEST SECTION

- 4.1 PLACEMENT. Prior to full production, the Contractor shall prepare a quantity of mixture sufficient to place a test section of approximately 250

square yards at the application rate specified in paragraph 3.3. The area to be tested will be designated by the Engineer and will be located on a representative section of the pavement to be treated. All equipment, emulsion storage tanks, etc. shall be calibrated prior to the placement of the test section. Calibration results will be provided to the Engineer and Resident Inspector prior to the full production. Refer to Section 5.2 (4) for more specific calibration instructions.

The test section should be used to verify the adequacy of the mixture and to determine the exact application rate. The same equipment and method of operations shall be used on the test section as will be used on the remainder of the work. If the test section should prove to be unsatisfactory, the necessary adjustment to the mix design, application rate, placement operations and equipment shall be made. Additional test sections shall be placed and evaluated if required. Full production shall not begin without the Engineer's approval. Acceptable test section(s) shall be paid for in accordance with the payment section 7.1.

5. CONSTRUCTION METHODS

- 5.1 WEATHER LIMITATIONS. The slurry seal shall be applied only when the surface is dry and the atmospheric and pavement temperature is above 50 degrees F (10 degrees C). It should not be applied when the humidity (rain, dew, etc.) or impending weather conditions will not allow proper curing.

The contractor is responsible for protecting all work during the project. Particular care should be taken during material cure time. Should weather be inclement, sound judgment should be used by the Contractor and his decision presented to the Engineer in the field.

Caution should be observed by the Contractor when the slurry is placed adjacent to buildings, structures or over objects where water can fall on the uncured slurry. The contractor will be responsible for any and all damage caused by his negligence to protect existing building, structures or other objects adjacent to work areas and shall repair damage to the Owner's satisfaction at no additional cost to the project.

- 5.2 EQUIPMENT AND TOOLS. Descriptive information on the mixing and applying equipment to be used, shall be submitted to the Engineer prior production. All methods employed in performing the work and are equipment, tools, and machinery used for handling materials and executing any part of the work shall be subject to the approval of the Engineer before

the work is started.

- (1) Slurry Machine. The slurry machine shall be a truck-mounted mobile mixing plant with a towed-type spreader box. It shall have an agitated storage tank for the emulsion and peristaltic pump or approved equal with variable rate of flow for the delivery of the emulsion to the mixing chamber. Slurry machine shall have a hopper for holding aggregate, supplying this material to the mixing chamber by a conveyor belt. The rate of aggregate delivery and emulsion shall be volumetrically controlled and set at a fixed position at the time of calibration.

The slurry machine shall be a continuous-flow mixing unit capable of delivering predetermined quantities of emulsion, aggregate and, if necessary, water to the mixing chamber and discharging the thoroughly mixed slurry to the pavement on a continuous basis. The slurry machine shall deliver the materials to a mixing chamber in a constant proportion in a manner not dependent on power plant or vehicle speed. The slurry machine shall be equipped with a water spray bar capable of fogging the pavement surface with up to 0.05 gallons of water per square yard.

- (2) Batch-Mixing Machine. The batch-mixing machine shall be a truck-mounted 500 to 1,000 gallon tank containing suitable driven mixing blades to combine predetermined quantities of thermoplastic emulsion, aggregate, and if necessary, water to create a homogeneous slurry.

It shall be equipped with a water tank and pump necessary to supply and be capable of delivering a constant volume of water to a spray bar. The spray bar shall be capable to fogging the pavement surface with up to 0.05 gallons of water per square yard.

- (3) Spreading Equipment. Attached to the mixing machine shall be a mechanical type squeegee distributor equipped with flexible material in contact with surface to prevent loss of slurry from the distributor. It shall be maintained to prevent loss of slurry and be adjustable to lay the slurry at the specified rate of application. Behind the device there shall be a wetted single ply burlap drag sized to drag the entire pass to six inches outside of the width of a pass on each side. A minimum of 12 inches of burlap shall remain uniformly in contact with the laid material for the entire length of the

burlap so that no “rowing occurs”. Where the pass will abut to previous laid slurry, a hand held burlap drag shall be applied to the adjoining surface to smooth out any excess material. The box shall be kept clean; dried slurry build-up on the box shall not be permitted.

- (4) Calibration. The Contractor shall furnish all equipment and materials and labor necessary to calibrate the equipment. It shall be calibrated to assure that it will produce and apply a mix that conforms to the job mix design. All calibrations shall be made with the approved job materials prior to applying the slurry seal to the pavement.

The Contractor may be required to obtain depth measurements on the slurry machine of the emulsion storage tank to verify the proper spread rate during the progress of the application. The field engineer will determine the frequency of these measurements.

- (5) Auxiliary Equipment. Other tools or equipment such as power brooms, power blowers, air compressors, hand brooms, hand squeegees, etc., shall be provided as required.

5.3 PREPARATION OF PAVEMENT. Prior to placing the slurry seal, unsatisfactory areas shall be repaired and the surface shall be cleaned of dust, dirt or other loose foreign matter. Any standard cleaning method will be acceptable except that water flushing will not be permitted in areas where considerable cracks are present in the pavement surface.

(a) Any painted stripes which are raised above the pavement surface greater than 1/16 inch when applying the Type C mix, 1/4 inch when applying the Type A & B mix, shall be ground to the level of the surrounding pavement before applying the slurry seal. All thermoplastic marking stripes shall be removed. The engineer shall make the determination of which lines shall be treated.

(b) Bituminous pavement surfaces which have been softened by petroleum derivatives or have failed due to any other cause shall be removed to full depth of the damage and replaced with new hot mix bituminous concrete, similar to that of the existing pavement or approved equal. Areas of the pavement surface to be treated shall be in a firm consolidated condition. They shall be sufficiently cured so that there is no concentration of oils on the surface. These areas shall be identified by the Engineer in the field and corrected to his satisfaction prior to slurry

application.

(c) Oil spots shall be treated by scraping off excess oil, heating with a torch, brushing loosened material away and primed with a solvent type polymeric primer.

(d) Where vegetation exists in cracks, such cracks shall be treated with a concentrated solution of herbicide, soil sterilant and pre-emergent approved by the Engineer. An effective kill shall be achieved prior to application of the slurry. Cracks shall be cleared free of all treated vegetation and loose material in an approved manner and shall be filled as stated in (e) below, depending on the size and treatment method.

(e) Cracks wider than 1/4 inch shall be blown free of all loose material using a power jet capable of delivering a minimum of 90 psi air to the crack to be cleaned then filled with a crack sealer which is compatible with the thermoplastic emulsion slurry seal. Prior to filling the cracks, a tack coat of thermoplastic emulsion shall be applied into the designated cracks. Cracks less than 1/4 inch will be filled when the slurry is applied.

(f) A minimum period of 30 days shall elapse between the placement of a bituminous surface course filler and the application of slurry.

(g) Line items shall be created on the bid document for items of preparation of the pavement.

5.4 APPLICATION OF TACK COAT. Following preparation of the pavement, a tack coat of thermoplastic emulsion diluted with 50% water, shall be applied at a minimum rate of 0.05 gallons per square yard, (prior to dilution) to the entire area to receive the slurry application.

5.5 APPLICATION OF SLURRY SEAL. The surface shall be pre-wet by fogging ahead of the spreader box. Water used in pre-wetting the surface shall be applied at such a rate that the entire surface is damp with no apparent flowing water in front of the spreader box. The slurry shall be of a desired consistency when deposited on the surface with no additional element added. A sufficient amount of slurry shall be carried in the spreader box at all times so that even distribution is obtained. No clumped or unmixed aggregate shall be permitted. No segregation of the emulsion and aggregate will be permitted. If this occurs the applied slurry will be removed from the pavement surface and reapplied in accordance with these specifications.

Hand squeegees may be used in areas which are inaccessible to the machine. The Contractor shall follow the Manufacturers recommendations regarding application by spraying or squeegee method.

Upon completion of the work, the slurry shall have covered the surface evenly with no bare spots. There should be no excessive buildup or unsightly appearance or longitudinal transverse joints.

- 5.6 CURING. The slurry shall be permitted to dry a minimum of 24 hours before opening to traffic and shall be sufficiently cured to drive over without damage to the slurry seal. Any damage to the uncured slurry due to Contractor negligence will be the responsibility of the Contractor to repair at no additional cost to the Contract.
- 5.7 HANDLING. The slurry shall be continuously agitated from the initial mixing until its application on the pavement surface during continuous operation. The application machine, pumps and all tools shall be maintained in satisfactory working condition. The emulsion shall be mixed thoroughly prior to being put in the application machine. Settlement of the emulsion prior to being made in to a slurry shall not be permitted.
- 5.8 FINAL CLEANUP. The Contractor shall be responsible for cleaning up the application area and the staging area by removing all barricades, tools, excess aggregate, distressed materials, etc.
- 5.9 CONTRACTOR'S CERTIFICATION. The Contractor shall furnish the manufacturer's certification that each consignment of thermoplastic emulsion shipped to the project meets the requirements of paragraph 2.2. The Contractor shall submit a certification that the emulsion proposed, has been in field use for a minimum of three years. The Contractor shall furnish a certification demonstrating his experience in the application of the thermoplastic coal-tar emulsion slurry seal for a minimum of two (2) years.
- 5.10 INSPECTION. The Contractor shall have an independent technical consultant on the job site at the beginning of operations. The consultant shall have knowledge of the materials, procedures and equipment described in this specification and shall assist the Contractor with proper mixing of the component materials and application of slurry.
- 5.11 MANUFACTURER WARRANTIES. Any manufacturer warranties applicable to the material applied on this project shall be delivered to the Owner upon receipt of a fully executed Certificate after completion of the application and full payment for the contract.

6. METHOD OF MEASUREMENT

6.1 MEASUREMENT. The thermoplastic coal-tar emulsion slurry seal, repairs, and tack coat shall be measured by the square yard of area indicated on the contract drawings. The crack sealing will be measured by the linear foot as applied.

7. BASIS OF PAYMENT

7.1 PAYMENT. Payment shall be made at the contract unit price per square yard for the slurry seal. These prices shall fully compensate the Contractor for furnishing all materials and for all labor, equipment, tools, and incidentals necessary to complete the items including the job mix design and data sheets stipulated in these specifications. Payment *for* crack cleaning and sealing shall be made on a linear foot basis to compensate the Contractor for furnishing all materials; and for all labor, equipment, tools, and incidentals necessary according to these specifications.

Payment will be made under:

Item 8.1 Slurry Seal – Per square yard

Item 8.2 Surface preparation and Tack coat - Per square yard

Item 8.3 Paint Removal - Per linear foot

Item 8.4 Crack preparation and seal - Per linear foot

8. TESTING REQUIREMENTS

ASTM C131 LA Abrasion test

ASTM C136 Sieve or Screen Analysis of Aggregate

ASTM D244 Water content

ASTM D3320 Pitch, Coal-Tar Emulsion (Coating for Bituminous Pavements)

ASTM D36 Dried Emulsion Softening

III. GENERAL CONDITIONS.

Article 1. Definitions

The following definitions shall apply:

Whenever the following terms (or pronouns in place of them) are used in the Contract Documents, the intent and meaning of such terms shall be interpreted as follows:

(a) Owner: The City of Leesburg.

