

RESOLUTION NO. 88834-0803

**A RESOLUTION ACCEPTING THE LOWEST RESPONSIBLE BID
AND AUTHORIZING THE MAYOR AND CITY CLERK TO
ENTER INTO A CONTRACT FOR THE CONSTRUCTION OF THE
PAVEMENT MARKING OF RUNWAY 6/24
AT THE MUSCATINE MUNICIPAL AIRPORT**

WHEREAS, the City Council of the City of Muscatine, Iowa, has approved the design, plans, specifications and form of contract for the pavement marking of runway 6/24 project; and

WHEREAS, the City Council released the plans and specifications for bidding after the public hearing on July 17, 2003; and

WHEREAS, the City Council established a bid opening date for this project for August 12, 2003 at 10:00 a.m. in the City Hall Council Chambers; and

WHEREAS, said bids have been opened by the City and evaluated for compliance with bidders instructions; and

WHEREAS, it is now necessary for the City Council to accept the lowest responsible bidder and authorize the Mayor and City Clerk to enter into a contract for the pavement marking of runway 6/24 at the Municipal Airport;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MUSCATINE, IOWA, that the City accept the bid submitted by Bergman Companies, Inc. for the pavement marking of runway 6/24 project, as specified and designed, in the amount of \$49,940.19 subject to FAA approval and submission of the necessary documents for performance bond, payment bond, and insurance certificates.

BE IT FURTHER RESOLVED THAT THE MAYOR AND CITY CLERK are hereby authorized and directed to execute a contract with Bergman Companies, Inc. for this project upon receipt of the aforesaid required documents.

PASSED, APPROVED, AND ADOPTED this 21st day of August, 2003.



A. J. Johnson
A. J. Johnson, City Clerk

**BY THE CITY COUNCIL OF THE
CITY OF MUSCATINE, IOWA**

Richard W. O'Brien
Richard W. O'Brien, Mayor

AGREEMENT
PAVEMENT MARKING FOR ILS – RUNWAY 6/24
AIP PROJECT NO. 3-19-0063-10
THE CITY OF MUSCATINE

THIS AGREEMENT is by and between CITY OF MUSCATINE, IOWA (hereinafter called OWNER) and BERGMAN COMPANIES, INC. (hereinafter called CONTRACTOR).

OWNER and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

ARTICLE 1 - WORK

1.01 CONTRACTOR shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

PAVEMENT MARKING FOR ILS – RUNWAY 6/24

ARTICLE 2 - THE PROJECT

2.01 The Project for which the Work under the Contract Documents may be the whole or only a part is generally referred to as follows:

77,000 SF of pavement marking and 43,000 SF of pavement marking removal

ARTICLE 3 - ENGINEER

3.01 The Project will be administered by ANDERSON-BOGERT Engineers & Surveyors, Inc., 4001 River Ridge Drive NE, Cedar Rapids, IA, 52402,

who is hereinafter called ENGINEER and who is to act as OWNER's representative, assume all duties and responsibilities, and have the rights and authority assigned to ENGINEER in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

ARTICLE 4 - CONTRACT TIMES

4.01 *Time of the Essence*

A. All time limits for Milestones, if any, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

4.02 *Calendar Days for Completion and Final Payment*

A. The Work will be completed and ready for final payment in accordance with the General Provisions within 30 calendar days after the date when the contract times commence to run.

4.03 *Dates for Milestones*

There are no milestones for this project.

4.04 *Liquidated Damages*

- A. CONTRACTOR and OWNER recognize that time is of the essence of this Agreement and that OWNER will suffer financial loss if the Work is not completed within the times specified in paragraph 4.02 above, plus any extensions thereof allowed in accordance with the General Provisions. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by OWNER if the Work is not completed on time. Accordingly, instead of requiring any such proof, OWNER and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty), CONTRACTOR shall pay OWNER \$100.00 for each day that expires after the time specified in paragraph 4.02 until the Work is complete and ready for final payment.

ARTICLE 5 - CONTRACT PRICE

- 5.01 OWNER shall pay CONTRACTOR for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts determined pursuant to paragraphs below:
- A. For all Unit Price Work, an amount equal to the sum of the established unit price for each separately identified item of Unit Price Work times the estimated quantity of that item as indicated in Contractor's bid.

ARTICLE 6 - PAYMENT PROCEDURES

6.01 *Submittal and Processing of Payments*

- A. CONTRACTOR shall submit Applications for Payment in accordance with the General Provisions. Applications for Payment will be processed by ENGINEER as provided in the General Provisions.

6.02 *Progress Payments; Retainage*

- A. OWNER shall make progress payments, for a maximum of twice monthly, on account of the Contract Price on the basis of CONTRACTOR's Applications for Payment during performance of the Work as provided in paragraphs 6.02.A.1 and 6.02.A.2 below, which shall be submitted to the ENGINEER ten (10) days prior to the date of a regular Council meeting. Council meetings are normally held the first and third Thursdays of each month. All such payments will be measured by the schedule of values established in the General Provisions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no schedule of values, as provided in the General Requirements:
1. Prior to Project Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as ENGINEER may determine or OWNER may withhold, in accordance with the General Provisions:
 - a. If the Work has been 95% completed as determined by ENGINEER, and if the character and progress of the Work have been satisfactory to OWNER and ENGINEER, OWNER, on recommendation of ENGINEER, may determine that as long as the character and progress of the Work remain satisfactory to them, there will be a reduction in retainage on account of Work subsequently completed, in which case the remaining progress payments prior to Final Completion will be in an amount equal to between 90% and 100% of the Work completed less the aggregate of payments previously made; and

- b. 50% of cost of materials and equipment not incorporated in the Work (with the balance being retainage).
2. OWNER shall pay retainage to CONTRACTOR in accordance with the General Provisions.

