



## **AGREEMENT**

**Between**

**CITY OF MARGATE**

**and**

**Globaltech, Inc.**

**for**

**RFQ 2025-008 WWTP HEADWORKS REHABILITATION**

This is an Agreement between: The CITY OF MARGATE , a municipal Corporation in the State of Florida, hereinafter referred to as "CITY" and "OWNER" and Globaltech, Inc. its successors and assigns, hereinafter referred to as "DESIGN BUILDER".

WITNESSETH, in consideration of the mutual terms and conditions, promises, covenants and payments hereinafter set forth, CITY and DESIGN BUILDER agree as follows:

## GENERAL PROVISIONS

### 1.1 BASIC DEFINITIONS:

Wherever used in this Agreement or in the other Contract Documents the following terms have the meanings indicated which are applicable to both the singular and plural thereof:

**1.1.1 Agreement/Contract** - The written agreement between CITY and DESIGN BUILDER covering the WORK to be performed including other Contract Documents that are attached to the Agreement or made a part thereof.

**1.1.2 Contractor/Offeror/Proposer** - a person or entity that has entered or is attempting to enter into a contract with the City to provide labor, supplies, or services to the City in exchange for salary, wages, or other remuneration.

**1.1.3 Change Order** - A document which is signed by DESIGN BUILDER and CITY and authorizes an addition, deletion or revision in the WORK within the general scope of this Agreement, or an adjustment in the Contract Price or the Contract Time, issued on or after the Effective Date of the Agreement.

**1.1.4 CITY/OWNER** - The City Commission of the CITY OF MARGATE, FLORIDA with whom DESIGN BUILDER has entered into an Agreement and for whom the WORK is to be provided.

**1.1.5 Contract Documents/Design-Build Documents** - The Contract Documents or Design-Build Documents consist of the Drawings, Plans and Specifications, Non-Collusive Affidavit, Contract, Notice of Award, Notice to Proceed, Certificate(s) of Insurance, Payment and Performance Bonds and any additional documents which are required to be submitted under the Contract, and all amendments, modifications and supplements, change orders and WORK directive changes issued on or after the effective date of the Contract.

**1.1.6 Defective** - An adjective which when modifying the WORK refers to WORK that is unsatisfactory, faulty or deficient, or does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test or approval referred to in the Contract Documents, or has been damaged prior to final payment.

**1.1.7 Drawings** - The drawings which show the character and scope of the WORK to be performed and which are referred to in the Contract Documents.

**1.1.8 Effective Date of the Agreement** - The date indicated in the Agreement on which it becomes effective, but if no such date is indicated it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.

**1.1.9 ENGINEER** – Engineer or Project Manager as designated by CITY/OWNER.

**1.1.10 Field Order** - A written order issued by the ENGINEER which orders minor changes in the WORK but which does not involve a change in the Contract Price or the Contract Time.

**1.1.11 Notice to Proceed** - A written notice given by CITY to DESIGN BUILDER fixing the date on which the Contract Time will commence to run and on which DESIGN

BUILDER shall start to perform DESIGN BUILDER'S obligations under the Contract Documents.

**1.1.12 Project** - Is the total construction for which the DESIGN BUILDER is responsible under this Agreement, including all labor, materials, equipment and transportation used or incorporated in such construction.

**1.1.13 Specifications** - Those portions of the Contract Documents consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the WORK and certain administrative details applicable thereto.

**1.1.14 Subcontractor/Subconsultant** - An individual, firm or corporation having a direct Contract with DESIGN BUILDER or with any other Subcontractor for the performance of a part of the WORK at the site.

**1.1.15 Supplier** - A manufacturer, fabricator, supplier, distributor, materialman or vendor.

**1.1.16 WORK** - WORK is the result of performing services, specifically, including but not limited to construction, furnishing labor, soil borings, equipment and materials incorporated used or incorporated in the construction of the entire project as required by the Contract Documents.

**1.1.17 WORK Change Directive** - A written directive to DESIGN BUILDER issued on or after the effective date of the Agreement and signed by CITY and recommended by ENGINEER ordering an addition, deletion or revision in the WORK. A WORK change directive shall not change the Contract Price or time, but is evidence that the parties expect that the change directed or documented by a WORK Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Time.