(b) Project Representative: There shall be authorized representative(s) of the Owner assigned to make all necessary inspections of the work performed by the Contractor and for such other purposes as outlined in the Contract Documents.

(c) The masculine pronoun shall include the feminine and neuter and the singular shall include the plural.

(d) The word "and" shall also mean "or" and the word "or" shall also mean "and" whenever the contents or purpose so requires.

(e) The word "Person" shall mean and include any individual, partnership, society, association, joint stock company, corporation, estate, receiver, trustee, assignee, referee or capacity; whether appointed by a court or otherwise, and any combination of individuals.

(f) Contractor: The person whose Bid shall be accepted by the City and who shall thereafter enter into a formal contract with the City to do the work as bid upon.

(g) Engineer: Charlie Weller, Airport Manager

(h) Notice to Proceed: The official letter from the Owner to the Contractor notifying him that the executed contract has been accepted and to proceed with the construction.

(i) Delivery: Written notice shall be deemed to have been duly served, if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or if delivered at or sent by registered mail to the business address shown in the contract.

(j) Subcontractor: Includes only those having a direct contract with the Contractor and it includes one who furnished material worked to a special design according to the plans or specifications of this work, but does not include one who merely furnishes material not so worked.

(k) Work--The entire completed construction or the various separately identifiable parts thereof required to be furnished under the Contract Documents. Work is the result of performing services, furnishing labor and furnishing and incorporating materials and equipment into the construction, all as required by the Contract Documents.

(l) Manual(s): Not applicable.

(m) Surety: The corporate body which is bound with and for the contractor which is primarily liable and which guarantees the faithful performance of the bid and/or agreement.

(n) Addenda: Written or graphic instruments issued by the Owner prior to the contract which modify or interpret the contract documents by additions, deletions, clarifications or corrections.

(o) Plans, Drawings And /Or Sketches: Graphic representations of the work to be performed or reproductions thereof.

(p) Specifications: Broadly defined, the specifications include all data bound together herein or referenced on the plans, including, but not limited to, General Conditions, Technical Specifications, Special Conditions, Geotechnical Investigation, Supplementary Conditions (if any), other detailed technical specifications, exhibits and all addenda.

(q) Defective--An adjective which when modifying the word Work refers to Work that is unsatisfactory, faulty or deficient, or does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test or approval referred to in the Contract Documents, or has been damaged prior to ENGINEER's recommendation of final payment (unless responsibility for the protection thereof has been assumed by OWNER at Substantial Completion in accordance with Article 67 or OWNER has taken beneficial use in accordance with Article 36).

(r) Resident Project Representative (Project Representative)--The authorized representative of ENGINEER who is assigned to the site or any part thereof.

(s) Shop Drawings--All drawings, diagrams, illustrations, schedules and other data which are specifically prepared by or for CONTRACTOR to illustrate some portion of the Work and all illustrations, brochures, standard schedules, performance charts, instructions, diagrams and other information prepared by a Supplier and submitted by CONTRACTOR to illustrate material or equipment for some portion of the Work.

(t) Substantial Completion--The Work (or a specified part thereof) has progressed to the point where, in the opinion of ENGINEER as evidenced by ENGINEER's definitive certificate of Substantial Completion, it is sufficiently complete, in accordance with the Contract Documents, so that the Work (or specified part) can be utilized for the purposes for which it is intended; or if there be no such certificate issued, when final payment is due in accordance with Article 39. The terms "substantially complete" and "substantially completed" as applied to any Work refer to Substantial Completion thereof.

(u) Underground Facilities--All pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels or other such facilities or attachments, and any encasements containing such facilities which have been installed underground to furnish any of the following services or materials: electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, sewage and drainage removal, traffic or other control systems or water.

Article 2. Inspection Of Work

The Project Representative and his representatives shall, at all times, have access to the work whenever it is in preparation or progress and the Contractor shall provide proper facilities for such access and for inspection. The work will be conducted under the general direction of the Project Representative of the Owner and is subject to inspection by his appointed inspectors to insure compliance with the terms of the

contract. No inspector is authorized to change any provisions of the specifications without written authorization of the Owner, nor shall the presence or absence of an inspector relieve the Contractor from any requirements of the contract.

If the specifications, the Project Representative's instructions, laws, ordinances or any public authority require any work to be specifically tested or approved, the Contractor shall give the Owner timely notice of its readiness for inspection, and if the inspection is by another authority than the Project Representative, of the date fixed for such inspection. Inspections by the Project Representative will be promptly made, and where practicable at the source of supply. If any work should be covered up without approval or consent of the Owner, it shall, if required by the Project Representative, be uncovered for examination at the Contractor's expense.

Re-examination of questioned work may be ordered by the Project Representative and, if so ordered, the work shall be uncovered by the Contractor. If such work is found in accordance with the contract documents, the Owner will pay the cost of re-examination and replacement. If such work is found not in accordance with the contract documents, the Contractor shall pay such cost.

The duties and responsibilities of the resident project representative are described in Part 5.

Article 3. Tests

The Project Representative will have the right to require all materials to be submitted to test prior to incorporation in the work. In some instances, it may be expedient to make these tests at the source of supply and for this reason it is requested that the Contractor furnish the source before incorporating material in the work. This does not in any way obligate the Project Representative to perform tests for acceptance of material and does not relieve the Contractor of his responsibility to furnish satisfactory material. The Contractor shall furnish two copies of manufacturer's certificate of compliance with these specifications covering manufactured items incorporated in the work.

All field tests for compaction of earthwork and of material incorporated in the sub grade and base will be performed by technicians of a materials testing laboratory approved by the Owner. All tests performed by the laboratory to ascertain that the material, as placed, meets the required specification will be at the expense of the Contractor and should be included in the bid items as such.

Article 4. Tools, Plant And Equipment

If any time before the commencement or during the progress of the work, tools, plant or equipment appear to the Project Representative to be insufficient, inefficient or inappropriate to secure the quality of work required, or the proper rate of progress, the Project Representative will notify the Owner of such conditions. The ENGINEER will provide written notification to the CONTRACTOR of OWNER's quality and/or schedule concerns. The CONTRACTOR will respond in writing within 5 business days of receiving the OWNER's notice and will propose remedial actions to address the quality and/or schedule concerns.

Article 5. Collection And Disposal Of Waste

The Contractor shall collect waste from construction areas and elsewhere; handle hazardous, dangerous, or unsanitary waste materials separately from other waste by containerizing properly; dispose of material in a lawful manner. The Contractor shall be responsible for the transportation and disposal costs of all waste construction materials.

Article 6. Burning Of Debris

For any areas where the burning of debris is permitted, the Contractor will be required to request a permit therefore, from the fire authority having jurisdiction in the area in due advance time, and if such permission is granted he shall rigidly abide by all provisions and requirements of such permit. In no case will burning be permitted until the fire authorities have adequately checked the size of the pile to be burned, the weather conditions and any other factors which might affect the proper control of the burning operation.

Article 7. Maintenance Of Traffic

Where construction is located in public right of ways, traveled streets and roads, the Contractor shall exercise extreme care in seeing that sufficient area is provided and kept open for police, fire, ambulance, mail and private vehicular traffic.

The Contractor shall ensure that each person supervising the selection, placement and maintenance of Traffic Control Devices in the FDOT Work Zone shall be certified by attending an FDOT approved MOT training course. A copy of these certifications shall be submitted to the City of Leesburg upon request.

Article 8. Protection Against Pollution

The Contractor shall comply with all legal regulations pertaining to pollution as are applicable to the site and he shall take all measures necessary to assure that no pollution, temporary or permanent, occurs to any lakes or other water areas as a result of runoff from the areas within which he is working.

This shall include the installation of temporary construction turbidity screens or hay bales along the edge of existing wetlands prior to the start of construction. These areas shall be as shown on the plans.

Contractor shall maintain the fuel storage area in accordance with local, state and federal regulations. Refueling vehicles and refueling techniques shall also comply with all applicable regulations. Clean-up of the fuel storage area shall be as required by the regulations and in accordance with these regulations.

Article 9. Temporary Fencing And Barricades

The Contractor shall at his cost erect barricades sufficient to prevent injury to persons or damage to property, including the Contractor's personal property and materials. The Owner shall not be held responsible for the loss, theft, or vandalism of the Contractor's equipment or other personal property, including construction materials and supplies. Fences shall be constructed to prevent entry of unauthorized persons; cover trenches and holes when not in use; erect barriers at sharp changes in plane more than four (4) feet high. Should construction operations temporarily obstruct road passage, the Contractor shall at his cost provide suitable flagmen to control vehicular traffic on the road. Permits to use construction equipment on Florida Department of Transportation Right-of-Way shall be secured by the Contractor prior to actual

beginning of work. The Contractor shall, at his cost, remove all temporary protection from the work site upon completion of the work.

Article 10. Workmanship, Materials, Appliances, Employees

All work will be done in a competent and workmanlike manner. All materials, equipment and supplies furnished by the Contractor for permanent incorporation in the work shall be new and of quality standards specified. Workmanship shall be first class and the finished product equal to the best-accepted standards of the trade for the category of work performed. It is the Owner's intent to obtain a high quality job that will operate and function with least maintenance costs. The Contractor shall, if requested by Owner, furnish satisfactory evidence as to the kind and quality of materials.

Unless otherwise stipulated, the Contractor shall provide and pay for all materials, labor, water, tools, equipment, light, power, transportation and other facilities necessary for the execution and completion of the work.

The Contractor shall, at all times, enforce strict discipline and good order among his employees and shall not employ on the work any unfit person or anyone not skilled in the work assigned to him.

Neither party shall employ or hire any employees of the other party without his consent.

Article 11. General Quality And Standards

To facilitate rapid examination, detailed specifications concerning basic requirements for labor, materials, equipment and/or incidentals to be used on the project are included under the various divisions in as brief a form as is consistent with clarity. The primary concern of the detailed specifications is for standards of performance expected for the finished work.

When in the detailed specifications reference is made to a particular code or specification, the latest edition of said code or specification shall apply.

The interests of the Owner, the Contractor and others concerned with the work require the inclusion of certain general governing requirements and standards, as a precaution against contingency and to provide for the conditions under which the construction and the administration of the work will be carried out.

General requirements for the quality of the work, when not otherwise covered in more specific detail in the specifications, will be governed by acceptable standards of the trade.

These specifications consider the project as a whole and assume it's completion under a general contract. Further, the scope of subcontracts and the quantities of materials and labor supplied to the Contractor by others are assumed to be matters governed by agreement between the Contractor and his Subcontractors and suppliers and not by agreement between the Owner and any Subcontractor or suppliers.