6.03 *Final Payment*

- A. Upon final completion and acceptance of the Work in accordance with the General Provisions, OWNER shall pay the remainder of the Contract Price as recommended by ENGINEER as provided in said paragraph 14.07.

ARTICLE 7 – NOT USED

ARTICLE 8 - CONTRACTOR'S REPRESENTATIONS

- 8.01 In order to induce OWNER to enter into this Agreement CONTRACTOR makes the following representations:
- A. CONTRACTOR has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.
 - B. CONTRACTOR has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
 - C. CONTRACTOR is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.
 - D. CONTRACTOR does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.
 - E. CONTRACTOR is aware of the general nature of Work to be performed by OWNER and others at the Site that relates to the Work as indicated in the Contract Documents.
 - F. CONTRACTOR has correlated the information known to CONTRACTOR, information and observations obtained from visits to the Site, reports and Drawings identified in the Contract Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.
 - G. CONTRACTOR has given ENGINEER written notice of all conflicts, errors, ambiguities, or discrepancies that CONTRACTOR has discovered in the Contract Documents, and the written resolution thereof by ENGINEER is acceptable to CONTRACTOR.
 - H. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
 - I. CONTRACTOR is competent and has sufficient equipment, personnel and financial resources to perform Work in accordance with the Contract Documents.

ARTICLE 9 - CONTRACT DOCUMENTS

9.01 *Contents*

A. The Contract Documents consist of the following items, as marked with a check:

Included	Not Included	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	1. This Agreement
<input type="checkbox"/>	<input checked="" type="checkbox"/>	a. Pages 1 to 7, inclusive;
<input type="checkbox"/>	<input checked="" type="checkbox"/>	b. Exhibit 500-A, Unit Price Work (pages 1 to [], inclusive);
		c. Exhibit 500-B, Supplemental Unit Price Work (pages 1 to [], inclusive);
<input checked="" type="checkbox"/>	<input type="checkbox"/>	2. Notice of Hearing and Letting.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	3. Performance Bond (pages 1 to 4, inclusive), (name of bond);
<input checked="" type="checkbox"/>	<input type="checkbox"/>	4. Payment Bond (pages 1 to 4, inclusive), (name of bond);
		5. Other Bonds (pages [] to [], inclusive), (name of bond);
<input type="checkbox"/>	<input type="checkbox"/>	a. [] (pages [] to [], inclusive);
<input type="checkbox"/>	<input type="checkbox"/>	b. [] (pages [] to [], inclusive);
<input type="checkbox"/>	<input type="checkbox"/>	c. [] (pages [] to [], inclusive);
		6. Bid Form Attachments
<input checked="" type="checkbox"/>	<input type="checkbox"/>	a. Non-Discrimination Clause
<input checked="" type="checkbox"/>	<input type="checkbox"/>	b. Non-Collusion Affidavit
<input type="checkbox"/>	<input checked="" type="checkbox"/>	c. Disadvantaged Business Enterprise (DBE) Certification for Non-Rolling Stock Materials or Services
<input type="checkbox"/>	<input checked="" type="checkbox"/>	d. Disadvantaged Business Enterprise (DBE) Contacts
<input checked="" type="checkbox"/>	<input type="checkbox"/>	e. Debarment and Suspension Certification
<input type="checkbox"/>	<input checked="" type="checkbox"/>	f. Certification of Primary Participant Regarding Debarment, Suspension, and Other Responsibility Matters
<input type="checkbox"/>	<input checked="" type="checkbox"/>	g. Buy America Requirements – Steel and Manufactured Products for Construction Contracts
<input type="checkbox"/>	<input checked="" type="checkbox"/>	h. Certification of Restrictions on Lobbying
<input type="checkbox"/>	<input checked="" type="checkbox"/>	i. Certification of Nonsegregated Facilities
<input checked="" type="checkbox"/>	<input type="checkbox"/>	j. Evidence of Competency and Financial Responsibility
<input checked="" type="checkbox"/>	<input type="checkbox"/>	7. FAA Requirements, General Provisions, Supplementary Provisions, and Technical Specifications;
<input checked="" type="checkbox"/>	<input type="checkbox"/>	8. Drawings consisting of a cover sheet and sheets labeled C1, S1, O1, R1, M1, D1;
<input checked="" type="checkbox"/>	<input type="checkbox"/>	9. Addenda (numbers 1 to 2, inclusive);
		10. Exhibits to this Agreement (enumerated as follows):
<input checked="" type="checkbox"/>	<input type="checkbox"/>	a. Notice to Proceed (pages [] to [], inclusive);
<input checked="" type="checkbox"/>	<input type="checkbox"/>	b. CONTRACTOR's Bid (page 00300-6);
<input checked="" type="checkbox"/>	<input type="checkbox"/>	c. Documentation submitted by CONTRACTOR prior to Notice of Award (pages [] to [], inclusive);
<input checked="" type="checkbox"/>	<input type="checkbox"/>	d. Insurance Certificates;
<input type="checkbox"/>	<input type="checkbox"/>	e. [FIELD FOR "OTHER EXHIBITS"];
		11. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:
<input checked="" type="checkbox"/>	<input type="checkbox"/>	a. Written Amendments;
<input checked="" type="checkbox"/>	<input type="checkbox"/>	b. Work Change Directives;
<input checked="" type="checkbox"/>	<input type="checkbox"/>	c. Change Order(s).

- B. The documents listed in paragraph 9.01.A are incorporated by reference (except as expressly noted otherwise above).
- C. The Contract Documents may only be amended, modified, or supplemented as provided in the General Provisions.