**1.1.18 Written Amendment** - A written amendment of the Contract Documents, signed by CITY and DESIGN BUILDER on or after the Effective Date of the Agreement and normally dealing with the non-engineering, or non-technical aspects rather than strictly WORK related aspects of the Contract Documents.

**1.1.19 DESIGN BUILDER/DESIGN BUILDER ENGINEER** – Contractor team who handles both the design and construction of the structure or project.

## **1.2 EXECUTION, CORRELATION AND INTENT:**

**1.2.1** This Agreement shall be signed in not less than duplicate by the OWNER and DESIGN BUILDER.

**1.2.2** It is the intent of the OWNER and DESIGN BUILDER that the Contract Documents include all items necessary for proper execution and completion of the WORK. The Contract Documents are complementary, and what is required by any one shall be as binding as if required by all. WORK not covered in the Contract Documents will not be required unless it is consistent with and is reasonably inferable from the Contract Documents as being necessary to produce the intended results. Words and

abbreviations which have well-known technical or trade meanings are used in the Contract Documents in accordance with such recognized meanings.

### **1.3 ENUMERATION OF CONTRACT DOCUMENTS:**

**1.3.1** The Contract Documents which comprise the entire agreement between CITY and DESIGN BUILDER are attached to this Agreement, made a part hereof and consist of the following:

- (1) This Agreement (pages 1 to 56, inclusive) and RFQ 2025-008 Proposal, Criteria Package and DESIGN BUILDER'S Response, all addenda, clarifications, exhibits, bonds and amendments for additional scale of work and cost.
- (2) Plans and Specification Attachments
- (3) Insurance certificate(s)
- (4) Notice of Award and Notice to Proceed
- (5) All applicable provisions of State, Federal or local law, unless preempted by such laws.
- (6) Any modification, including all change orders, duly delivered after execution of Agreement.

**IN THE EVENT OF CONFLICT, THE ABOVE LISTING OF DOCUMENTS SHALL TAKE PRECEDENCE IN THE ORDER THAT THEY ARE LISTED.**

### **1.4 INTENT:**

It is the intent of the Contract Documents to describe a functionally complete project in accordance with the Plans and Specifications. Any WORK, materials or equipment that may reasonably be inferred from the Contract Documents, as being required to produce the intended result will be supplied whether or not specifically called for. When words which have a well known technical or trade meaning are used to describe WORK, materials or equipment such words shall be interpreted in accordance with that meaning. Reference to standard specifications, manuals or codes of any technical society, organization or association, or to the laws or regulations of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard specification, manual, code or laws or regulations in effect at the time of contract award, except as may be otherwise specifically stated. However, no provision of any referenced standard specification, manual or code (whether or not specifically incorporated by reference in the Contract Documents) shall be effective to change the duties and responsibilities of CITY, DESIGN BUILDER, or any of their consultants, agents or employees from those set forth in the Contract Documents.

### **1.5 CONFLICT, ERROR OR DISCREPANCY:**

If, during the performance of the WORK, DESIGN BUILDER finds a conflict, error or discrepancy in the Contract Documents, DESIGN BUILDER shall so report to CITY and ENGINEER in writing at once and before proceeding with the WORK affected thereby shall obtain a written interpretation or clarification from CITY through the ENGINEER.

## **1.6 AMENDING OR SUPPLEMENTING CONTRACT DOCUMENTS:**

The Contract Documents may be amended, in writing, to provide for additions, deletions and revisions in the WORK or to modify the terms and conditions thereof in one or more of the following ways:

- 1.6.1** Change Order;
- 1.6.2** formal written amendment, or
- 1.6.3** work change directive.

## **1.7 SUPPLEMENTS, MINOR VARIATIONS OR DEVIATIONS:**

In addition, the requirements of the Contract Documents may be supplemented and minor variations and deviations in the WORK may be authorized in one or more of the following ways:

- 1.7.1** ENGINEER'S approval of a shop drawing or sample;
- 1.7.2** ENGINEER'S written interpretation or clarification, or
- 1.7.3** a field order

## **1.8 REPRESENTATION OF CONTRACTOR:**

Execution of the Contract by the DESIGN BUILDER is a representation that DESIGN BUILDER has visited the site and become familiar with the local conditions under which the WORK is to be performed.