Various sections of the construction specifications are intended to govern only the quality of work and/or materials incidental to the particular branch of work mentioned in the section title. Sections are not intended as itemizations of the work materials to be furnished or to limit or define the scope of any subcontract or

agreement to furnish material and labor.

The furnishing of all items of material, labor, equipment and/or incidentals necessary to the completion of the work as a whole will be expected when such items are called for on the drawings by diagram, note or schedule, are listed in the specifications, or are reasonably inferred by either or a combination of both.

During the construction operations under this contract, the Owner may elect to contract other work for the project. The Contractor shall coordinate his operations with those of any other such Contractors as well as any work of constructing or adjusting utilities by any other authorities, to the end that the least practical handicap to the work of all such Contractors or authorities will result.

Article 12. Project Coordination

The Contractor shall coordinate construction operations that are dependent upon each other for proper installation, connection and operation. The Contractor shall make adequate provisions to accommodate items scheduled for later installation.

The Contractor shall inspect both the substrate and conditions under which the work is to be performed. The Contractor shall not proceed until unsatisfactory conditions have been corrected in an acceptable manner.

The Contractor shall inspect materials or equipment immediately upon delivery and again prior to installation. The Contractor shall reject damaged and defective items.

The Contractor shall supervise construction activities to ensure that no part of the construction is subject to deleterious exposure during the construction period. Where applicable, such exposures include, but are not limited to, the following:

- Unprotected storage
- Improper shipping and handling
- Theft
- Vandalism

Article 13. Coordination With Utility Companies

Contractor shall coordinate with all utility installations. Contractor shall notify the appropriate utility companies, in writing, adequately in advance of the time frame set aside for such utility installation. The utility companies referred to herein shall include, but not be limited to, Power, Gas, Telephone, Cable Television. Contractor shall coordinate the installation of "sleeves" for the utility companies as may be required.

Contractor shall supply the Owner with copies of all correspondence notifying the utility companies of his intended schedule of construction and the expected date for their respective utility installations. Written notices shall be sent to the utility companies at sixty (60) days, thirty (30) days and two (2) weeks prior to the time at which the utility installation should begin.

Article 14. Supervision

CONTRACTOR shall supervise and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. CONTRACTOR shall be solely responsible for the means, methods, techniques, sequences and procedures of construction. CONTRACTOR shall be responsible to see that the finished Work complies accurately with the Contract Documents.

If the Contractor, in the course of the work, finds any discrepancy between the drawings and the physical conditions of the locality, or any errors or omissions in the drawing or in layout as given by points and instructions, it shall be his duty to immediately inform the Project Representative, in writing, and the Project Representative will promptly verify the same. Any work done after such discovery, until authorized, will be done at the Contractor's risk.

Article 15. Construction Superintendent

Contractor shall employ a Construction Superintendent who shall be present on-site or available throughout the duration of the project and shall remain associated with the project until completion unless otherwise requested to be replaced by the Owner. The superintendent shall be experienced in the work required and perform all coordination activities generally conducted by project superintendents including, but not limited to, subcontractor coordination, utility installations, inspections, testing, material deliveries, etc. The superintendent shall be present at the pre-construction meeting and shall remain on the project until completion. The owner reserves the right to request a resume of experience for the superintendent including, but not limited to, requesting references from recent projects. Substitution of superintendents after the start of the work shall be approved by the owner in advance. All communications given to the superintendent shall be as binding as if given to CONTRACTOR.

Article 16. Minimum Wage Rates

Wage rates for all workers shall be in conformance with all applicable federal, state and local laws.

Article 17. Subcontracts

The Contractor shall, as soon as practicable after signing the contract, notify the Project Representative in writing of any changes in the names of subcontractors proposed for the work as listed on the bid form. The Contractor shall not employ subcontractors, unless they are approved by the Project Representative.

The Contractor agrees that he is as fully responsible to the Owner for the acts and omissions of his subcontractors and of persons, either directly or indirectly, employed by them, as he is for the acts and omissions of persons directly employed by him.

Nothing contained in the contract documents shall create any contractual relation between any subcontractors and the Owner.

Article 18. Pre-Construction Meeting

The Owner shall schedule a meeting after the Notice of Award. The Project Representative, Engineer, and Contractor shall attend this mandatory meeting.

The following items shall be completed:

- (a) Submission of list of Subcontractors, Schedule of Values and Progress Schedule.
- (b) Designation of Personnel representing the parties in Contract, and the Engineer.
- (c) Use of premises by Owner and the Contractor.
- (d) Survey layout and scheduling.
- (e) Security and housekeeping procedures.
- (f) Requirements for start-up of equipment.
- (g) Inspection and acceptance of equipment put into service during construction period.

At least ten days before submission of the first Application for Payment a conference attended by CONTRACTOR, ENGINEER and others as appropriate will be held to finalize the schedules submitted by CONTRACTOR. The finalized progress schedule will be acceptable to ENGINEER as providing an orderly progression of the Work to completion within the Contract Time, but such acceptance will neither impose on ENGINEER responsibility for the progress or scheduling of the Work nor relieve CONTRACTOR from full responsibility thereto. The finalized schedule of Shop Drawing submissions will be acceptable to ENGINEER as providing a workable arrangement for processing the submissions. The finalized schedule of values will be acceptable to ENGINEER as to form and substance.

Article 19. Order Of Completion

The Contractor shall submit at such times as may be requested by the Project Representative, schedules which shall show the order in which the Contractor proposes to carry on the work with dates on which the Contractor will start the several parts of the work and estimated dates of completion of the several parts. The Owner retains the right to dictate to the Contractor the order of completion of the work.

Article 20. Materials And Equipment Schedules

As soon as practicable and within ten (10) days after the date of award of contract and before any material or equipment is purchased, the Contractor will submit to the Owner for approval a complete list, in triplicate, of materials to be incorporated in the work and samples of each listed material. The list shall include catalog numbers, cuts, diagrams, drawings and such other descriptive data as may be required. No consideration will be given to partial lists submitted from time to time. Approval of materials will be based on manufacturers' published ratings. Any materials listed that are not in accordance with the specification requirements may be rejected.

When one or more manufacturer's items are specified, it shall be understood that the item(s) so specified are hereby approved as to suitability and no substitutions will be permitted unless followed by such qualifying phrases as equal "approval equal" or "as approved" in which case the approval of the Owner for items not specified shall be obtained before they may be used.

Article 21. Submittal Requirements Of Contractor

After checking and verifying all field measurements and after complying with applicable procedures specified in the General Requirements, CONTRACTOR shall submit to ENGINEER for review in accordance with the accepted schedule of Shop Drawing submissions, or for other appropriate action if so indicated in the

Special Conditions, five copies (unless otherwise specified in the General Requirements) of all Shop Drawings, which will bear a stamp or specific written indication that CONTRACTOR has satisfied CONTRACTOR's responsibilities under the Contract Documents with respect to the review of the submission. All submissions will be identified as ENGINEER may require. The data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials and similar data to enable ENGINEER to review the information as required.

CONTRACTOR shall also submit to ENGINEER for review with such promptness as to cause no delay in Work, all samples required by the Contract Documents. All samples will have been checked by and accompanied by a specific written indication that CONTRACTOR has satisfied CONTRACTOR's responsibilities under the Contract Documents with respect to the review of the submission and will be identified clearly as to material, Supplier, pertinent data such as catalog numbers and the use for which intended.

Before submission of each Shop Drawing or sample CONTRACTOR shall have determined and verified all quantities, dimensions, specified performance criteria, installation requirements, materials, catalog numbers and similar data with respect thereto and reviewed or coordinated each Shop Drawing or sample with other Shop Drawings and samples and with the requirements of the Work and the Contract Documents.

At the time of each submission, CONTRACTOR shall give ENGINEER specific written notice of each variation that the Shop Drawings or samples may have from the requirements of the Contract Documents, and in addition, shall cause a specific notation to be made on each Shop Drawing submitted to ENGINEER for review of each such variation.

ENGINEER will review with reasonable promptness Shop Drawings and samples, but ENGINEER's review will be only for conformance with the design concept of the Project and for compliance with the information given in the Contract Documents and shall not extend to means, methods, techniques, sequences or procedures of construction (except where a specific means, method, technique, sequence or procedure of construction is indicated in or required by the Contract Documents) or to safety precautions or programs incident thereto. The review of a separate item as such will not indicate review of the assembly in which the item functions. CONTRACTOR shall make corrections required by ENGINEER, and shall return the required number of corrected copies of Shop Drawings and submit as required new samples for review. CONTRACTOR shall direct specific attention in writing to revisions other than the corrections called for by ENGINEER on previous submittals.

ENGINEER's review of Shop Drawings or samples shall not relieve CONTRACTOR from responsibility for any variation from the requirements of the Contract Documents unless CONTRACTOR has in writing called ENGINEER's attention to each such variation at the time of submission as required by this Article and ENGINEER has given written review each such variation by a specific written notation thereof incorporated in or accompanying the Shop Drawing or sample review; nor will any review by ENGINEER relieve CONTRACTOR from responsibility for errors or omissions in the Shop Drawings or from responsibility for having complied with the provisions herein.

Where a Shop Drawing or sample is required by the Specifications, any related Work performed prior to

ENGINEER's review of the pertinent submission will be the sole expense and responsibility of CONTRACTOR.

Article 22. Changes In The Work

The Owner, without invalidating the Contract, may order extra work or make changes by altering, adding to, or deducting from the work. The Contract can be adjusted accordingly. All such work shall be executed under the conditions of the original Contract except that any claim for extension of time caused thereby will be adjusted at the time of ordering such change.

In giving instructions, the Project Representative shall have authority to make minor changes in the work, not involving extra cost, and not inconsistent with the purpose of the work, but otherwise, except in an emergency endangering the life or property, no extra work or change will be made unless both parties have agreed to such changes in a written Change Order executed by or on behalf of both parties to this Contract. Owner will not be obligated to pay for work done or materials furnished which are not part of the Contract Documents, unless there is a written Change Order authorizing such additional work or materials.

The value of any such extra work or change shall be determined in one or more of the following ways:

- (a) By estimate and acceptance in a lump sum.
- (b) By unit, prices named in the Contract or subsequently agreed upon.
- (c) By cost and percentage or by cost and a fixed fee.

If none of the above methods is agreed upon, the Contractor, provided he receives an order as above, shall proceed with the work. In such case and also under case (c) he shall keep and present in such form as the Project Representative may direct a correct account of the net cost of labor and materials, together with vouchers. In any case, the Project Representative will certify the amount, including reasonable allowances for overhead and profit, due to the Contractor. Pending final determination of value, payments because of changes shall be made on the Project Representative's estimate.

Article 23. Detail Drawings And Instructions

The Owner will furnish, with reasonable promptness, additional instructions by means of drawings or otherwise, necessary for the proper execution of the work. All such drawings and instructions will be consistent with the contract documents, true developments thereof and reasonably inferable therefrom.

