

# CONTRACT

THIS CONTRACT, made and entered into this 23 day of Dec, 2025, by and between:

CITY OF MARGATE, FLORIDA, a municipal corporation organized and existing under the laws of the State of Florida, 5790 Margate Blvd., Margate, Florida, 33063, (hereinafter referred to as "CITY"); and **EMC Divers, Inc.** (hereinafter referred to as "CONTRACTOR").

WITNESSETH:

IN CONSIDERATION of the mutual covenants and conditions as herein expressed and of the faithful performance of all such covenants and conditions, the parties do mutually agree as follows:

## ARTICLE I

### THE CONTRACT DOCUMENTS

**1.1** The Contract Documents consist of all of the following: Notice Inviting Bid, Instructions to Bidders, Special Conditions, Bid Proposal Form, Schedule of Bid Prices, Information Required of Bidders, Bid Bond, Reference Sheet, Non-Collusive Affidavit, Drug-Free Workplace Form, Scrutinized Companies Certification, E-Verify Form, Performance Bond, and Certificate of Insurance, and which are made a part of this contract, or any additional documents which are required to be submitted under the Contract, and all amendments, modifications and supplements issued on or after the effective date of the Contract.

**1.3** Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings. In case of inconsistencies within or between parts of the Contract Documents, including the Specifications, the Contractor shall seek clarification or (1) provide the better quality or greater quantity of Work, or (2) comply with the more stringent requirement; either or both in accordance with the Owner's Consultant's interpretation. Given dimensions shall take precedence over scaled measurements, and large scale drawings over small scale drawings. Before ordering any materials or doing any Work, the Contractor shall verify measurements at the Project site and shall be responsible for the correctness of such measurements. The Contractor must call any such conflict or discrepancy between the Contract Documents and/or between the Contract Documents and applicable standards, codes and ordinances and/or between the Contract Documents and the existing Project it discovers to the Owner's attention, in writing, prior to proceeding with the Work. Contractor shall be responsible for any and all costs associated with all code compliance requirements at time of permitting as part of the Scope of Work/Specifications, whether stated explicitly or not in the Contract Documents. Contractor must verify all grades, elevations, dimensions, locations and quantities indicated on the Contract Drawings prior to the performance of Work. The Contractor shall, therefore, satisfy itself as to the accuracy of all grades, elevations, dimensions, locations and quantities. In all cases of interconnection of its Work with existing or other Work, it shall verify at the site all grades, elevations, dimensions, locations and quantities relating to such existing or other Work. Any errors due to the Contractor's failure to so verify all such grades, elevations, dimensions, locations and quantities shall be promptly rectified by the Contractor without any additional cost to the Owner. Any differences found shall be submitted to the Owner's Consultant for resolution before proceeding with the Work and in such time so as not to delay the progress of the Work. At minimum, Contractor's work must comply with Florida Building Code 2023 edition, ASME A17.1-2019, and ASME A17.3-020 Whenever a product to be furnished by Contractor requires it to be in accordance with a Federal Specification, an ASTM Standard, an American National Standards Institute Specification or other Association Standard, including the requirement of compliance with any local certifications for products such as a Notice of Acceptance approving the product, the Contractor shall present an affidavit from the manufacturer when provided by the manufacturer and, when requested by the Owner's Consultant or Owner or as set forth in the

Specifications certifying that the product complies with the particular Standard or Specification. When provided by the manufacturer and requested by the Owner's Consultant or Owner the specified support test data shall be submitted to substantiate compliance. When Contractor does discover grades, elevations, dimensions, locations or quantities in the field which differ from those depicted in the Contract Documents and Contractor provides notice to Owner and Owner's Consultant of such information, Contractor shall be entitled to submit a Request for Change Order to Owner and Owner's Consultant to the extent that the Contract Sum, Contract Time, or both will be effected.

**1.4** Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become familiar with local conditions under which the Work is to be performed and correlated personal visual observations with requirements of the Contract Documents. Claims for additional costs or extensions of time because of the failure of Contractor to familiarize itself with readily visible conditions at the Project site will not be allowed. The Contractor shall evaluate and satisfy itself as to the conditions and limitations under which the Work is to be performed, including, without limitation (1) the location, condition, layout and nature of the Project and surrounding areas; (2) any visible limitations as to access associated with the Project; (3) anticipated labor supply and costs; (4) availability and cost of materials, tools and equipment; and (5) other similar issues. The Contractor shall be solely responsible for providing a safe place for the performance of the Work. The Owner shall not be required to make any adjustment in the Contract Sum or grant an extension to the Contract Time in connection with any failure by the Contractor to comply with the requirements of this Article.