ARTICLE 10 - MISCELLANEOUS

10.01 *Terms*

- A. Terms used in this Agreement will have the meanings indicated in the General Provisions.

10.02 *Assignment of Contract*

- A. No assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

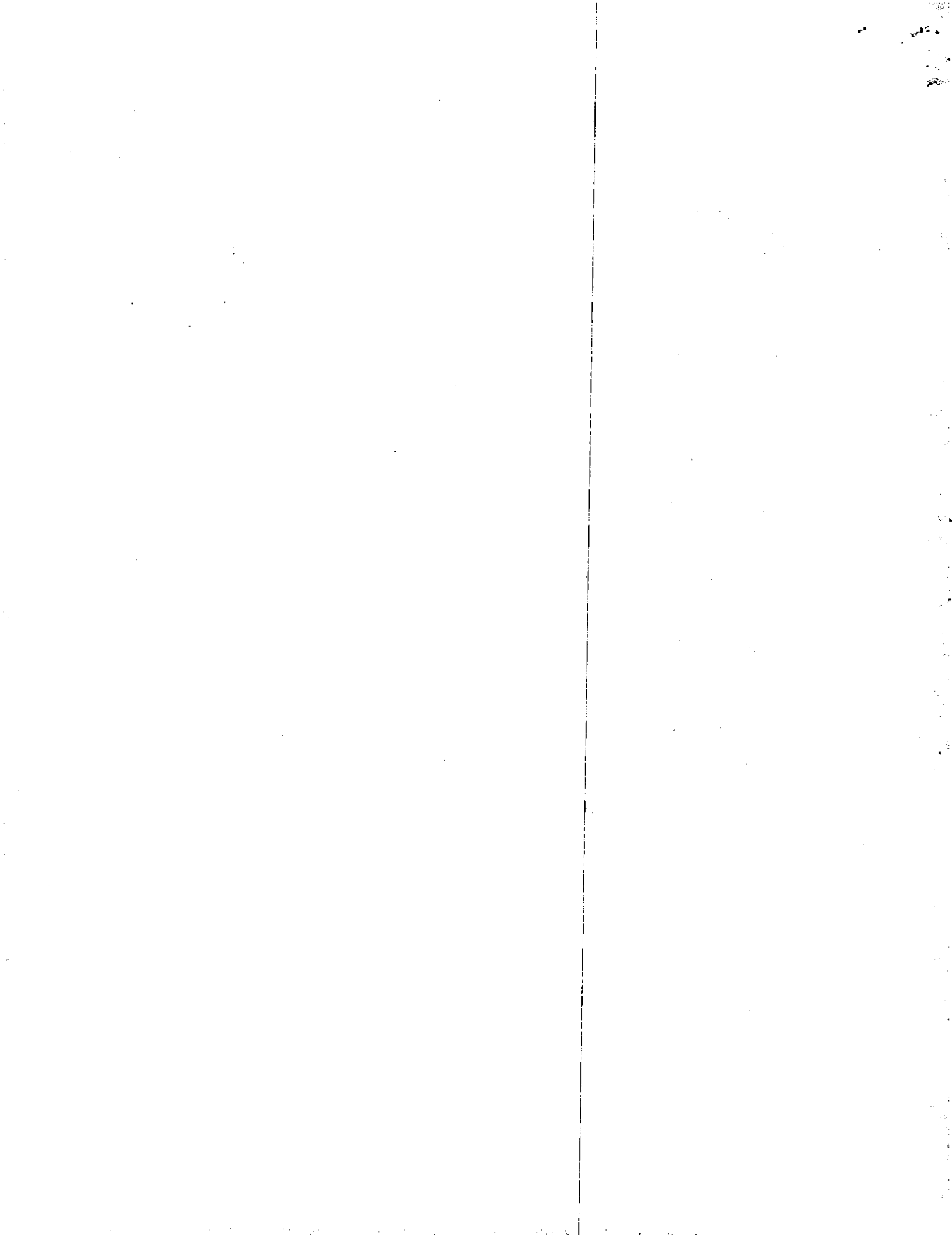
10.03 *Successors and Assigns*

- A. OWNER and CONTRACTOR each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

10.04 *Severability*

- A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon OWNER and CONTRACTOR, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

10.05 *Other Provisions* – NOT USED



IN WITNESS WHEREOF, OWNER and CONTRACTOR have signed this Agreement in duplicate. One counterpart each has been delivered to OWNER and CONTRACTOR. All portions of the Contract Documents have been signed or identified by OWNER and CONTRACTOR or on their behalf.

This Agreement will be effective on the date the Award is approved by the City Council as acting on behalf of the OWNER.

OWNER: City of Muscatine, Iowa CONTRACTOR: Bergman Companies, Inc.

By: *Richard W. O'Brien* By: *Greg Tolander*
Richard W. O'Brien, Mayor VP Sales
(Title) (Title)

Date: August 29, 2003 Date: 29 Aug 03

Attest *A. J. Johnson* Attest *Boone M Smith*
A. J. Johnson, City Clerk

Address for giving notices: Address for giving notices:
City of Muscatine, Iowa 6615 U.S. Highway 12 West
Community Development Department P.O. Box 659
215 Sycamore Street Eau Claire, WI 54702
Muscatine, IA 52761

Designated Representative: Designated Representative:
Name: Kevin Whittaker Name: Greg Tolander
Title: Dir. of Planning and Community Dev. Title: VP Sales
Address: 215 Sycamore Street Address: 6615 US Hwy 12 W
Muscatine, IA 52761 Eau Claire WI
54703
Phone: (563) 264-1554 Phone: 715 874 6070
Facsimile: (563) 264-0750 Facsimile: 715 874 6717

BERGMAN COMPANIES, INC.
P.O. BOX 659
Eau Claire, WI 54702

INSTRUCTIONS FOR EXECUTING CONTRACT

If the Agreement is to be signed by the Secretary of the corporation, the certificate below should be executed by some other officer of the corporation, under the corporate seal. **In lieu of the foregoing certificate, there may be attached to the Agreement copies of so much of the records of the corporation which will show the official character and authority of the officers signing, duly certified by the secretary or assistant secretary under the corporate seal to be true copies.**

The full name and business address of CONTRACTOR should be inserted and the Agreement should be signed with CONTRACTOR's official signature. Please have the name of the signing party printed under all signatures of the Agreement.