Article 24. Contract Drawings, Plans And Specifications

Four (4) sets of contract drawings, plans and specifications will be furnished to the Contractor without charge. Additional copies that may be needed by the Contractor will be furnished at the cost of \$50.00 per set (drawings and specifications). One complete set of Plans and Specifications shall be kept on the site by the Contractor and shall be accessible to the Project Representative or his representative at all times. Work shall conform to the applicable Contract Drawings, all of which form a part of these Contract Specifications and are available at the Purchasing Department, Leesburg, Florida.

Article 25. Ownership Of Drawings

All drawings, specifications and copies thereof furnished by the Owner are the property of the Owner. They are not to be used on other work and, with the exception of the signed contract set, are to be returned to the Owner, at the request of the Owner upon the completion of the work.

Article 26. Surveys, Permits And Regulations

The Owner will furnish horizontal and vertical control necessary to layout the work in an orderly and workmanlike manner.

Horizontal Control furnished by the Owner shall consist of adequately marked property corners or offset corners, with dimensions as shown on the drawings. Vertical Control will consist of benchmarks established within the immediate area of the work.

It shall be the responsibility of the Contractor to furnish all construction layout of the work, including, but not limited to, layout and elevations for the construction and final grade of the site.

The Contractor shall maintain and preserve all stakes and marks established by the Owner and should such stakes or marks be carelessly or willfully destroyed or damaged by the Contractor, said stakes or marks shall be replaced by the Owner at the expense of the Contractor.

The Contractor will set the horizontal and vertical control only at the beginning of the job as specified above. Interim staking during the job and all staking and layout work not furnished by the Owner as specified above shall be the responsibility of the Contractor.

The Owner will furnish all personnel and equipment and materials to make such surveys as are necessary to determine the quantities of work performed.

The Owner will furnish environmental permits unless otherwise specified. The Contractor shall obtain any and all required permits from all appropriate government agencies, other than the permit required from FDEP, and SJRWMD which has already been secured by the Owner.

Work permits and licenses necessary for the prosecution of the work shall be secured and paid for by the Contractor. Easements for permanent structures or permanent changes in existing facilities will be secured and paid for by the Owner unless otherwise specified. The Contractor shall give all notices and comply with all laws, ordinances, rules and regulations bearing on the conduct of the work as drawn and specified. If the Contractor observes that the drawings and specifications are at variance therewith, he shall promptly notify the Owner in writing and any necessary changes shall be adjusted as provided in the contract for changes in the work. If the Contractor performs work knowing it to be contrary to such laws, ordinances, rules and regulations and without such notice to the Owner, he shall bear all cost arising there from.

Article 27. Royalties And Patents

There may be a design, device, material or process included in these plans and specifications which may be covered by letters, patent or copyright. Prior to use of any design, device, material or process, or its incorporation into the construction, the Contractor shall secure indemnity from his subcontractors or material

suppliers that will protect and save harmless the Owner from all loss on account thereof.

The Contractor shall pay all royalties and license fees. He shall defend all suits or claims for infringement of any patent rights and shall save the Owner harmless from loss on account thereof, except that the Owner shall be responsible for all such loss when a particular process or the product of a particular manufacturer or manufacturers is specified, but if the Contractor has information that the process or article specified is an infringement of a patent, he shall be responsible for such loss unless he promptly gives such information to the Owner.

Article 28. Protection Of Work And Property

The Contractor shall continuously maintain adequate protection of all his work from damage and shall protect the Owner's property from injury or loss arising in connection with this contract. The Contractor shall at all times protect all public and privately owned property, structures, utilities, and work of any kind against damage or interruption of service which may result from the operations of the Contractor. Damage or interruption to service resulting from failure to do so shall be repaired or restored by or at the expense of the Contractor except such as may be directly due to errors in the contract documents or caused by the agents or employees of the Owner.

Article 29. Deductions For Uncorrected Work

If the Project Representative deems it inexpedient to correct work injured or done, not in accordance with the contract, an equitable deduction from the contract price will be made therefore.

Article 30. Delays And Extension Of Time

If the Contractor be delayed at any time, in the progress of the work by an act of neglect of the Owner or of his employees, or by any other contractor employed by the Owner or by Changes ordered in the work or by strikes, lockouts, fire, unusual delay in transportation, unavoidable casualties or any causes beyond the Contractor's control, or by delay authorized by the Project Representative, or by any cause which the Project Representative may decide to justify the delay, then the time of completion will be extended for any such reasonable time as the Project Representative may decide.

No such extension will be made for delay occurring more than seven (7) days before claim therefore is made in writing to the Owner. In the case of a continuing cause or delay, only one claim is necessary.

If no schedule or agreement stating the dates upon which drawings shall be furnished is made, then no claim for delay will be allowed on account of failure to furnish drawings until two weeks after demand for such drawings and not then unless such claims be reasonable.

Article 31. Correction Of Work Before Final Payments

The Contractor shall promptly remove from the premises all materials condemned by the Project Representative as failing to conform to the contract, whether incorporated in the work or not, and the Contractor shall promptly replace and re-execute his own work in accordance with the contract and without expense to the Owner and shall bear the expense of making good all work of other contractors destroyed or damaged by such removal or replacement.

If the Contractor does not correct such condemned work and material within a reasonable time fixed by written notice, the Owner may correct it at the expense of the Contractor. If the Contractor does not pay the expense of such correction within three (3) days thereafter, the Owner may, upon three (3) days written notice, deduct all the cost and expenses that should have been borne by the Contractor.

The Owner's Right To Do Work

If the Contractor should neglect to prosecute the work properly or fail to perform any provision of this contract, the Owner after three (3) days written notice to the Contractor, may, without prejudice to any other remedy he may have, make good such deficiencies at the Contractor's expense.

Article 32. Suspension Of Work

The Owner may at any time suspend the work, or any part thereof by giving five (5) days notice to the Contractor in writing. The work shall be resumed by the Contractor within ten (10) days after the date fixed in a written notice to resume work from the Owner to the Contractor. The Owner will reimburse the Contractor for expense incurred by the Contractor in connection with the work under this contract as a result of such suspension unless the suspension was recommended to the Owner by the Project Representative to enforce the contract or for any violation of the contract.

Article 33. The Owner's Right To Terminate Contract

If the Contractor should be adjudged a bankrupt, or if he should make a general assignment for the benefit of his creditors, or if a receiver should be appointed on account of his insolvency, or if he should persistently or repeatedly refuse or should fail, except in cases of which extension of time is provided, to supply enough properly skilled workmen or proper materials, or if he should fail to make prompt payment to subcontractors or for material or labor, or persistently disregard laws, ordinances or the instructions of the Project Representative, or otherwise be guilty of a substantial violation of any provision of the contract, then the Owner, upon the certificate of the Project Representative that sufficient cause exists to justify such action may without prejudice to any other right or remedy and after giving the Contractor seven (7) days written notice, terminate the employment of the Contractor and take possession of the premises and of all materials, tools and appliances thereon and finish the work by whatever method it may deem expedient. In such case, the Contractor will not be entitled to receive any further payment until the work is finished. If the unpaid balance of the contract price exceeds the expense of finishing the work, including compensation for additional managerial and administrative services, such excess will be paid to the Contractor. If such expense exceeds such unpaid balance, the Contractor shall pay the difference to the Owner. The expense incurred by the Owner as herein provided, and the damage incurred through the Contractor's default will be certified by the Project Representative.

Article 34. Contractor's Right To Stop Work Or Terminate Contract

If the work should be stopped under an order of any court, or other public authority for a period of three (3) months, through no act or fault of the Contractor or of anyone employed by him, or if the Owner fails to pay the Contractor with twenty (20) days of its maturity and presentation, then the Contractor may, upon seven (7) days written notice to the Owner and the Project Representative, stop work or terminate this contract and recover from the Owner payment for all work executed and any loss sustained upon any plant or

materials and reasonable profit and damages.

Article 35. Removal Of Equipment

In the case of annulment of this contract before completion, from any cause whatever, the Contractor, if notified to do so by the Owner, shall promptly remove any part or all of his equipment and supplies from the property of the Owner, failing which, the Owner will have the right to remove such equipment and supplies at the expense of the Contractor.

Article 36. Use Of Completed Portions

Use by OWNER of any finished part of the Work, which has specifically been identified in the Contract Documents, or which OWNER, ENGINEER and CONTRACTOR agree constitutes a separately functioning and useable part of the Work that can be used by OWNER without significant interference with CONTRACTOR's performance of the remainder of the Work, may be accomplished prior to Substantial Completion of all the Work subject to the following:

OWNER at any time may request CONTRACTOR in writing to permit OWNER to use any such part of the Work which OWNER believes to be ready for its intended use and substantially complete. If CONTRACTOR agrees, CONTRACTOR will certify to OWNER and ENGINEER that said part of the Work is substantially complete and request ENGINEER to issue a certificate of Substantial Completion for that part of the Work. CONTRACTOR at any time may notify OWNER and ENGINEER in writing that CONTRACTOR considers any such part of the Work ready for its intended use and substantially complete and request ENGINEER to issue a certificate of Substantial Completion for that part of the Work. Within a reasonable time after either such request, OWNER, CONTRACTOR and ENGINEER shall make an inspection of that part of the Work to determine its status of completion. If ENGINEER does not consider that part of the Work to be substantially complete, ENGINEER will notify OWNER and CONTRACTOR in writing giving the reasons therefore. If ENGINEER considers that part of the Work to be substantially complete, the provisions of Article 67 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.

OWNER may at any time request CONTRACTOR in writing to permit OWNER to take over operation of any such part of the Work although it is not substantially complete. A copy of such request will be sent to ENGINEER and within a reasonable time thereafter OWNER, CONTRACTOR and ENGINEER shall make an inspection of that part of the Work to determine its status of completion and will prepare a list of the items remaining to be completed or corrected thereon before final payment. If CONTRACTOR does not object in writing to OWNER and ENGINEER that such part of the Work is not ready for separate operation by OWNER, ENGINEER will finalize the list of items to be completed or corrected and will deliver such list to OWNER and CONTRACTOR together, with a written recommendation as to the division of responsibilities pending final payment between OWNER and CONTRACTOR with respect to security, operation, safety, maintenance, utilities, insurance, warranties and guarantees for that part of the Work, which will become binding upon OWNER and CONTRACTOR at the time when OWNER takes over such operation (unless they shall have otherwise agreed in writing and so informed ENGINEER). During such operation and prior to Substantial Completion of such part of the Work, OWNER shall allow

CONTRACTOR reasonable access to complete or correct items on said list and to complete other related Work.

If OWNER finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work, such use or occupancy may be accomplished in accordance with this Article; provided that no such use or occupancy shall commence before the insurers providing the property insurance have acknowledged notice thereof and in writing effected the changes in coverage necessitated thereby. The insurers providing the property insurance shall consent by endorsement on the policy or policies, but the property insurance shall not be cancelled or lapse on account of any such partial use or occupancy.