## **ARTICLE 2**

### **SCOPE OF THE WORK AND WARRANTIES**

**2.1** CONTRACTOR shall furnish all of the labor, materials, equipment, transportation, supplies, and services necessary to perform all of the work required by the Contract Documents for:

#### **BID NO. 2026-001 Canal Embakment and Stormwater Infrastructure Improvements**

**2.2** **Warranty**

In addition to Contractor's Warranties, the Contractor warrants to the Owner that: (1) materials and equipment furnished under the Contract will be new and of good quality unless otherwise required or permitted by the Contract Documents; (2) the Work will be free from defects not inherent in the quality required or permitted; and (3) the Work will conform to the requirements of the Contract Documents and Specifications. Any material or equipment warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence from the date of Final Completion.

**2.2.1** The Contractor represents and warrants that the construction means, methods, procedures and techniques necessary to perform the Work will be consistent with and conform to: (1) good and sound practices within the construction industry; (2) generally prevailing and accepted industry standards applicable to the Work; (3) requirements of any warranties applicable to the Work; and (4) applicable, laws, codes, orders and ordinances which bear upon the Contractor's performance of the Work.

**2.2.2** Contractor represents and warrants to Owner that all labor, materials and/or services furnished, and all Work performed by the Contractor, will be free of defects for a period of one (1) year, unless otherwise provided herein for a longer period, from the date of Final Acceptance by the Owner. Such warranty shall be extended for any period during which Owner maintains an active service contract with Contractor. The Contractor represents and further warrants to perform inspections every six (6) months and to perform any required corresponding repairs in order to maintain the warranty, at no cost to Owner. These warranties are not in lieu of, but are in addition to any other warranties, express or implied, which may be provided by law and by manufacturers,

Subcontractors, and suppliers. Contractor shall provide to Owner all original warranties and guarantees from all Subcontractors, suppliers, manufacturers of equipment and materials installed in connection with the Project, together with any other warranties and guarantees required by the Contract Documents.

**2.2.3** All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence as of the date of Final Completion.

**2.2.4** The Contractor shall obtain warranties, for a period of one (1) year, from all subcontractors, if any.

**2.2.5** Contractor shall provide to the Owner one (1) electronic copy containing the following information:

1. All Subcontractor and manufacturers' warranties fully executed in the form approved by the Owner;
2. The Contractor's warranty;
3. A list of all Subcontractors, Sub-subcontractors and suppliers who performed work on the Project or who furnished materials for use in the Project, such list to include the name, address, telephone number and responsible person at all such entities

The delivery, endorsement or assignment of such warranties shall not release the Contractor from obligations pursuant to the Contract Documents.

**2.2.6** Contractor shall perform all necessary maintenance to the work per the terms set forth in Contractor's Scope of Work.

**2.2.7** The warranty obligations of this Article shall survive completion and final payment or termination of this Contract for the Work performed to the date of termination.

## ARTICLE 3

### CONTRACT TIME

**3.1** TIME IS OF THE ESSENCE OF THIS CONTRACT. This agreement will be for an initial period of two (2) years, with the opportunity for three (3) additional one-year renewals. The work to be performed under this Contract shall be commenced upon the date of Contract Commencement specified in the Notice to Proceed and subject to authorized adjustments shall be completed by time stipulated in the Notice to Proceed. Failure to achieve timely, substantial and/or final completion shall be regarded as a breach of this Contract and subject to appropriate remedies.

**3.2** Contractor's Construction Schedule

The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and the A/E Professional, if any, information a Contractor's construction schedule for the Work (the "Project Schedule").

**3.2.1** The Contractor shall coordinate and provide the project schedules in a manner to complete the Project in accordance with the requirements of the Project Schedule. The Contractor shall be responsible for the timely and proper finish of the Work and shall not commence any part of it until substrates and surfaces are in proper condition to receive specified portions of the Work.