If CONTRACTOR is operating as a partnership, each partner should sign the Agreement. If the Agreement is not signed by each partner, there should be attached to the Agreement a duly authenticated power of attorney evidencing the signer's (signers') authority to sign such Agreement for and in behalf of the partnership.

If CONTRACTOR is an individual, the trade name (if CONTRACTOR is operating under a trade name) should be indicated in the Agreement and the Agreement should be signed by such individual. If signed by other than CONTRACTOR, there should be attached to the Agreement a duly authenticated power of attorney evidencing the signer's authority to execute such Agreement for and in behalf of CONTRACTOR.

If CONTRACTOR is a corporation, the following certificate should be executed:

I, Karen A Sabini, certify that I am the VP Finance of the corporation named as CONTRACTOR herein above; that Greg Tolander, who signed the foregoing Agreement on behalf of CONTRACTOR was then VP Sales of said corporation; that said Agreement was duly signed for and in behalf of said Corporation by authority of its governing body, and is within the scope of its corporate powers.

Karen A Sabini




PERFORMANCE BOND


CONTRACTOR (Name and Address): Bergman Companies, Inc. 6615 U.S. Highway 12 West P.O. Box 659 Eau Claire, WI 54702	SURETY (Name and Address of Principal Place of Business): Mid-State Surety Corporation W177 N9886 Rivercrest Drive, Suite 101 Germantown, WI 53022
OWNER (Name and Address): City of Muscatine, Iowa 215 Sycamore Street Muscatine, IA 52761	
CONTRACT Date: 8-22-03 Amount: \$49,940.19 Description (Name and Location): Muscatine Municipal Airport, Muscatine, Iowa Pavement Marking for ILS – Runway 6/24 AIP Project No. 3-19-0063-10	
BOND Date (Not earlier than Contract Date): 8-26-03 Amount: \$49,940.19 Modifications to this Bond Form: None	

Surety and CONTRACTOR, intending to be legally bound hereby, subject to the terms included in this document, do each cause this Performance Bond to be duly executed on its behalf by its authorized officer, agent, or representative.

CONTRACTOR AS PRINCIPAL
 Company: Bergman Companies, Inc.
(Corp. Seal)

Signature: 
 Name and Title: Greg Tolander
VP Sales

SURETY
 Company: Mid-State Surety Corporation
(Corp. Seal)

Signature: 
 Name and Title: Thamer M. Herrell, Attorney-in-Fact
 (Attach Power of Attorney)

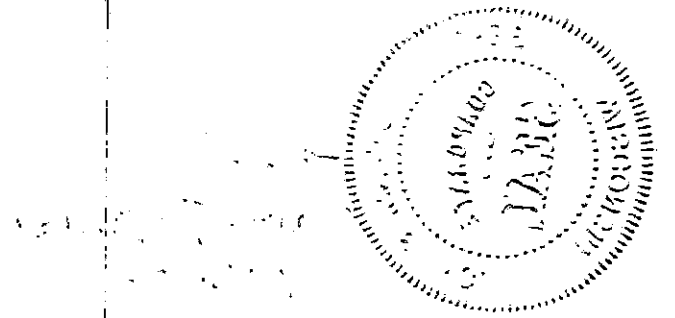
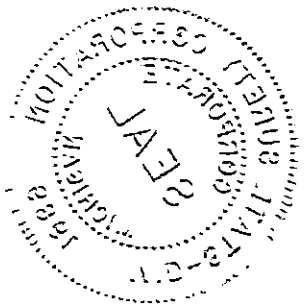
(Space is provided below for signatures of additional parties, if required.)

CONTRACTOR AS PRINCIPAL
 Company: _____
(Corp. Seal)

Signature: _____
 Name and Title: _____

SURETY
 Company: _____
(Corp. Seal)