Article 37. Payment Schedule

The Contractor shall submit to the Owner, at least 20 days before the date established for each progress payment (but not more often than once a month), an Application for Payment filled out and signed by Contractor covering the work completed as of the date of the Application. Upon review and approval by the Owner, Project Representative and Engineer, the Owner shall submit the progress payment to the Contractor.

The retainage amount with respect to the progress payments shall be 10% unless otherwise stated in the Contract Documents.

Contractor shall, before any draw is issued, provide a sworn statement to Owner attesting that all services, materials and labor, furnished to the project to the date of the draw request have been paid for in full, or listing the amounts due for such services, materials and labor, and if any amounts are listed as being due, the Owner shall have the right to pay those amounts directly to the persons to whom they are due, with the balance of the draw amount to be paid to Contractor, and if the draw is insufficient to pay the amounts then due for services, materials and labor, the Owner shall pay those to whom such amounts are due on a pro rata basis until the draw is exhausted, and any remaining amounts due others shall be paid first out the next draw due.

The Owner shall not be required to issue progress payments pursuant to the draw schedule appended to the Proposal until its personnel have verified, by on-site inspection, that construction has in fact progressed to the stage at which a draw is required and that the work done and materials furnished are in compliance with the Contract Documents, and all applicable technical codes. The final draw due upon "completion" shall not be payable until the Engineer has determined that the work has been completed in accordance with the Contract Documents and a Certificate of Completion has been issued by the City.

Article 38. Payments Withheld

The Owner may withhold or, on account of subsequently discovered evidence, recover the whole or part of any payment to such an extent as may be necessary to protect the Owner from loss on account of:

- (A) Defective work not remedied.
- (B) Claims filed or reasonable evidence indicating probable filing of claims.

- (C) Failure of the Contractor to make payments properly to subcontractors or for materials or labor.
- (D) The Project Representative's opinion that the contract cannot be completed for the balance then unpaid.
- (E) Damage to another contractor.
- (F) Failure to maintain adequate progress.
- (G) Damage to the building resulting from the negligence of the Contractor.

When the above grounds are removed, payment will be made for amounts withheld because of them.

Article 39. Final Payment Application

Administrative actions and submittals that must precede or coincide with submittal of the final payment Application for Payment include the following:

1. Completion of Project closeout requirements.
2. Completion of items specified for completion after Substantial Completion.
3. Assurance that unsettled claims will be settled.
4. Transmittal of required project construction records to Owner.
5. Final Clean Up as outlined in these General Conditions

Upon written notice from CONTRACTOR that the entire Work or an agreed portion thereof is complete, ENGINEER will make a final inspection with OWNER and CONTRACTOR and will notify CONTRACTOR in writing of all particulars in which this inspection reveals that the Work is incomplete or *defective*. CONTRACTOR shall immediately take such measures as are necessary to remedy such deficiencies.

After CONTRACTOR has completed all such corrections to the satisfaction of ENGINEER and delivered all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, marked-up record documents (as provided in Article 63) and other documents--all as required by the Contract Documents, and after ENGINEER has indicated that the Work is acceptable (subject to the provisions under Waiver of Claims), CONTRACTOR may make application for final payment following the procedure for progress payments. The final Application for Payment shall be accompanied by all documentation called for in the Contract Documents, together with complete and legally effective releases or waivers (satisfactory to OWNER) of all Liens arising out of or filed in connection with the Work. In lieu thereof and as approved by OWNER, CONTRACTOR may furnish receipts or releases in full; an affidavit of CONTRACTOR that the releases and receipts include all labor, services, material and equipment for which a Lien could be filed, and that all payrolls, material and equipment bills, and other indebtedness connected with the Work for which OWNER or OWNER's property might in any way be responsible, have been paid or otherwise satisfied; and consent of the surety, if any, to final payment. If any Subcontractor or Supplier fails to furnish a release or receipt in full, CONTRACTOR may furnish a Bond or other collateral satisfactory to OWNER to indemnify OWNER against any Lien.

If, on the basis of ENGINEER's observation of the Work during construction and final inspection, and ENGINEER's review of the final Application for Payment and accompanying documentation--all as required by the Contract Documents, ENGINEER is satisfied that the Work has been completed and

CONTRACTOR's other obligations under the Contract Documents have been fulfilled, ENGINEER will, within ten days after receipt of the final Application for Payment, indicate in writing ENGINEER's recommendation of payment and present the Application to OWNER for payment. Thereupon ENGINEER will give written notice to OWNER and CONTRACTOR that the Work is acceptable subject to the provisions found under "Waiver of Claims". Otherwise, ENGINEER will return the Application to CONTRACTOR, indicating in writing the reasons for refusing to recommend final payment, in which case CONTRACTOR shall make the necessary corrections and resubmit the Application. Thirty days after presentation to OWNER of the Application and accompanying documentation, in appropriate form and substance, and with ENGINEER's recommendation and notice of acceptability, the amount recommended by ENGINEER will become due and will be paid by OWNER to CONTRACTOR.

If, through no fault of CONTRACTOR, final completion of the Work is significantly delayed and if ENGINEER so confirms, OWNER shall, upon receipt of CONTRACTOR's final Application for Payment and recommendation of ENGINEER, and without terminating the Agreement, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by OWNER for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if Bonds have been furnished as required in Article 49, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by CONTRACTOR to ENGINEER with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

Contractor's Continuing Obligation:

CONTRACTOR's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. Neither recommendation of any progress or final payment by ENGINEER, nor the issuance of a certificate of Substantial Completion, nor any payment by OWNER to CONTRACTOR under the Contract Documents, nor any use or occupancy of the Work or any part thereof by OWNER, nor any act of acceptance by OWNER nor any failure to do so, nor any review and approval of a Shop Drawing or sample submission, nor the issuance of a notice of acceptability by ENGINEER, nor any correction of *defective* Work by OWNER will constitute an acceptance of Work not in accordance with the Contract Documents or a release of CONTRACTOR's obligation to perform the Work in accordance with the Contract Documents (except as provided under Waiver of Claims).

Waiver of Claims:

The making and acceptance of final payment will constitute:

- a. a waiver of all claims by OWNER against CONTRACTOR, except claims arising from unsettled Liens, from defective Work appearing after final inspection or from failure to comply with the Contract Documents or the terms of any special guarantees specified therein; however, it will not constitute a waiver by OWNER of any rights in respect of CONTRACTOR's continuing obligations under the Contract Documents; and
- b. a waiver of all claims by CONTRACTOR against OWNER other than those previously made in writing and still unsettled.

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Before the final draw is payable, Contractor must furnish a sworn statement that all sums due for services, materials or labor on the project have been paid in full. If the Owner receives any Notice to Owner on this project, then in addition to the requirements set forth above, Contractor shall at the time of each draw furnish a partial waiver of lien from the person who gave Notice to Owner, and at the time of the final draw shall furnish a final waiver of lien for each such person, as a condition precedent to receiving any payment from the Owner. Contractor shall indemnify the Owner 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.

The Contractor may, if any subcontractor refuses to furnish a release or receipt in full, furnish a bond satisfactory to the Project Representative, to indemnify the Owner against any lien. If any lien remains unsatisfied after all payments are made, the Contractor shall refund to the Owner all moneys that the latter may be compelled to pay in discharging such a lien, including all costs and a reasonable attorney's fee.

Article 40. Damages

Any claim for damage arising under this contract shall be made in writing to the party liable within ten (10) days after the first observance of such damage and not later than the time of final payment, except as expressly stipulated otherwise in the case of faulty work or materials.

Article 41. Equipment Startup

Equipment startup shall be in accordance of the manufacturer's recommendations, and as required to demonstrate performance to the Engineer and Owner in accordance with the specifications. The Contractor shall provide 30-days notice to the Engineer and Owner of the date on which all equipment and systems will be ready for startup. The startup date shall be arranged as required by the Owner's operational schedule with consideration of the schedule needs of the Engineer and Contractor.

Article 42. Completion Of Work

The Contractor shall be considered "substantially complete" when the equipment and systems have been used without failure for seven (7) continuous days, and in the opinion of the Engineer, all work has been completed in general accordance with the plans and specifications and all test reports, inspections, etc. have been completed and delivered to the Engineer. Substantial completion shall also mean that degree of completion which allows the Owner to occupy and use the facilities. When the Engineer deems the work to be "substantially complete" he shall indicate this to the Owner in writing with copies to the Contractor. The date of contract completion shall be the same date at which the Contractor is considered substantially complete by the Engineer.

Article 43. Acceptance Of Finished Work

The Owner shall make final acceptance inspection of the Project covered by this Contract when the Project is completed and finished in all respects in accordance with the Contract Documents. Contractor shall

furnish to the Engineer or Owner Representative a complete set of As-Built drawings. These drawings shall be prepared by a licensed Surveyor in the State of Florida and shall be submitted to the Engineer within five (5) days following the completion of the work.

Article 44. Final Clean Up

The Contractor shall complete all cleaning operations before requesting final inspection.

The Contractor shall, as directed by the Project Representative, remove from the Owner's property and from all public and private property, at his own expense, all temporary structures, rubbish and waste materials resulting from his operation.

The Contractor shall remove temporary protection and facilities installed for protection of the work during construction.

The Contractor shall comply with all regulations of authorities having jurisdiction and safety standards for cleaning. The Contractor shall not burn waste materials. The Contractor will not discharge volatile, harmful or dangerous materials into drainage systems. The Contractor will remove all waste materials from the site and dispose of in a lawful manner. Materials of value remaining after completion of associated work will become the owner's property. The Contractor will arrange for the disposition of these materials as directed by the Owner.

The Contractor shall rake the grounds that are neither paved nor planted to a smooth, even-textured surface.

Article 45. Trees

It shall be the responsibility of the Contractor to protect all trees within the limits of the work and as designated by the Project Representative.

Article 46. Guaranty

CONTRACTOR warrants and guarantees to OWNER and ENGINEER that all Work will be in accordance with the Contract Documents and will not be *defective*. Prompt notice of all defects shall be given to CONTRACTOR. All *defective* Work, whether or not in place, may be rejected, corrected or accepted as provided in the paragraph in this section labeled '**Inspections, Correction, Removal Of Defective Work**'.

All equipment, materials and installation and workmanship furnished by the Contractor under the terms of the Contract, shall be guaranteed by the Contractor against defective workmanship, mechanical and physical defects, leakage, breakage and other damages and failure, under normal operation for a period of two (2) years or as otherwise specified in the Technical Specifications and after the date of acceptance thereof by the Owner, and each item of equipment or materials and installation proving to be defective within the specified period of guaranty shall be replaced, without cost to the Owner, by the Contractor or by the Surety. The period of guaranty of such replacement shall be from and after the date of final acceptance of the Project by the Owner, provided however, that where any item or equipment or material comes with a

manufacturer's warranty of two (2) years or longer, that warranty shall take precedence over the warranty of Contractor hereunder.