**3.2.2** The Contractor shall perform the Work in strict accordance with the Owner approved Project Schedule.

**3.2.3** The original construction schedule and all subsequently submitted updated construction schedules shall be in a detailed precedence-style, resource loaded critical path method (CPM) type format satisfactory to the Owner which shall also: (1) provide a graphic representation of all activities and events that will occur during performance of the Work; (2) identify each phase of construction and occupancy; and (3) set forth dates that are critical in ensuring the timely and orderly completion of the Work in accordance with the requirements of the Contract Documents (hereinafter referred to as "Milestone Dates"). Contractor shall provide Owner will the original/planned, resource loaded schedule electronic files in P6 native electronic files (.xer format). Upon review and acceptance by the Owner and the Owner's Consultant of the Milestone Dates, the construction schedule shall be deemed part of the Contract Documents and attached to the Agreement to be incorporated in the Contract Documents. The Contractor shall monitor the progress of the Work for conformance with the requirements of the construction schedule and shall promptly advise the Owner of any delays or potential delays. The accepted construction schedule shall be updated one time each month to reflect actual conditions and Contractor shall provide Owner with a copy of the updated resource loaded schedule, the electronic files in P6 native electronic files (.xer format), and a list of all changes made to the schedule, at the time Contractor submits its monthly Payment Application. In the event any progress report or schedule update indicates any delays, the Contractor shall propose an affirmative plan to correct the delay, including resequencing of the Work, overtime and/or additional labor, if necessary. In no event shall any progress report constitute an adjustment in the Contract Time, Milestone Dates, or the Contract Sum unless any such adjustment is agreed to by the Owner and authorized pursuant to properly executed written Change Order. Contractor shall maintain such progress schedule on a current basis in accordance with the provisions of this Section and shall keep proper records available to inspection by Owner to substantiate actual activity, duration and completion dates.

**3.2.4** In the event the Owner determines that the performance of the Work, as of a Milestone Date, has not progressed or reached the level of completion required by the Contract Documents, the Owner shall have the right to order the Contractor, in writing, to take corrective measures necessary to expedite the progress of construction, including, without limitation, (1) working additional shifts or overtime, (2) supplying additional manpower, equipment, and facilities, (3) re-sequencing the Work to avoid the effects of the potential delay; and (4) other similar measures utilizing the most cost effective and reasonable acceleration methods possible to avoid delays and liquidated damages (hereinafter referred to collectively as "Extraordinary Measures"). Such Extraordinary Measures shall continue until the progress of the Work complies with the stage of completion required by the Contract Documents and approved construction schedule. The Owner's right to require Extraordinary Measures is solely for the purpose of ensuring the Contractor's compliance with the construction schedule. The Contractor shall be responsible for liquidated damages for delays for failure to meet the construction schedule and to complete the Work within the Contract Time. All Extraordinary Measures required to keep the Project on schedule and to avoid delays shall be a Cost of the Work but shall not be a basis to increase the Contract Sum. Should Contractor fail to perform the Extraordinary Measures as provided herein the Owner shall give the Contractor a three (3) business day notice of default. If the Contractor does not commence and continue to correct the default as provided in this Section, then the Owner may supplement Contractor's crews, supply additional manpower, equipment and facilities, and/or other similar measures to avoid delays. Contractor shall be liable to Owner for all costs incurred by Owner pursuant to this Section. If Contractor does not perform its obligations pursuant to this Section, an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost incurred pursuant to this Section. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

**3.2.5** The Owner may exercise the rights furnished the Owner under or pursuant to this Section as frequently as the Owner deems necessary to ensure that the Contractor's performance of the Work will comply with any Milestone Date and/or the Substantial Completion Date set forth in the Contract Documents. Alternatively, Owner may exercise termination rights as provided for in the Contract Documents.

**3.2.6** Adjustments in the Contract Time will be permitted for a delay only to the extent such delay (1) is not caused by the Contractor, or its Subcontractors and material suppliers; (2) could not be avoided by the Contractor's timely notice to the Owner of the delay; (3) is of a duration not less than one (1) Business day; (4) impacts the critical path of the Project and (5) was reasonably mitigated by the Contractor. All requests for extensions of time other than those associated with changes in the Work, must be submitted in writing to the Owner within twenty one (21) calendar days of the event giving rise to the delay. Failure to so request an extension will constitute a waiver of any right for an extension of time.