Signature: _____
 Name and Title: _____



1. The CONTRACTOR and the Surety, jointly and severally, bind themselves, their heirs, Executors, administrators, successors and assigns to the OWNER for the performance of the Contract, which is incorporated herein by reference.
2. If the CONTRACTOR performs the Contract, the Surety and the CONTRACTOR have no obligation under this Bond, except to participate in conferences as provided in paragraph 3.1.
3. If there is no OWNER Default, the Surety's obligation under this Bond shall arise after:
 - 3.1. The OWNER has notified the CONTRACTOR and the Surety at the addresses described in paragraph 10 below, that the OWNER is considering declaring a CONTRACTOR Default and has requested and attempted to arrange a conference with the CONTRACTOR and the Surety to be held not later than fifteen days after receipt of such notice to discuss methods of performing the Contract. If the OWNER, the CONTRACTOR and the Surety agree, the CONTRACTOR shall be allowed a reasonable time to perform the Contract, but such an Agreement shall not waive the OWNER's right, if any, subsequently to declare a CONTRACTOR Default; and
 - 3.2. The OWNER has declared a CONTRACTOR Default and formally terminated the CONTRACTOR's right to complete the Contract. Such CONTRACTOR Default shall not be declared earlier than twenty days after the CONTRACTOR and the Surety have received notice as provided in paragraph 3.1; and
 - 3.3. The OWNER has agreed to pay the Balance of the Contract Price to:
 - 3.3.1. The Surety in accordance with the terms of the Contract;
 - 3.3.2. Another CONTRACTOR selected pursuant to paragraph 4.3 to perform the Contract.
4. When the OWNER has satisfied the conditions of paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions:
 - 4.1. Arrange for the CONTRACTOR, with consent of the OWNER, to perform and complete the Contract; or
 - 4.2. Undertake to perform and complete the Contract itself, through its agents or through independent contractors; or
 - 4.3. Obtain bids or negotiated proposals from qualified CONTRACTORS acceptable to the OWNER for a Contract for performance and completion of the Contract, arrange for a Contract to be prepared for execution by the OWNER and the CONTRACTOR selected with the OWNER's concurrence, to be secured with performance and payment Bonds executed by a qualified surety equivalent to the Bonds issued on the Contract, and pay to the OWNER the amount of damages as described in paragraph 6 in excess of the Balance of the Contract Price Incurred by the OWNER resulting from the CONTRACTOR Default; or
 - 4.4. Waive its right to perform and complete, arrange for completion, or obtain a new CONTRACTOR and with reasonable promptness under the circumstances;
 - 4.4.1. After investigation, determine the amount for which it may be liable to the OWNER and, as soon as practicable after the amount is determined, tender payment therefor to the OWNER; or
 - 4.4.2. Deny liability in whole or in part and notify the OWNER citing reasons therefor.
5. If the Surety does not proceed as provided in paragraph 4 with reasonable promptness, the Surety shall be deemed to be in default on this Bond fifteen days after receipt of an additional written notice from the OWNER to the Surety demanding that the Surety perform its obligations under this Bond, and the OWNER shall be entitled to enforce any remedy available to the OWNER. If the Surety proceeds as provided in paragraph 4.4, and the OWNER refuses the payment tendered or the Surety has denied liability, in whole or in part, without further notice the OWNER shall be entitled to enforce any remedy available to the OWNER.

6. After the OWNER has terminated the CONTRACTOR's right to complete the Contract, and if the Surety elects to act under paragraph 4.1. 4.2. or 4.3 above, then the responsibilities of the Surety to the OWNER shall not be greater than those of the CONTRACTOR under the Contract, and the responsibilities of the OWNER to THE Surety shall not be greater than those of the OWNER under the Contract. To a limit of the amount of this Bond, but subject to commitment by the OWNER of the Balance of the Contract Price to mitigation of costs and damages on the Contract, the Surety is obligated without duplication for:
 - 6.1. The responsibilities of the CONTRACTOR for correction of defective Work and completion of the Contract;
 - 6.2. Additional legal, design professional and delay costs resulting from the CONTRACTOR's Default, and resulting from the actions or failure to act of the Surety under paragraph 4; and
 - 6.3. Liquidated damages, or if no liquidated damages are specified in the Contract, actual damages caused by delayed performance or nonperformance of the CONTRACTOR.
7. The Surety shall not be liable to the OWNER or others for obligations of the CONTRACTOR that are unrelated to the Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the OWNER or its heirs, executors, administrators, or successors.
8. The Surety hereby waives notice of any change, including changes of time, to the Contract or to related subcontracts, purchase orders and other obligations.
9. Any proceedings legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the state of Iowa and shall be instituted within two years after CONTRACTOR Default or within two years after the CONTRACTOR ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.
10. Notice to the Surety, the OWNER or the CONTRACTOR shall be mailed or delivered to the address shown on the signature page.
11. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the Contract was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted here from and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.
12. Definitions.
 - 12.1 Balance of the Contract Price: The total amount payable by the OWNER to the CONTRACTOR UNDER THE Contract after all proper adjustments have been made, including allowance to the CONTRACTOR of any amounts received or to be received by the OWNER in settlement of insurance or other Claims for damages to which the CONTRACTOR is entitled, reduced by all valid and proper payments made to or on behalf of the CONTRACTOR under the Contract.
 - 12.2 Contract: The Agreement between the OWNER and the CONTRACTOR identified on the signature page, including all Contract Documents and changes thereto.
 - 12.3 CONTRACTOR Default: Failure of the CONTRACTOR, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Contract.
 - 12.4 OWNER Default: Failure of the OWNER, which has neither been remedied nor waived, to pay the CONTRACTOR as required by the Contract or to perform and complete or comply with the other terms thereof.

MID-STATE SURETY CORPORATION

GROSSE POINTE FARMS, MICHIGAN 48236

578516

POWER OF ATTORNEY

Know All Men By These Presents:

That the MID-STATE SURETY CORPORATION, a corporation of the State of MICHIGAN, having its principal office in the City of Grosse Pointe Farms, Michigan, pursuant to authority granted by a resolution of its Board of Directors, which reads as follows:

The President, the Vice President, or the Treasurer of this Corporation shall have authority to appoint in writing such attorneys-in-fact, as the business of the Corporation may require, and to authorize such attorneys-in-fact, and each of them to execute on behalf of the Corporation, any bonds, recognizances, stipulations, contracts of indemnity and other undertakings of like character, or to exercise any lesser number of said powers as hereinbefore set forth.