Article 47. Indemnity

The Contractor agrees to make payment of all proper charges for labor required in the aforementioned work and defend, indemnify, and save harmless the Owner and Engineer 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 Owner and Engineer 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 the 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 or subcontractors.

Provided, however, if this Contract is deemed, by a court of competent jurisdiction, to be a construction contract for the purposes of Section 725.06, Florida Statutes, any obligation of the Contractor to defend, indemnify or hold harmless an Owner and Engineer shall be limited to an obligation to indemnify and hold harmless the Owner and Engineer, and its officers and employees, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the Contractor and persons employed or utilized by the Contractor in the performance of this Contract.

Article 48. Insurance

See the "Insurance and Indemnity Requirements Section.

Article 49. Assignment

Neither party to the contract shall assign the contract or sublet it as a whole without the written consent of the other, nor shall the Contractor assign any moneys due, or to become due to him hereunder, without the previous written consent of the Project Representative.

Article 50. Rights Of Various Interests

Wherever work being done by the Owner's forces, or by the other contractors, is contiguous to work covered by this contract, the respective rights of the various interests involved will be established by the Project Representative, to secure the completion of the various portions of the work in general harmony.

Article 51. Separate Contracts

The Owner reserves the right to let other contracts in connection with this work. The Contractor shall afford other contractors reasonable opportunity for the introduction and storage of their materials and the execution of their work, and shall properly conduct and coordinate his work with theirs.

If any part of the Contractor's work depends, for proper execution or results upon the work of any other contractor, the Contractor shall inspect and promptly report to the Project Representative any defects in such work that render it unsuitable for such proper execution and results. His failure to so inspect and report shall constitute an acceptance of the other contractor's work as fit and proper for the reception of his work, except as to defects which may develop in the other contractor's work after the execution of the

work.

To insure the proper execution of his subsequent work, the Contractor shall measure work already in place and shall at once report to the Project Representative any discrepancy between the executed work and the drawings.

Article 52. Lands For Work

The Owner will provide the lands upon which the work under this contract is to be done, except that the Contractor shall provide land required for the erection of temporary construction facilities and storage of his material, together with right of access to same.

Article 53. Access To Records

The Owner, the Florida Department of State, or any of their duly authorized representatives shall have access to any books, documents, papers or any other records prepared by the Contractor that are directly pertinent to the work produced under this Agreement for making audit, examination, excerpts and transcription. Such records will be maintained for three (3) years after the completion of the work and until claims or audit findings have been resolved which were initiated prior to the expiration of the three (3) year period.

Article 54. Execution, Correlation And Intent Of Documents

The Agreement shall be signed in quadruplicate by the OWNER and the CONTRACTOR. The Contract Documents comprise the entire agreement between OWNER and CONTRACTOR concerning the Work. The Contract Documents are complementary; what is called for by one is as binding as if called for by all. The Contract Documents will be construed in accordance with the law of the place of the Project.

It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents. Any Work, materials or equipment that may reasonably be inferred from the Contract Documents as being required to produce the intended result will be supplied whether or not specifically called for. When words which have a well-known technical or trade meaning are used to describe Work, materials or equipment, such words shall be interpreted in accordance with that meaning. Reference to standard specifications, manuals or codes of any technical society, organization or association, or to the Laws or Regulations of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard specification, manual, code or Laws or Regulations in effect at the time of opening of Bids (or, on the Effective Date of the Agreement if there were no Bids), except as may be otherwise specifically stated. However, no provision of any referenced standard specification, manual or code (whether or not specifically incorporated by reference in the Contract Documents) shall be effective to change the duties and responsibilities of OWNER, CONTRACTOR or ENGINEER, or any of their consultants, agents or employees from those set forth in the Contract Documents, nor shall it be effective to assign to ENGINEER, or any of ENGINEER's consultants, agents or employees, any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of Article 66. Clarifications and interpretations of the Contract Documents shall be issued by ENGINEER as provided in Article 61.

If, during the performance of the Work, CONTRACTOR finds a conflict, error or discrepancy in the Contract Documents, CONTRACTOR shall so report to ENGINEER in writing at once and before proceeding with the Work affected thereby shall obtain a written interpretation or clarification from ENGINEER; however, CONTRACTOR shall not be liable to OWNER or ENGINEER for failure to report any conflict, error or discrepancy in the Contract Documents unless CONTRACTOR had actual knowledge thereof or should reasonably have known thereof.

Article 55. Contractor's Understanding

Contractor has visited the site, **has called for utility locates** and has familiarized itself with the local conditions under which the work is to be performed, both underground and above ground and both on and off premises and has correlated these observations with the requirements of the proposed contract documents; all as considered necessary or pertinent to the work, and any failure to thus make all such prior investigations and studies shall in no way act as a waiver of any of the terms of the contract. No verbal agreement or conversation with any officer, agent or employee of the Owner, either before or after the execution of this contract, shall affect or modify any of the terms or obligations herein contained

Article 56. Familiarity With Laws

The Contractor is required to be familiar with all Federal, State and Local laws, ordinances, rules and regulations that in any manner affect the work. Ignorance on the part of the Contractor will in no way relieve him from responsibility.

Article 57. Sales Tax

The Contractor is required to pay Florida sales and use taxes on all materials purchased for this project unless otherwise specified in the document.

Article 58. Clarifications And Interpretations Of Contract Documents

It is the duty of the CONTRACTOR to notify the ENGINEER, in writing, in the event of any doubt or question as to the true meaning of any provision in the Contract Documents. The ENGINEER's decision thereon shall be final. Annotated dimensions on drawings shall govern and work not dimensioned shall be as clarified by the ENGINEER. Work not particularly shown or specified shall be the same as similar parts that are shown or specified. Materials or work described in words which have a well-known technical or trade meaning shall be deemed to refer to such recognized standard.

ENGINEER will issue with reasonable promptness such written clarifications or interpretations of the requirements of the Contract Documents (in the form of Drawings or otherwise) as ENGINEER may determine necessary, which shall be consistent with or reasonably inferable from the overall intent of the Contract Documents. If CONTRACTOR believes that a written clarification or interpretation justifies an increase in the Contract Price or an extension of the Contract Time then CONTRACTOR shall notify OWNER in accordance with the Special Conditions or Article 30.

ENGINEER will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. Claims, disputes and other matters relating to the acceptability of the Work or the interpretation of the requirements of the Contract Documents pertaining to the performance and

furnishing of the Work and claims under Articles 24 and 32 in respect of changes in the Contract Price or Contract Time will be referred initially to ENGINEER in writing with a request for a formal decision in accordance with this paragraph, which ENGINEER will render writing within a reasonable time. Written notice of each such claim, dispute and other matters will be delivered by the claimant to ENGINEER and the other party to the Agreement promptly (but in no event later than thirty days) after the occurrence of the event giving rise thereto, and written supporting data will be submitted to ENGINEER and the other party within sixty days after such occurrence unless ENGINEER allows an additional period of time to ascertain more accurate data in support of the claim.

When functioning as interpreter and judge under this Article, ENGINEER will not show partiality to OWNER or CONTRACTOR and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity. The rendering of a decision by ENGINEER pursuant this Article with respect to any such claim, dispute or other matter (except any which have been waived by the making or acceptance of final payment as provided in Article 39) will be a condition precedent to any exercise by OWNER or CONTRACTOR of such rights or remedies as either may otherwise have under the Contract Documents or by Laws or Regulations in respect of any such claim, dispute or other matter.

Article 59. Limitations On ENGINEER's Responsibilities

Neither ENGINEER's authority to act under Article 60 or elsewhere in the Contract Documents nor any decision made by ENGINEER in good faith either to exercise or not exercise such authority shall give rise to any duty or responsibility of ENGINEER to CONTRACTOR, any Subcontractor, any Supplier, or any other person or organization performing any of the Work, or to any surety for any of them.

Whenever in the Contract Documents the terms "as ordered", "as directed", "as required", "as allowed", "as approved" or terms of like effect or import are used, or the adjectives "reasonable", "suitable", "acceptable", "proper" or "satisfactory" or adjectives of like effect or import are used to describe a requirement, direction, review or judgment of ENGINEER as to the Work, it is intended that such requirement, direction, review or judgment will be solely to evaluate the Work for compliance with the Contract Documents (unless there is a specific statement indicating other-wise). The use of any such term or adjective shall not be effective to assign to ENGINEER any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of this Article.

ENGINEER will not be responsible for CONTRACTOR's means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs incident thereto, and ENGINEER will not be responsible for CONTRACTOR's failure to perform or furnish the Work in accordance with the Contract Documents.

ENGINEER will not be responsible for the acts or omissions of CONTRACTOR or of any Subcontractor, any Supplier, or of any other person or organization performing or furnishing any of the Work.

Article 60. Safety And Precaution

CONTRACTOR shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. CONTRACTOR shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:

all employees on the Work and other persons and organizations who may be affected thereby;

all the Work and materials and equipment to be incorporated therein, whether in storage on or off the site; and

other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities and Underground Facilities not designated for removal, relocation or replacement in the course of construction.

CONTRACTOR shall comply with all applicable Laws and Regulations of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss; and shall erect and maintain all necessary safeguards for such safety and protection. CONTRACTOR shall notify owners of adjacent property and of Underground Facilities and utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation and replacement of their property. All damage, injury or loss to any property referred to in paragraph caused, directly or in this Article directly, in whole or in part, by CONTRACTOR, any Subcontractor, Supplier or any other person or organization directly or indirectly employed by any of them to perform or furnish any of the Work or anyone for whose acts any of them may be liable, shall be remedied by CONTRACTOR (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of OWNER or ENGINEER or anyone employed by either of them or anyone for whose acts either of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of CONTRACTOR). CONTRACTOR's duties and responsibilities for the safety and protection of the Work shall continue until such time as all the Work is completed and ENGINEER has issued a notice to OWNER and CONTRACTOR in accordance with Article 39 that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

CONTRACTOR shall designate a responsible representative at the site whose duty shall be the prevention of accidents. This person shall be CONTRACTOR's superintendent unless otherwise designated in writing by CONTRACTOR to OWNER.

In emergencies affecting the safety or protection of persons or the Work or property at the site or adjacent thereto, CONTRACTOR, without special instruction or authorization from ENGINEER or OWNER, is obligated to act to prevent threatened damage, injury or loss. CONTRACTOR shall give ENGINEER prompt written notice that any significant changes in the Work or variations from the Contract Documents have been caused thereby. If ENGINEER determines that a change in the Contract Documents is required because of the action taken in response to an emergency, a Work Directive Change or Change Order will be issued to document the consequences of the changes or variations.