**3.2.7** No Owner Damage for Delays. Except for delays due to the gross negligence of the Owner or active interference by the Owner, Contractor's sole and exclusive remedy for delays shall be an increase to the Contract Time. Contractor shall not be entitled to an increase in the Contract Sum or to payment of any other additional monies from Owner for costs incurred as a result of such delay. Owner's exercise of its rights under this Contract shall in no way be considered active interference.

**3.2.7** No recovery for changed market conditions.

In entering into the Agreement, Contractor represents and warrants that it has accounted for any and all labor or material shortages, delivery lead time, or price increases that may be caused by local and or national conditions, whether known or unknown at the time of entering into the Contract (the "Market Conditions"). Contractor further specifically represents and warrants that it has considered all impacts and potential impacts, including any current and future supply chain disruptions and labor shortages, associated with the following events (1) COVID-19, Monkey Pox, and related worldwide pandemics ("Pandemics"); (2) the current military conflicts involving Russia and the Ukraine and Israel and Hamas (the "Military Conflicts"); and (3) the current international tariffs imposed by the United States administration (the "Tariffs"). The Contractor further represents and warrants that in entering into this Agreement, it has accounted for any and all labor or material shortages, delivery lead time, or price increases that may be caused by local and or national conditions, including but not limited to impacts from the Pandemics, the Military Conflicts, and the Tariffs. The Contractor also represents and warrants that in determining time requirements for procurement, installation, and construction completion, Contractor has taken into account these impacts from the Market Conditions, Pandemics, the Military Conflicts, and the Tariffs, and has included all of those factors in the Project Schedule and Contract Sum.

The Contractor will not seek any price increases or time extensions relating to or arising from any impacts from the Market Conditions, Pandemics, the Military Conflicts, and the Tariffs.

The Owner shall not be required to make any adjustment in the Contract Sum or grant an extension to the Contract Time in connection with any failure by the Contractor to comply with the requirements of this Article.

**3.3** Contractor shall achieve Substantial Completion of the Work as set forth in the Agreement, subject to any authorized extensions of time as recognized in properly executed change orders in accordance with the Agreement. In the event Substantial Completion is not achieved within such number of days and has not been extended by a properly executed change order, if such delay is caused by Contractor or any party for which Contractor is responsible, the Owner shall be entitled to collect liquidated damages from Contractor. Contractor and Owner agree that, because of the nature of the Work, the inability of the parties to precisely calculate actual damages for delay and the difficulty of determining these damages, the sum of One Thousand and 00/100 Dollars (\$1,000.00) shall be assessed for each calendar day of delay in reaching Substantial Completion of the Work. It is hereby agreed that the amounts of the per diem assessment are not a penalty and not excessive in light of the circumstances known to the parties at the time this Contract is executed. Liquidated Damages are waived for the first thirty (30) days following the Substantial Completion deadline.

**3.4** Contractor shall achieve Final Completion of the Work as set forth in the Agreement, subject to any authorized extensions of time as recognized in properly executed change orders in accordance with the Agreement. In the event Final Completion is not achieved within such number of days and has not been extended by a properly executed change order, if such delay is caused by Contractor or any party for which Contractor is responsible, the Owner shall be entitled to collect liquidated damages from Contractor. Contractor and Owner agree that, because of the nature of the Work, the inability of the parties to precisely calculate actual damages for delay and the difficulty of determining these damages, the sum of Five Hundred and 00/100 Dollars (\$500.00) shall be assessed for each calendar day of delay in reaching Substantial Completion of the Work. It is hereby agreed that the amounts of the

per diem assessment are not a penalty and not excessive in light of the circumstances known to the parties at the time this Contract is executed. Liquidated Damages are waived for the first thirty (30) days following the Final Completion deadline.

**3.5** The above liquidated damage provisions shall not effect Owner's right to terminate this Agreement as provided in this Agreement nor shall it limit any of the other remedies as provided in the Contract Documents. The Owner's exercise of its right to terminate this Agreement shall not release the Contractor from its obligation to pay liquidated damages in the amount set forth herein. Such assessments shall be immediately due and payable to the Owner or, at the Owner's option may be deducted from payments that may be due and owing to Contractor.