"Said appointments shall be attested by the Secretary or a Vice President of this Corporation under its seal. The signature of the Secretary or any Vice President to certified copies of such powers of attorney may be original or facsimile, and when the corporate seal is affixed thereto, any third party may rely on said certified copies of powers of attorney as the act and deed of this Corporation. The President, the Vice President, or Treasurer may revoke any appointment made pursuant hereto, and revoke any and all authority conferred by any such appointment."

does hereby nominate, constitute and appoint

Nancy Engebretson, Thomas G. Ziemann, Mary A. Kaiser, Jodi L. Cordes, Paula J. Ausen, Janet L. Roth, Brandi L. Levasseur, Thamer M. Herrell Of RJF Agency

its true and lawful Attorney-in-Fact, to make, execute, seal and deliver for and on its behalf, as Surety, and as its act and deed.

Any and all bonds in an amount not exceeding \$10,000,000.00 in any single instance, for or on behalf of this Company, in its business and in accordance with its charter, and to bind MID-STATE SURETY CORPORATION, thereby, and all of the acts of said Attorney-in-Fact, pursuant to these presents, are hereby ratified and confirmed.

IN WITNESS WHEREOF, MID-STATE SURETY CORPORATION of Grosse Pointe Farms, Michigan, has caused these presents to be signed by its proper officer

and its corporate seal to be hereunto affixed this 5th day of March, 2003.

MID-STATE SURETY CORPORATION JOHN J. BARRY, PRESIDENT

STATE OF MICHIGAN, COUNTY OF WAYNE

On this 5th day of March, A.D. 2003, personally came before me JOHN J. BARRY, to me known to be the individual and officer of the MID-STATE SURETY CORPORATION of Grosse Pointe Farms, Michigan, who executed the above instrument, and acknowledged the execution of the same, and being by me duly sworn, did severally depose and say: that he is the said officer of the Corporation aforesaid and the seal affixed to the above instrument is the seal of the corporation, and that said corporate seal and their signatures as such officers were duly affixed and subscribed to the said instrument by the authority of the Board of Directors of said Corporation.

Gail Trevor Notary Public Macomb County, MI Acting in Wayne County, Michigan My Commission Expires August 2, 2005

Gail Trevor Notary Public August 2, 2005 Commission Expires

I, the undersigned, Vice President of the Mid-State Surety Corporation of Grosse Pointe Farms, Michigan, a Michigan corporation, DO HEREBY CERTIFY that the foregoing Power of Attorney remains in full force and has not been revoked, and furthermore that the provisions of the By-Laws of the company and the Resolutions of the Board of Directors set forth in the Power of Attorney, are still in force.

Signed and sealed in the City of Grosse Pointe Farms this 26th day of August, 2003

JOSEPH A. SPRYS, VICE PRESIDENT

(Seal)

PAYMENT BOND


Any singular reference to CONTRACTOR, Surety, OWNER or other party shall be considered plural where applicable.


CONTRACTOR (Name and Address): Bergman Companies, Inc. 6615 U.S. Highway 12 West P.O. Box 659 Eau Claire, WI 54702	SURETY (Name and Address of Principal Place of Business): Mid-State Surety Corporation W177 N9886 Rivercrest Drive, Suite 101 Germantown, WI 53022
OWNER (Name and Address): City of Muscatine, Iowa 215 Sycamore Street Muscatine, IA 52761	
CONTRACT Date: 8-22-03 Amount: \$49,940.19 Description (Name and Location): Muscatine Municipal Airport, Muscatine, Iowa Pavement Marking for ILS – Runway 6/24 AIP Project No. 3-19-0063-10	
BOND Date (Not earlier than Contract Date): 8-26-03 Amount: \$49,940.19 Modifications to this Bond Form: None	

Surety and CONTRACTOR, intending to be legally bound hereby, subject to the terms included in this document, do each cause this Payment Bond to be duly executed on its behalf by its authorized officer, agent, or representative.

CONTRACTOR AS PRINCIPAL
 Company: Bergman Companies, Inc.
(Corp. Seal)

SURETY
 Company: _____
(Corp. Seal)

Signature: 
 Name and Title: Greg Tolander
VP Sales

Signature: 
 Name and Title: Thamer M. Herrell, Attorney-in-Fact
(Attach Power of Attorney)

(Space is provided below for signatures of additional parties, if required.)

CONTRACTOR AS PRINCIPAL
 Company: _____
(Corp. Seal)

SURETY
 Company: _____
(Corp. Seal)