Article 61. Record Documents

CONTRACTOR shall maintain in a safe place at the site one record copy of all Drawings, Specifications, Addenda, Written Amendments, reviewed Shop Drawings, Change Orders, Work Directive Changes, Field

Orders and written interpretations and clarifications (issued pursuant to Article 60) in good order and annotated to show all changes made during construction. These record documents together with all reviewed samples and a counterpart of all reviewed Shop Drawings will be available to ENGINEER for reference. Upon completion of the Work, these record documents or **As-builts**, samples and Shop Drawings will be delivered to ENGINEER for OWNER. Upon delivery of such documents to ENGINEER, the CONTRACTOR shall provide a written certification, signed and dated, that all documents accurately and completely reflect all deviations from or changes in the original Contract Documents made during construction of the project.

Record documents shall be up-to-date and available for review by the resident project representative prior to each application for progress payment. Payment will not be made for construction of items not shown on the record documents.

These requirements also supplement those of Article 37. Not less than two percent (2%) of the contract price shall be retained until correct record drawings, specifications, addenda, modifications and shop drawings are delivered to and reviewed by the ENGINEER.

Article 62. Physical Conditions-Underground Facilities

Shown or Indicated: The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the site are based on information and data furnished to OWNER or ENGINEER by the owners of such Underground Facilities or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:

- OWNER and ENGINEER shall not be responsible for the accuracy or completeness of any such information or data; and
- CONTRACTOR shall have full responsibility for reviewing and checking all such information and data, for locating all Underground Facilities shown or indicated in the Contract Documents, for coordination of the Work with the owners of such Underground Facilities during construction, for the safety and protection thereof as provided in Article 62 and repairing any damage thereto resulting from the Work, the cost of all of which will be considered as having been included in the Contract Price.

The word facility as used in this subsection titled "Utilities" includes any pipe conveying gases or liquids and appurtenances attached thereto; cables, conduits, wires, ducts and appurtenances; poles and appurtenances; any of which may be buried below grade or installed at or above grade level. A facility excludes irrigation pipes, service connections and traffic signal wiring. A service connection is a pipe (excluding irrigation pipes), cable, wire, duct or conduit that is intended to connect a facility with a user. The word Utility as used in this subsection titled "Utilities" refers to the entity having legal ownership of the facility, service connection, irrigation pipe, or traffic signal wiring.

The ENGINEER has endeavored to determine the existence of underground facilities at the site of the work from the records of the utilities with known facilities in the vicinity of the work. The position of these facilities as derived from such records are shown on the plans. Service connections, irrigation pipes, and traffic signal wiring may not be shown on the plans. The CONTRACTOR shall make his own investigations, including

exploratory excavations and contact with Utilities, to determine the exact locations and type of existing facilities, service connections, irrigation pipes, and traffic signal wiring prior to commencing work in the area and shall be responsible for any damage thereto.

With regard to Article 62, damage, injury, or loss resulting in whole or in part from the CONTRACTOR's failure to locate and preserve a facility, service connection, irrigation pipe, or traffic signal wiring shall under no circumstances be deemed attributable to the fault of the Drawings or Specifications or to the acts or omissions of the OWNER or ENGINEER or anyone employed by either of them or anyone for whose acts either of them may be liable.

With respect to underground facilities, no claim for a change in the contract price may be allowed unless the CONTRACTOR discovers an underground facility which is not indicated or referred to in the Contract Documents or which is in a position differing materially and significantly from that indicated or referred to in the Contract Documents. If such discovery is made, the CONTRACTOR shall promptly notify in writing the OWNER, ENGINEER and the Utility. The OWNER may make changes in the alignment and grade of the work in accordance with Article 22.

At no additional cost to the OWNER, the CONTRACTOR shall replace, remove, relocate, protect, or temporarily maintain a facility which is not in a position differing materially and significantly from that indicated or referred to in the Contract Documents. At no additional cost to the OWNER, the CONTRACTOR shall adjust the top elevation of all valve boxes and manholes to match the finish grade or pavement surface and shall replace, remove, relocate, protect, or temporarily maintain all service connections, irrigation pipes, and traffic signal wiring. The work on the facility, service connection, irrigation pipe or traffic signal wiring shall be done in a manner satisfactory to the Utility, it being understood that the Utility has the option of doing such work with his own forces, or permitting the work to be done by the CONTRACTOR.

Article 63. Physical Conditions

Exploration and Reports: Reference is made in the Special Conditions to those reports of exploration and tests of subsurface conditions at the site that have been utilized by ENGINEER in preparation of the Contract Documents. Such reports are not guaranteed as to accuracy or completeness and are not part of the Contract Documents.

Unforeseen Conditions: CONTRACTOR shall promptly notify OWNER and ENGINEER in writing of any subsurface or latent physical conditions at the site or in an existing structure differing materially from those indicated or referred to in the Contract Documents. ENGINEER will promptly review those conditions and advise OWNER in writing if further investigation or tests are necessary.

Promptly thereafter, OWNER shall obtain the necessary additional investigations and tests and furnish copies to ENGINEER and CONTRACTOR. If ENGINEER finds that the results of such investigations or tests indicate that there are subsurface or latent physical conditions which differ materially from those intended in the Contract Documents, and which could not reasonably have been anticipated by CONTRACTOR, a Change Order shall be issued incorporating the necessary revisions.

Article 64. Review Of Application For Progress Payment

ENGINEER will, within ten days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to OWNER, or return the Application to CONTRACTOR indicating in writing ENGINEER's reasons for refusing to recommend payment. In the latter case, CONTRACTOR may make the necessary corrections and resubmit the Application. Ten days after presentation of the Application for Payment with ENGINEER's recommendation, the amount recommended will become due and when due will be paid by OWNER to CONTRACTOR.

ENGINEER's recommendation of any payment requested in an Application for Payment will constitute a representation by ENGINEER to OWNER, based on ENGINEER's on-site observations of the Work in progress as an experienced and qualified design professional and on ENGINEER's review of the Application for Payment and the accompanying data and schedules that the Work has progressed to the point indicated; that, to the best of ENGINEER's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, to a final determination of quantities and classifications for Unit Price Work, and to any other qualifications stated in the recommendation); and that CONTRACTOR is entitled to payment of the amount recommended. However, by recommending any such payment ENGINEER will not thereby be deemed to have represented that exhaustive or continuous on-site inspections have been made to check the quality or the quantity of the Work beyond the responsibilities specifically assigned to ENGINEER in the Contract Documents or that there may not be other matters or issues between the parties that might entitle CONTRACTOR to be paid additionally by OWNER or OWNER to withhold payment to CONTRACTOR.

ENGINEER's recommendation of final payment will constitute an additional representation by ENGINEER to OWNER that the conditions precedent to CONTRACTOR's being entitled to final payment as set forth in Article 68 have been fulfilled.

ENGINEER may refuse to recommend the whole or any part of any payment if, in ENGINEER's opinion, it would be incorrect to make such representations to OWNER. ENGINEER may also refuse to recommend any such payment, or, because of subsequently discovered evidence or the results of subsequent inspections or test, nullify any such payment previously recommended, to such extent as may be necessary in ENGINEER's opinion to protect OWNER from loss (refer to Article 38).

OWNER may refuse to make payment of the full amount recommended by ENGINEER because claims have been made against OWNER on account of CONTRACTOR's performance or furnishing of the Work or Liens have been filed in connection with the Work or there are other items entitling OWNER to a set-off against the amount recommended, but OWNER must give CONTRACTOR immediate written notice (with a copy to ENGINEER) stating the reasons for such action.

Article 65. Substantial Completion

When CONTRACTOR considers the entire Work ready for its intended use, CONTRACTOR shall notify OWNER and ENGINEER in writing that the entire Work is substantially complete (except for items specifically listed by CONTRACTOR as incomplete) and request that ENGINEER issue a certificate of Substantial Completion. Within a reasonable time thereafter, OWNER, CONTRACTOR and ENGINEER shall make an inspection of the Work to determine the status of completion. If ENGINEER does not

consider the Work substantially complete, ENGINEER will notify CONTRACTOR in writing giving the reasons therefor. If ENGINEER considers the Work substantially complete, ENGINEER will prepare and deliver to OWNER a tentative certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before final payment. OWNER shall have seven days after receipt of the tentative certificate during which to make written objection to ENGINEER as to any provisions of the certificate or attached list. If, after considering such objections, ENGINEER concludes that the Work is not substantially complete, ENGINEER will within fourteen days after submission of the tentative certificate to OWNER notify CONTRACTOR in writing, stating the reasons therefor. If, after consideration of OWNER's objections, ENGINEER considers the Work substantially complete, ENGINEER will within said fourteen days execute and deliver to OWNER and CONTRACTOR a definitive certificate of Substantial Completion (with a revised tentative list of items to be completed or corrected) reflecting such changes from the tentative certificate as ENGINEER believes justified after consideration of any objections from OWNER. At the time of delivery of the tentative certificate of Substantial Completion, ENGINEER will deliver to OWNER and CONTRACTOR a written recommendation as to division of responsibilities pending final payment between OWNER and CONTRACTOR with respect to security, operation, safety, maintenance, heat, utilities, insurance and warranties. Unless OWNER and CONTRACTOR agree otherwise in writing and so inform ENGINEER prior to ENGINEER's issuing the definitive certificate of Substantial Completion, ENGINEER's aforesaid recommendations will be binding on OWNER and CONTRACTOR until final payment.

OWNER shall have the right to exclude CONTRACTOR from the Work after the date of Substantial Completion, but OWNER shall allow CONTRACTOR reasonable access to complete or correct items on the tentative list.

Article 66. Inspections, Correction, Removal Of Defective Work

ENGINEER and ENGINEER's representatives, other representatives of OWNER, testing agencies and governmental agencies with juris-dictional interests will have access to the Work at reasonable times for their observation, inspecting and testing. CONTRACTOR shall provide proper and safe conditions for such access.

CONTRACTOR shall give ENGINEER timely notice of readiness of the Work for all required inspections or tests.

If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) to specifically be inspected, tested or approved, CONTRACTOR shall assume full responsibility therefor, pay all costs in connection therewith and furnish ENGINEER the required certificates of inspection, testing or approval. CONTRACTOR shall also be responsible for and shall pay all costs in connection with any inspection or testing required in connection with OWNER's or ENGINEER's acceptance of a Supplier of materials or equipment proposed to be incorporated in the Work, or of materials or equipment submitted for approval prior to CONTRACTOR's purchase thereof for incorporation in the Work. The cost of all inspections, tests and approvals in addition to the above which are required by the Contract Documents shall be paid by OWNER (unless otherwise specified).

All inspections, tests or approvals other than those required by Laws or Regulations of any public body having jurisdiction shall be performed by organizations acceptable to OWNER and CONTRACTOR (or by ENGINEER if so specified).

If any Work (including the work of others) that is to be inspected, tested or approved is covered without written concurrence of ENGINEER, it must, if requested by ENGINEER, be uncovered for observation. Such uncovering shall be at CONTRACTOR's expense unless CONTRACTOR has given ENGINEER timely notice of CONTRACTOR's intention to cover the same and ENGINEER has not acted with reasonable promptness in response to such notice.