## ARTICLE 4

### CONTRACT SUM

**4.1** CITY shall pay CONTRACTOR in current funds as full compensation for the performance of all the WORK subject to additions and deductions by Change Order as provided in this Agreement. Amounts billed for services shall be in accordance with proposals for each project and based upon CONTRACTOR'S scheduled rates for services as submitted for BID 2026-001; which are as follows:

ITEM	UOM	UNIT PRICE
Furnish and Install Bank Stabilization Erosion Barrier Bag - Base Layer with Clean Dredged Sand Fill Material (with no divers)	LF	\$45.00
Furnish and Install Bank Stabilization Erosion Barrier Bag - Each Additional Layer with Clean Dredged Sand Fill Material (with no divers)	LF	\$42.00
Furnish and Install Bank Stabilization Erosion Barrier Bag - Top Overlay Layer with Clean Sand Material Fill (NO Dredged Material)	LF	\$42.00
Furnish and Install Bank Stabilization Erosion Barrier Bag - Base Layer with Imported Clean Sand Material Fill	LF	\$45.00
Furnish and Install Bank Stabilization Erosion Barrier Bag - Each Additional Layer with Imported Clean Sand Material Fill	LF	\$42.00
Furnish and Install 4-inch SCH 80 PVC Conduit (irrigation)	LF	\$20.00
Furnish and Install St. Augustine Sod (includes watering)	SY	\$20.00
Remove Existing Minor Trees {3.0" to 5.0" diameter trunk) - cut just above the roots	EA	\$200.00
Remove Existing Major Trees {5.1" to 8" diameter trunk) - cut just above the roots	EA	\$300.00
City Requested Removal and Replacement of Existing Hedges	LF	\$50.00
Demolish and Remove Existing Wooden Docks	SY	\$200.00
勞工小時率 for Ancillary and Unspecified Work (5% mark-up on materials)	HR	\$125.00

**4.2** Changes in the Work shall be performed under applicable provisions of the Contract Documents. Once agreed terms have been reached, the Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, or order for a minor change in the Work.

All Claims arising out of or relating to a Change Order shall be deemed waived unless expressly reserved in such Change Order.

Agreement on any Change Order shall constitute a final settlement of all matters which the Contractor knew or should have known relating to the change in the Work that is the subject of the Change Order, including but not limited to all direct and indirect costs associated with such change and all adjustments to the Contract Sum and Contract Time.

## **ARTICLE 5**

### **PAYMENT**

**5.1** The CONTRACTOR shall requisition in writing payment for work completed. Payment shall be made as above provided upon full completion of the job as determined by CITY together with properly executed releases of liens by all subcontractors, suppliers and materialmen as may be required by CITY. CITY shall make payment to CONTRACTOR within 45 calendar days after its approval of each payment application.

**5.2** CITY may withhold in whole or in part, payment to such extent as may be necessary to protect itself from loss on account of:

- a. Defective work not remedied promptly.
- b. Claims filed or evidence indicating the probable filing of claims by other parties against the CONTRACTOR.
- c. Failure of the CONTRACTOR to make payment to subcontractors or suppliers for materials or labor.
- d. Damage to the CITY or to another contractor not remedied promptly.
- e. Reasonable evidence that the work cannot be completed for the unpaid balance of the Contract time.
- f. Reasonable evidence that the work will not be completed within the Contract Time.
- g. Failure to carry out the work in accordance with the Contract Documents.

When the above grounds are removed or resolved or the CONTRACTOR provides a surety bond or a consent of surety satisfactory to the CITY which will protect the CITY in the amount withheld, payment may be made in whole or in part.

## **ARTICLE 6**

### **FINAL PAYMENT**

Final payment, constituting the entire unpaid balance of the Contract Sum, shall be paid by the CITY to the CONTRACTOR when all outstanding work has been completed and all controversy regarding the preceding has been settled to the CITY'S satisfaction.

## **ARTICLE 7**

### **MISCELLANEOUS PROVISIONS**

**7.1** Terms used in this Agreement which are defined in the Special and General Conditions of the Contract shall have the meanings designated in those Conditions.