## **1.9 BEFORE COMMENCING OPERATIONS:**

Before undertaking each part of the WORK, DESIGN BUILDER shall carefully study and compare the Contract Documents and check and verify pertinent figures shown thereon. DESIGN BUILDER shall promptly (no later than three (3) days from discovery) report in writing to CITY and/or ENGINEER any conflict, error or discrepancy which DESIGN BUILDER may discover and shall obtain a written interpretation or clarification from ENGINEER before proceeding with any WORK affected thereby.

## **1.10 OWNERSHIP AND USE OF DOCUMENTS:**

**1.10.1** The drawings, specifications, designs, models, photographs, reports, surveys and other data provided with this Agreement are and shall remain the property of the CITY whether the project for which they are made is executed or not. This is not an assignment of any copyrights or other ownership rights which the DESIGN BUILDER maintains.

**1.10.2** Submission or distribution of documents to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the DESIGN BUILDER ENGINEER'S common law copyrights or other reserved rights.

#### **1.11. NONCOERCION OF LABOR:**

As a nongovernmental entity executing, renewing, or extending a contract with a government entity, Vendor is required to provide an affidavit under penalty of perjury attesting that Vendor does not use coercion for labor or services in accordance with Section 787.06, Florida Statutes.

#### **1.12 RELATIONSHIP OF THE PARTIES:**

The Design-Builder accepts the relationship of trust and confidence established by this Agreement and covenants with the City to cooperate with the City. Further, Design-Builder acknowledges and accepts its obligations to the City in performing its services, and covenants with the City to exercise the Design-Builder's best efforts and highest skill and judgment in furthering the interests of the City to furnish a sufficient supply of workers and skilled personnel and materials and equipment; and to perform the Work in an expeditious and economical manner consistent with the City's best interests. The City agrees to furnish or approve, in a timely manner, information required in writing by the Design-Builder for construction of the Project and to make payments to the Design-Builder in accordance with the requirements of the Design-Build Documents.

**The remainder of the page is intended to be blank.**

## **ARTICLE 2**

### **DESIGN BUILDER'S SERVICES AND RESPONSIBILITIES**

#### **2.1 SERVICES AND RESPONSIBILITIES:**

**2.1.1** The DESIGN BUILDER shall assist the OWNER and ENGINEER in filing documents required to obtain necessary approvals of governmental authorities having jurisdiction over the Project.

**2.1.2** Unless otherwise provided for in the Contract Documents, the DESIGN BUILDER shall provide or cause to be provided and shall pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation and other facilities and services necessary for proper execution and completion of the WORK, whether temporary or permanent and whether or not incorporated or to be incorporated in the WORK.

**2.1.3** The DESIGN BUILDER shall be responsible for and shall coordinate all construction means, methods, techniques, sequences and procedures.

**2.1.4** The DESIGN BUILDER shall keep the OWNER and ENGINEER informed of the progress and quality of the WORK.

**2.1.5** If requested in writing by the OWNER, the DESIGN BUILDER, with reasonable promptness and in accordance with time limits agreed upon, shall interpret the requirements of the Contract Documents and shall decide, subject to determination by the ENGINEER, subject to litigation, claims, disputes and other matters in question relating to performance thereunder by both OWNER and DESIGN BUILDER. Such interpretations and decisions shall be in writing, shall not be presumed to be correct and shall be given such weight as the arbitrator(s) or the court shall determine.

**2.1.6** The DESIGN BUILDER shall promptly correct WORK which does not conform to the Construction Documents.

**2.1.7** The DESIGN BUILDER warrants to the OWNER that materials and equipment incorporated in the WORK will be new unless otherwise specified, and that the WORK will be of good quality, free from faults and defects, and in conformance with the Contract Documents. WORK not conforming to these requirements shall be promptly corrected in accordance with Article 9.