Signature: _____

Signature: _____

Name and Title: _____

Name and Title: _____



1. The CONTRACTOR and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the OWNER to pay for labor, materials and equipment furnished for use in the performance of the Contract, which is incorporated herein by reference.
2. With respect to the OWNER, this obligation shall be null and void if the CONTRACTOR:
 - 2.1. Promptly makes payment, directly or indirectly, for all sums due Claimants, and
 - 2.2. Defends, indemnifies and holds harmless the OWNER from all claims, demands, Liens or suits by any person or entity who furnished labor, materials or equipment for use in the performance of the Contract, provided the OWNER has promptly notified the CONTRACTOR and the Surety (at the addresses described in paragraph 12) of any claims, demands, Liens or suits and tendered defense of such claims, demands, Liens or suits to the CONTRACTOR and the Surety, and provided there is no OWNER Default.
3. With respect to Claimants, this obligation shall be null and void if the CONTRACTOR promptly makes payment, directly or indirectly, for all sums due.
4. The Surety shall have no obligation to Claimants under this Bond until:
 - 4.1. Claimants who are employed by or have a direct Contract with the CONTRACTOR have given notice to the Surety (at the addresses described in paragraph 12) and sent a copy, or notice thereof, to the OWNER, stating that a Claim is being made under this Bond and, with substantial accuracy, the amount of the Claim.
 - 4.2. Claimants who do not have a direct Contract with the CONTRACTOR:
 1. Have furnished written notice to the CONTRACTOR and sent a copy, or notice thereof, to the OWNER, within 90 days after having last performed labor or last furnished materials or equipment included in the Claim stating, with substantial accuracy, the amount of the Claim and the name of the party to whom the materials were furnished or supplied or for whom the labor was done or performed; and
 2. Have either received a rejection in whole or in part from the CONTRACTOR, or not received within 30 days of furnishing the above notice any communication from the CONTRACTOR by which the CONTRACTOR had indicated the Claim will be paid directly or indirectly; and
 3. Not having been paid within the above 30 days, have sent a written notice to the Surety and sent a copy, or notice thereof, to the OWNER, stating that a Claim is being made under this Bond and enclosing a copy of the previous written notice furnished to the CONTRACTOR.
5. If a notice required by paragraph 4 is given by the OWNER to the CONTRACTOR or to the Surety, that is sufficient compliance.
6. When the Claimant has satisfied the conditions of paragraph 4, the Surety shall promptly and at the Surety's expense take the following actions:
 - 6.1. Send an answer to the Claimant, with a copy to the OWNER, within 45 days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed.
 - 6.2. Pay or arrange for payment of any undisputed amounts.
7. The Surety's total obligation shall not exceed the amount of this Bond, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.
8. Amounts owed by the OWNER to the CONTRACTOR under the Contract shall be used for the performance of the Contract and to satisfy claims, if any, under any Performance Bond. By the CONTRACTOR furnishing and the OWNER accepting this Bond, they agree that all funds earned by the CONTRACTOR in the performance of the Contract are dedicated to satisfy obligations of the

CONTRACTOR and the Surety under this Bond, subject to the OWNER's priority to use the funds for the completion of the Work.

9. The Surety shall not be liable to the OWNER. Claimants or others for obligations of the CONTRACTOR that are unrelated to the Contract. The OWNER shall not be liable for payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligations to make payments to, give notices on behalf of, or otherwise have obligations to Claimants under this Bond.
10. The Surety hereby waives notice of any change, including changes of time, to the Contract or to related Subcontracts, purchase orders and other obligations.
11. No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the location in which the Work or part of the Work is located or after the expiration of one year from the date (1) on which the Claimant gave the notice required by paragraph 4.1 or paragraph 4.2.3, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.
12. Notice to the Surety, the OWNER or the CONTRACTOR shall be mailed or delivered to the addresses shown on the signature page. Actual receipt of notice by Surety, the OWNER or the CONTRACTOR, however accomplished, shall be sufficient compliance as of the date received at the address shown on the signature page.
13. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the Contract was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is, that this Bond shall be construed as a statutory Bond and not as a common law bond.
14. Upon request of any person or entity appearing to be a potential beneficiary of this Bond, the CONTRACTOR shall promptly furnish a copy of this Bond or shall permit a copy to be made.
15. **DEFINITIONS**
 - 15.1. **Claimant:** An individual or entity having a direct Contract with the CONTRACTOR or with a Subcontractor of the CONTRACTOR to furnish labor, materials or equipment for use in the performance of the Contract. The intent of this Bond shall be to include without limitation in the terms 'labor, materials or equipment' that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Contract, architectural and engineering services required for performance of the Work of the CONTRACTOR and the CONTRACTOR's Subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.
 - 15.2. **Contract:** The Agreement between the OWNER and the CONTRACTOR identified on the signature page, including all Contract Documents and changes thereto.
 - 15.3. **OWNER Default:** Failure of the OWNER, which has neither been remedied nor waived, to pay the CONTRACTOR as required by the Contract or to perform and complete or comply with the other terms thereof.

MID-STATE SURETY CORPORATION

GROSSE POINTE FARMS, MICHIGAN 48236

578516

POWER OF ATTORNEY

Know All Men By These Presents:

That the MID-STATE SURETY CORPORATION, a corporation of the State of MICHIGAN, having its principal office in the City of Grosse Pointe Farms, Michigan, pursuant to authority granted by a resolution of its Board of Directors, which reads as follows:

The President, the Vice President, or the Treasurer of this Corporation shall have authority to appoint in writing such attorneys-in-fact, as the business of the Corporation may require, and to authorize such attorneys-in-fact, and each of them to execute on behalf of the Corporation, any bonds, recognizances, stipulations, contracts of indemnity and other undertakings of like character, or to exercise any lesser number of said powers as hereinbefore set forth.

"Said appointments shall be attested by the Secretary or a Vice President of this Corporation under its seal. The signature of the Secretary or any Vice President to certified copies of such powers of attorney may be original or facsimile, and when the corporate seal is affixed thereto, any third party may rely on said certified copies of powers of attorney as the act and deed of this Corporation. The President, the Vice President, or Treasurer may revoke any appointment made pursuant hereto, and revoke any and all authority conferred by any such appointment."

does hereby nominate, constitute and appoint

Nancy Engebretson, Thomas G. Ziemann, Mary A. Kaiser, Jodi L. Cordes, Paula J. Ausen, Janet L. Roth, Brandi L. Levasseur, Thamer M. Herrell Of RJF Agency

its true and lawful Attorney-in-Fact, to make, execute, seal and deliver for and on its behalf, as Surety, and as its act and deed.

Any and all bonds in an amount not exceeding \$10,000,000.00 in any single instance, for or on behalf of this Company, in its business and in accordance with its charter, and to bind MID-STATE SURETY CORPORATION, thereby, and all of the acts of said Attorney-in-Fact, pursuant to these presents, are hereby ratified and confirmed.