**7.2** This agreement shall have been deemed to have been executed within the State of Florida. The validity, construction, and effect of this Agreement shall be governed by the laws of the State of Florida. Any claim, objection, or dispute arising out of this Agreement shall be litigated only in the Seventeenth Judicial Circuit in and for Broward County, Florida.

**7.3** No waiver of any provision, covenant, or condition within this agreement or of the breach of any provision, covenant, or condition within this agreement shall be taken to constitute a waiver of any subsequent breach of such provision, covenant, or condition.

**7.4** CONTRACTOR shall not assign or transfer the Contract or its rights, title or interests therein without CITY'S prior written approval. The obligations undertaken by CONTRACTOR pursuant to the Contract shall not be delegated or assigned to any other person or firm unless CITY shall first consent in writing to the assignment. Violation of the terms of this Paragraph shall constitute a breach of Contract by CONTRACTOR and the CITY may, at its discretion, cancel the Contract and all rights, title and interest of CONTRACTOR shall thereupon cease and terminate.

**7.5** This agreement, and attachments, represents the entire understanding of the parties as to the matters contained herein. No prior oral or written understanding shall be of any force and effect with respect to those matters covered hereunder. This agreement may only be modified by amendment in writing signed by each party.

**7.6 THE PARTIES TO THIS AGREEMENT HEREBY KNOWINGLY, IRREVOCABLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT EITHER MAY HAVE TO A TRIAL BY JURY IN RESPECT TO ANY ACTION, PROCEEDING, LAWSUIT OR COUNTERCLAIM BASED UPON THE CONTRACT, ARISING OUT OF, UNDER, OR IN CONNECTION WITH THE MATTERS TO BE ACCOMPLISHED IN THIS AGREEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR THE ACTIONS OR INACTIONS OF ANY PARTY.**

**7.7 PUBLIC RECORDS:** The Contractor shall comply with Florida's Public Records Act, Chapter 119, Florida Statutes, and specifically agrees to:

- a. Keep and maintain public records required by the City of Margate to perform the service.
- b. Upon request from the City of Margate's custodian of public records, provide the City of Margate with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.
- c. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and following completion of the Agreement if the Contractor does not transfer the records to the City of Margate.
- d. Upon completion of the Agreement, transfer, at no cost, to the City of Margate all public records in possession of the Contractor or keep and maintain public records required by the City of Margate to perform the service. If the Contractor transfers all public records to the City of Margate upon completion of the Agreement, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the Agreement, the Contractor shall meet all applicable requirements for

retaining public records. All records stored electronically must be provided to the City of Margate, upon request from the City of Margate's custodian of public records, in a format that is compatible with the information technology systems of the City of Margate.

e. **IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:**

**Telephone number:**

**(954) 972-6454**

**E-mail address:** [recordsmanagement@margatefl.com](mailto:recordsmanagement@margatefl.com)

**Mailing address:**

**5790 Margate Boulevard**

**Margate, FL 33063**

**7.8 SCRUTINIZED COMPANIES:** In accordance with s. 287.135, Florida Statutes, as amended, a company is ineligible to, and may not bid on, submit a proposal for, or enter into or renew a contract with an agency or local governmental entity for goods or services of:

**7.8.1** Any amount if, at the time of bidding on, submitting a proposal for, or entering into or renewing such contract, the company is on the Scrutinized Companies that Boycott Israel List, created pursuant to s. 215.4725, Florida Statutes, or is engaged in a boycott of Israel; or

.1 One million dollars or more, if, at the time of bidding on, submitting a proposal for, or entering into or renewing such contract, the company:

.2 Is on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to s. 215.73, Florida Statutes; or

.3 Is engaged in business operations in Cuba and Syria.

**7.8.2** By submitting a bid, proposal or response, the company, principals or owners certify that they are not listed on the Scrutinized Companies that Boycott Israel List, Scrutinized Companies with Activities in Sudan List, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or is engaged in business operations in Syria.

**7.8.3** The City reserves the right to terminate this contract if Contractor is found to have been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel.

**7.9 E-VERIFY**

1) Definitions:

"Contractor" means a person or entity that has entered or is attempting to enter into a contract with a public employer to provide labor, supplies, or services to such employer in exchange for salary, wages, or other remuneration.