Neither observations by ENGINEER nor inspections, tests or approvals by others shall relieve CONTRACTOR from CONTRACTOR's obligations to perform the Work in accordance with the Contract Documents.

If any Work is covered contrary to the written request of ENGINEER, it must, if requested by ENGINEER, be uncovered for ENGINEER's observation and replaced at CONTRACTOR's expense.

If ENGINEER considers it necessary or advisable that covered Work be observed by ENGINEER or inspected or tested by others, CONTRACTOR, at ENGINEER's request, shall uncover, expose or otherwise make available for observation, inspection or testing as ENGINEER may require, that portion of the Work in question, furnishing all necessary labor, material and equipment. If it is found that such Work is *defective*, CONTRACTOR shall bear all direct, indirect and consequential costs of such uncovering, exposure, observation, inspection and testing and of satisfactory reconstruction, (including but not limited to fees and charges of engineers, architects, attorneys and other professionals), and OWNER shall be entitled to an appropriate decrease in the Contract Price, and, if the parties are unable to agree as to the amount thereof, may make a claim therefore as provided in Special Conditions. If, however, such Work is not found to be *defective*, CONTRACTOR shall be allowed an increase in the Contract Price or an extension of the Contract Time, or both, directly attributable to such uncovering, exposure, observation, inspection, testing and reconstruction; and, if the parties are unable to agree as to the amount or extent thereof, CONTRACTOR may make a claim therefore as provided in Special Conditions.

If the Work is *defective*, or CONTRACTOR fails to supply sufficient skilled workers or suitable materials or equipment, or fails to furnish or perform the Work in such a way that the completed Work will conform to the Contract Documents, OWNER may order CONTRACTOR to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of OWNER to stop the Work shall not give rise to any duty on the part of OWNER to exercise this right for the benefit of CONTRACTOR or any other party.

If required by ENGINEER, CONTRACTOR shall promptly either correct all *defective* Work, whether or not fabricated, installed or completed, or, if the Work has been rejected by ENGINEER, remove it from the site and replace it with *non-defective* Work. CONTRACTOR shall bear all direct, indirect and consequential costs of such correction or removal (including but not limited to fees and charges of engineers, architects, attorneys and other professionals) made necessary thereby.

Article 67. Acceptance Of Defective Work; Correction Of Defective Work By The Owner

If, instead of requiring correction or removal and replacement of *defective* Work, OWNER (and, prior to ENGINEER's recommendation of final payment) prefers to accept it, OWNER may do so. CONTRACTOR shall bear all direct, indirect and consequential costs attributable to OWNER's evaluation of and determination to accept such *defective* Work (such costs to be approved by ENGINEER as to reasonableness and to include but not be limited to fees and charges of engineers, architects, attorneys and other professionals). If any such acceptance occurs prior to ENGINEER's recommendation of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and OWNER shall be entitled to an appropriate decrease in the Contract Price, and, if the parties are unable to agree as to the amount thereof, OWNER may make a claim therefor as provided in Article 22. If the acceptance occurs after such recommendation, an appropriate amount will be paid by CONTRACTOR to OWNER.

If CONTRACTOR fails within a reasonable time after written notice of ENGINEER to proceed to correct and to correct *defective* Work or to remove and replace rejected Work as required by ENGINEER, or if CONTRACTOR fails to perform the Work in accordance with the Contract Documents, or if CONTRACTOR fails to comply with any other provision of the Contract Documents, OWNER may, after seven days' written notice to CONTRACTOR, correct and remedy any such deficiency. In exercising the rights and remedies under this paragraph OWNER shall proceed expeditiously. To the extent necessary to complete corrective and remedial action, OWNER may exclude CONTRACTOR from all or part of the site, take possession of all or part of the Work, and suspend CONTRACTOR's services related thereto, take possession of CONTRACTOR's tools, appliances, construction equipment and machinery at the site and incorporate in the Work all materials and equipment stored at the site or for which OWNER has paid CONTRACTOR but which are stored elsewhere. CONTRACTOR shall allow OWNER, OWNER's representatives, agents and employees such access to the site as may be necessary to enable OWNER to exercise the rights and remedies under this paragraph. All direct, indirect and consequential costs of OWNER in exercising such rights and remedies will be charged against CONTRACTOR in an amount approved as to reasonableness by ENGINEER, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and OWNER shall be entitled to an appropriate decrease in the Contract Price, and, if the parties are unable to agree as to the amount thereof, OWNER may make a claim therefore as provided in Article 22. Such direct, indirect and consequential costs will include but not be limited to fees and charges of engineers, architects, attorneys and other professionals, all court and arbitration costs and all costs of repair and replacement of work of others destroyed or damaged by correction, removal or replacement of CONTRACTOR's *defective* Work. CONTRACTOR shall not be allowed an extension of the Contract Time because of any delay in performance of the Work attributable to the exercise by OWNER of OWNER's rights and remedies hereunder.

Article 68. Arbitration

Before bringing any action in any court of competent jurisdiction pertaining to any claim, dispute or other matter in question arising out of or relating to the Contract Documents or the breach thereof, in an amount less than \$25,000, except for claims which have been waived by the making and acceptance of final payment,

the claimant/objector (Party A) shall first offer to arbitrate the question(s) with the other party to the contract (Party B) by notifying him in writing and setting forth in such notice the question(s) to be arbitrated.

Party B can select to arbitrate or not. If Party B agrees to arbitrate he shall so advise Party A in writing within ten days after receipt of Party A's notice. Notice by Party B that he does not wish to arbitrate or failure of Party B to notify Party A within the ten-day period will give Party A the right to institute a court action.

If Party B agrees to arbitrate, the arbitration shall be in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association except as modified herein. In such event, the agreement to arbitrate shall be specifically enforceable under the provisions of the Florida Arbitration Code, S682, Fla. Stat., as it may be from time to time amended. The award rendered by the arbitrators shall be final, and judgment may be entered upon it in any court having jurisdiction thereof.

If Party B agrees to arbitrate, then Party A shall file its notice of demand for arbitration in writing with Party B and with the American Arbitration Association, and a copy shall be filed with the ENGINEER. Notice of demand for arbitration shall be served on the parties referred to herein no later than thirty days from the date Party B agrees to arbitrate the issues in question. Failure to serve the notice of demand for arbitration shall constitute a waiver and abandonment of the claims for which arbitration is sought. Notice of demand for arbitration shall in no event be made on any claim, dispute or other matter in questions which would be barred by the applicable statute of limitations.

If the dollar amount of the claim exceeds \$25,000, arbitration may only be utilized if both Party A and party B agree to arbitrate.

The CONTRACTOR shall carry on the Work and maintain the progress schedule during any arbitration proceedings, unless otherwise mutually agreed in writing.

The Florida Rules of Civil Procedure pertaining to discovery shall apply to both parties during arbitration, and, at the OWNER's sole option, any and all arbitration arising out of or relating to any of the Contract Documents or any breach thereof shall include by consolidation, joinder, or joint filing any additional person or entity not a party to this Agreement to the extent necessary for the final resolution of the matter in controversy.

At least one of the members of the arbitration panel must be an attorney licensed to practice law in the state of Florida.

The surety shall be bound by the arbitration award to the same extent as the CONTRACTOR is bound.

The arbitration panel shall submit a written opinion with findings of fact and conclusions of law stating the basis for the decision made, and including an award of arbitration that may be confirmed by a court of competent jurisdiction.

Unless OWNER agrees to the contrary, the location of any and all arbitration proceedings shall be in the county in which the Project is located.

IV. INSURANCE REQUIREMENTS

A. Scope of Insurance

The CONTRACTOR shall procure and maintain at its own expense, the following minimum insurance coverage, unless otherwise specified in the agreement, contract or lease.

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

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.

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.

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.

The provisions of the required insurance are subject to the approval of the CITY'S Risk Manager, and upon request, the CONTRACTOR shall make available certified copies of the various policies for inspection.

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

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

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.

B. Indemnification

The CONTRACTOR shall defend, indemnify, and save harmless the CITY or any of its 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 agreement, contract or lease, or through the negligence of the CONTRACTOR in the performance of its duties under the agreement, contract or lease, or through any act or omission on the part of the CONTRACTOR, his agent, employees, or servants.

C. Certificate of Insurance

The CONTRACTOR shall provide evidence of required minimum insurance by providing the CITY an ACORD or other Certificate of Insurance in forms acceptable to the Risk Manager for the CITY, before any work under the agreement, contract or lease begins.

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.

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

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

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

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

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

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).

D. Comprehensive General Liability

The CONTRACTOR shall purchase and maintain Commercial General Liability coverage on forms no more restrictive than the latest editions of the Commercial General Liability policies of the Insurance Services Office (ISO). The Commercial General Liability policy shall provide minimum limits of \$1,000,000 per occurrence combined single limit that includes coverage for bodily and personal injury and property damage liability for premises, operations, products and completed operations*, independent contractors, contractual liability covering the agreement, contract or lease, broad form property damage coverages, and property damage resulting from explosion, collapse or underground exposures (x,c,u).

* For remodeling and construction projects, the CONTRACTOR shall purchase and maintain products and completed operations coverage for a minimum of five (5) years beyond the CITY'S acceptance of the project.

E. Business Automobile Liability

The CONTRACTOR shall purchase and maintain Business Automobile Liability coverage on forms no more restrictive than the latest editions of the Business Automobile Liability policies of the Insurance Services Office (ISO). The Business Automobile Liability policy shall provide minimum limits of \$1,000,000 per occurrence combined single limit that includes coverage for claims for bodily injury and property damage arising from the use of motor vehicles, including on-site and off-site operations, and owned, non-owned and hired vehicles, and employee non-ownership use.

F. Workers' Compensation

The CONTRACTOR shall purchase and maintain Workers' Compensation insurance for all workers' compensation obligations imposed by state law and with employers liability limits of at least \$100,000 each accident and \$100,000 each employee with \$500,000 policy limit for disease.

CONTRACTORS exempt from maintaining Workers' Compensation insurance must provide a valid certificate of exemption issued by the State of Florida.

EXHIBIT "B"
COMPENSATION

I. PAYMENTS: Payments shall be made in accordance with the General Conditions above and at the prices listed below:

<u>ITEM</u>	<u>ITEM DESCRIPTION</u>	<u>ESTIMATED QUANTITY</u>	<u>UNIT QUOTE</u>	<u>TOTAL</u>
1	Mobilization			\$5,000.00
2	Pavement Precoating	Approx. 3,800 SY	3.40 SY	12,920.00
3	Slurry Seal "Type B"	Approx. 32,000 SY	3.40 SY	108,800.00
4	Yellow Pavement Marking	Approx. 4,000 SF	2.30 SF	9,200.00
5	Red Pavement Marking	Approx. 2,000 SF	2.60 SF	5,200.00
6	Pavement Signs	Approx. 1,300 SF	6.62 SF	8,606.00
	Total Bid			\$149,726.00