IN WITNESS WHEREOF, MID-STATE SURETY CORPORATION of Grosse Pointe Farms, Michigan, has caused these presents to be signed by its proper officer

and its corporate seal to be hereunto affixed this 5th day of March, 2003.

MID-STATE SURETY CORPORATION JOHN J. BARRY, PRESIDENT

STATE OF MICHIGAN, COUNTY OF WAYNE

On this 5th day of March, A.D. 2003, personally came before me JOHN J. BARRY, to me known to be the individual and officer of the MID-STATE SURETY CORPORATION of Grosse Pointe Farms, Michigan, who executed the above instrument, and acknowledged the execution of the same, and being by me duly sworn, did severally depose and say: that he is the said officer of the Corporation aforesaid and the seal affixed to the above instrument is the seal of the corporation, and that said corporate seal and their signatures as such officers were duly affixed and subscribed to the said instrument by the authority of the Board of Directors of said Corporation.

Gail Trevor Notary Public Macomb County, MI Acting in Wayne County, Michigan My Commission Expires August 2, 2005

Gail Trevor Notary Public Commission Expires August 2, 2005

I, the undersigned, Vice President of the Mid-State Surety Corporation of Grosse Pointe Farms, Michigan, a Michigan corporation, DO HEREBY CERTIFY that the foregoing Power of Attorney remains in full force and has not been revoked, and furthermore that the provisions of the By-Laws of the company and the Resolutions of the Board of Directors set forth in the Power of Attorney, are still in force.

Signed and sealed in the City of Grosse Pointe Farms this 26th day of August, 2003

JOSEPH A. SPRYS, VICE PRESIDENT

(Seal)

ACORD CERTIFICATE OF LIABILITY INSURANCE

OP ID M5
BERGMAN

DATE (MM/DD/YYYY)
08/26/03

PRODUCER RJF Agencies, Inc. Eau Claire 415 E. Lake Street Eau Claire WI 54701-3734 Phone: 715-833-7000 Fax: 715-552-3658	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.												
INSURED Bergman Companies Inc Karen Sabin P O Box 659 Eau Claire WI 54702	<table border="1" style="width: 100%;"> <tr> <th style="width: 80%;">INSURERS AFFORDING COVERAGE</th> <th>NAIC #</th> </tr> <tr> <td>INSURER A: Western National Insurance</td> <td>15377</td> </tr> <tr> <td>INSURER B:</td> <td></td> </tr> <tr> <td>INSURER C:</td> <td></td> </tr> <tr> <td>INSURER D:</td> <td></td> </tr> <tr> <td>INSURER E:</td> <td></td> </tr> </table>	INSURERS AFFORDING COVERAGE	NAIC #	INSURER A: Western National Insurance	15377	INSURER B:		INSURER C:		INSURER D:		INSURER E:	
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INSURER B:													
INSURER C:													
INSURER D:													
INSURER E:													

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR ADD'L LTR	INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
A		GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> Blanket Add'l Insured GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC	CP300000406	01/01/03	01/01/04	EACH OCCURRENCE	\$ 1,000,000
						DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 100,000
						MED EXP (Any one person)	\$ 5,000
						PERSONAL & ADV INJURY	\$ 1,000,000
						GENERAL AGGREGATE	\$ 2,000,000
						PRODUCTS - COMP/OP AGG	\$ 2,000,000
A		AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS	CA300000445	01/01/03	01/01/04	COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000
						BODILY INJURY (Per person)	\$
						BODILY INJURY (Per accident)	\$
						PROPERTY DAMAGE (Per accident)	\$
		GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT	\$
						OTHER THAN AUTO ONLY: EA ACC	\$
						AGG	\$
A		EXCESS/UMBRELLA LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE <input checked="" type="checkbox"/> RETENTION \$10000	CU300000228	01/01/03	01/01/04	EACH OCCURRENCE	\$ 5,000,000
						AGGREGATE	\$ 5,000,000
							\$
							\$
A		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below	WC300000617	06/01/03	06/01/04	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER	
						E.L. EACH ACCIDENT	\$ 100000
						E.L. DISEASE - EA EMPLOYEE	\$ 100000
						E.L. DISEASE - POLICY LIMIT	\$ 500000
A		OTHER Installation Floater	IM300000665	01/01/03	01/01/04	Any one job site	100,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

Re Project: Muscatine Municipal Airport, Pavement Marking for ILS - Runway 6/24

CERTIFICATE HOLDER

CITYMUS

The City of Muscatine
 215 Sycamore Street
 Muscatine IA 52761

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

Marie Herrell

MEMO

TO: A. J. Johnson, City Administrator

FROM: Kevin Whittaker, Director of Planning & Community Development *Kevin*

SUBJ: Low Bids – Airport Improvement Projects

DATE: August 14, 2003

On August 12, 2003 bids were opened for the Municipal Airport Pavement Marking Project and the Runway Safety Area Improvement Project. Both projects are necessary for the Instrument Landing System (ILS) which is scheduled to start this construction season. Bid tabulation results are attached for your information. As you know, FAA funds 90% of the cost of these improvements.

Three (3) bids were received for the Pavement Marking of Runway 6/24. The low bid is from Bergman Companies, Inc. of Eau Claire, Wisconsin in the amount of \$49,940.19.

Five (5) bids were received for the Runway Safety Area Improvement Project. The low bid is from Sulzberger Excavating Company of Muscatine, Iowa in the amount of \$84,995.70.

The award to each of these firms should be conditional upon receipt of a properly executed performance bond, payment bond, insurance certificates, and FAA approval. It is recommended the attached resolutions accepting the lowest responsible bid and authorizing the City enter into a contract for these two airport improvement projects be approved by City Council.

Atch.