"Subcontractor" means a person or entity that provides labor, supplies, or services to or for a contractor or another subcontractor in exchange for salary, wages, or other remuneration.

- 2) Effective January 1, 2021, public and private employers, contractors and subcontractors will begin required registration with, and use of the E-Verify system in order to verify the work authorization status of all newly hired employees. Vendor/Consultant/Contractor acknowledges and agrees to utilize the U.S. Department of Homeland Security's E-Verify System to verify the employment eligibility of:
  - a) All persons employed by Vendor/Consultant/Contractor to perform employment duties within Florida during the term of the contract; and
  - b) All persons (including subvendors/subconsultants/subcontractors) assigned by Vendor/Consultant/Contractor to perform work pursuant to the contract with the Department. The Vendor/Consultant/Contractor acknowledges and agrees that use of the U.S. Department of Homeland Security's E-Verify System during the term of the contract is a condition of the contract with the City of Margate; and
  - c) By entering into this Contract, the Contractor becomes obligated to comply with the provisions of Section 448.095, Fla. Stat., "Employment Eligibility," as amended from time to time. This includes but is not limited to utilization of the E-Verify System to verify the work authorization status of all newly hired employees, and requiring all subcontractors to provide an affidavit attesting that the subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. The contractor shall maintain a copy of such affidavit for the duration of the contract. Failure to comply will lead to termination of this Contract, or if a subcontractor knowingly violates the statute, the subcontract must be terminated immediately. Any challenge to termination under this provision must be filed in the Circuit Court no later than 20 calendar days after the date of termination. If this contract is terminated for a violation of the statute by the Contractor, the Contractor may not be awarded a public contract for a period of 1 year after the date of termination and shall be liable for any additional costs incurred by the City as a result of the termination.

## ARTICLE 8 CLAIMS AND DISPUTES

### **8.1.1** Definition

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Agreement. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Agreement. The responsibility to substantiate Claims shall rest with the party making the Claim. This Article does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

### **8.1.2** Written Notice of Claims

Claims by either the Owner or Contractor shall be initiated by written notice to the other party with a copy sent to the Initial Decision Maker. Claims by either party under this Section shall be initiated within seven (7) calendar days after occurrence of the event giving rise to such Claim or within seven (7) calendar days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

### **8.1.3** Continuing Contract Performance

Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in the Contract Documents, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

## 8.2 Initial Decision

**8.2.1** Claims shall be referred to the Initial Decision Maker for initial decision. The Owner's A&E Professional will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. An initial decision shall be required as a condition precedent to mediation of any Claim. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner. Contractor must continue with its Work when a Claim is pending before the Initial Decision Maker.

**8.2.2** The Initial Decision Maker will review Claims and within ten (10) days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

**8.2.3** In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision.

**8.2.4** If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

**8.2.5** The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties of any change in the Contract Sum or Contract Time or both. The initial decision shall not be final or binding on the parties.

**8.2.6** Either party may file for mediation of an initial decision at any time, subject to the terms of Section 7.3, within thirty (30) days from the date of an initial decision.

**8.2.7** In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

## 8.3 Mediation

**8.3.1** Claims, disputes, or other matters in controversy arising out of or related to the Agreement shall be subject to mediation as a condition precedent to binding dispute resolution.

**8.3.2** The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its

Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of litigation.

**8.3.3** The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

#### **8.4 Litigation**

**8.4.1** Litigation of Claims, disputes or other matters in question between the Owner and Contractor arising out of or relating to this Contract or breach thereof, which are not resolved by mediation, shall be subject to and decided by litigation exclusively in the Florida state courts of the county in which the Project is located. Contractor and Owner consent to the venue of the Florida state courts of the county in which the Project is located, and specifically recognize and acknowledge the waiver of any right to remove any action to federal court on the basis of diversity jurisdiction or on any other basis.

**8.4.2** In the event of any litigation arising out of or relating to this Agreement or the Contract Documents, the prevailing party shall recover from the non-prevailing party, all reasonable attorney's fees, paralegal fees and Court costs incurred by the prevailing party, as set forth in greater detail in Section 7.7 of the Agreement.

#### **8.5 Venue**

The venue for any Claim arising out of or related to this Agreement shall be in a state court in the jurisdiction where the Project is located.

#### **8.6 Governing Law**

The Contract shall be governed by the law of the state in which the Project is located without regard to conflicts of law provisions.

##### **8.7.1 Prevailing Party**

In the event that any litigation arises out of or under this Agreement, then the prevailing party in such litigation shall be entitled to recover the cost of such action including but not limited to reasonable attorneys' fees, paralegal fees and all fees and costs related to electronically stored information in discovery, for all trial and appellate levels. In any suit, action, or other proceeding, including bankruptcy, arising out of or in any manner relating to the Contract Documents, including without limitation, (i) the enforcement or interpretation of a party's rights or obligations under the Contract Documents (whether in contract, tort, or both), or (ii) the declaration of any rights or obligations under the Contract Documents, the successful or prevailing party, as determined by the court, shall be entitled to recover from the losing party, as determined by the court, reasonable attorneys' fees, paralegal fees, and disbursements (including disbursements which would not otherwise be taxable as cost in the proceeding) and expert witness fees. All references in the Contract Documents to attorneys' fees shall be deemed to include all attorney and paralegal fees as well as through all post-judgment and appellate levels and in connection with collection, and bankruptcy proceedings.

**8.7.2** In addition to the above, the prevailing party shall be entitled to recover from the non-prevailing party, all litigation costs associated with discovery, processing, management, hosting, and production of Electronically Stored Information ("ESI").

**8.8** The Contractor waives Claims against the Owner for consequential damages arising out of or relating to this Contract. This waiver includes damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit, except anticipated profit arising directly from the Work. This waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 8. Nothing contained in this Section shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

## **ARTICLE 9**

### **TERMINATION AND SUSPENSION**

#### **9.1 Termination or Suspension by the Contractor**

If the Work is stopped for a period of sixty (60) consecutive days through no fault of the Contractor, its subcontractors, or any person/entity for whom Contractor is responsible, the Contractor may, upon fourteen (14) additional days' written notice to the Owner suspend or upon thirty (30) additional days' written notice to Owner, terminate the Contract and recover from the Owner payment for Work executed including reasonable overhead and profit on work performed, and costs incurred by reason of such termination. Contractor shall have no claim for profit or overhead on Work not performed.

#### **9.2 Termination by the Owner for Cause**

##### **9.2.1 The Owner may terminate the Contract if the Contractor**

1. refuses or fails to supply enough properly skilled workers or proper materials;
2. fails to make payment to subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the subcontractors;
3. disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority;
4. admits in writing its inability to pay its debts generally as they become due, or if the Contractor makes a general assignment for the benefit of its creditors, or if a receiver, liquidator, trustee or assignee is appointed on account of its bankruptcy or insolvency;
5. submits an Application for Payment, sworn statement, waiver of lien, affidavit or document that is intentionally falsely filed;
6. has a construction lien filed against any part of the Work or the site of the project for work performed under the Agreement for which the Contractor has been paid by the Owner and not promptly bonded or insured over by the Contractor;

IN WITNESSETH WHEREOF, CITY and CONTRACTOR have signed this Contract in duplicate. One counterpart each has been delivered to CITY and CONTRACTOR. All portions of the Contract Documents have been signed or identified by CITY and CONTRACTOR.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year first above written.

**CITY OF MARGATE**

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Antonio V. Arserio, Mayor

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Cale Curtis, City Manager

       day of       , 20       

       day of       , 20       

ATTEST:

APPROVED AS TO FORM:

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Jennifer M. Johnson, City Clerk

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David N. Tolces, City Attorney

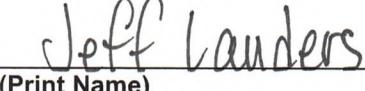
       day of       , 20       

       day of       , 20

**EMC DIVERS, INC**

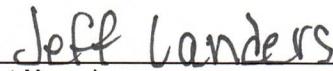
FOR CORPORATION:

  
President (signature)

  
(Print Name)

13 day of Dec, 20 15

  
Secretary (signature)

  
(Print Name)

(CORPORATE SEAL)



13 day of Dec, 20 15

**AGREEMENT BETWEEN CITY OF MARGATE AND EMC DIVERS, INC FOR BID 2026-001 CANAL  
EMBANKMENT AND STORMWATER INFRASTRUCTURE IMPROVEMENTS**