**2.1.8** The DESIGN BUILDER shall pay all sales, consumer, use and similar taxes which were in effect at the time the DESIGN BUILDER'S Proposal was first submitted to the OWNER, and shall secure and pay for building and other permits and governmental fees, licenses and inspections necessary for the proper execution and completion of the WORK which are either customarily secured after execution of this Agreement or are legally required at the time the DESIGN BUILDER'S Proposal was first submitted to the OWNER.

**2.1.9** The DESIGN BUILDER shall give written notices and comply with all laws, ordinances, rules, regulations and lawful orders of public authorities relating to the Project.

**2.1.10** The DESIGN BUILDER shall pay royalties and license fees. The DESIGN BUILDER shall defend suits or claims for infringement of patent rights and shall save the OWNER harmless from loss on account thereof, except that the OWNER shall be responsible for such loss when a particular design, process or product of a particular manufacturer is required by the OWNER. However, if the DESIGN BUILDER has reason to believe the use of a required design, process or product is an infringement of a patent, the DESIGN BUILDER shall be responsible for such loss unless such information is promptly given to the OWNER.

**2.1.11** The DESIGN BUILDER shall be responsible to the OWNER for acts and omissions of the DESIGN BUILDER'S employees and parties in privity of contract with the DESIGN BUILDER to perform a portion of the WORK, including their agents and employees as well as for any entity or individual for whom Design-Builder has supervisory authority.

**2.1.12** On a daily basis, the DESIGN BUILDER shall keep the premises free from accumulation of waste materials or rubbish caused by the DESIGN BUILDER'S operations. At the completion of the WORK, the DESIGN BUILDER shall remove from and about the Project the DESIGN BUILDER'S tools, construction equipment, machinery, surplus materials, waste materials and rubbish.

**2.1.13** The DESIGN BUILDER shall prepare Change Orders for the ENGINEER'S and OWNER'S written approval and execution in accordance with this Agreement and shall have authority to make minor changes in the design and construction consistent with the intent of this Agreement not involving an adjustment in the Contract Price or an extension of the Contract Time. The DESIGN BUILDER shall promptly inform the OWNER and ENGINEER in writing, of minor changes in the design and construction.

**2.1.14** The DESIGN BUILDER shall notify the ENGINEER and OWNER when the WORK or an agreed upon portion thereof is substantially completed by issuing a Certificate of Substantial Completion which shall establish the Date of Substantial Completion, shall state the responsibility of each party for security, maintenance, heat, utilities, damage to the WORK and insurance, shall include a list of items to be completed or corrected and shall fix the time within which the DESIGN BUILDER shall complete items listed therein.

**2.1.15** The DESIGN BUILDER shall maintain in good order at the site one record copy of the drawings, specifications, product data, samples, shop drawings, Change Orders and other Modifications, marked currently to record changes made during construction.

These shall be delivered to the OWNER upon completion of the construction and prior to final payment.

## **2.2 BASIC SERVICES:**

The WORK will consist of furnishing all materials, labor, equipment and transportation to provide a completed project for RFQ 2025-008 WWTP HEADWORKS REHABILITATION.

**DESIGN BUILDER will provide necessary weather protection against rain, wind, storms, and heat as to maintain WORK and/or contents of building.**



**All WORK must be guaranteed for a minimum of one (1) year from the date of final acceptance by the CITY.**

**2.2.1** Design shall be performed in accordance with the design criteria package by qualified architects, engineers and other professional duly licensed by the State of Florida and holding current certificates of registration under the laws of the State of Florida to practice architectural and/or engineering and who are selected and paid by the DESIGN BUILDER.

**2.2.2** All services shall be performed by DESIGN BUILDER to the satisfaction of CITY who, upon making a determination of acceptance or satisfaction shall utilize generally accepted engineering standards as well as the design criteria package, and CITY'S published and approved engineering standards. ENGINEER shall decide all questions, and disputes of any nature whatsoever that may arise by reason of the execution of this Agreement and the prosecution and fulfillment of the services hereunder.

**2.2.3** After CITY'S acceptance of the final design documents, the original set of DESIGN BUILDER'S drawings, tracing, plans and maps shall be provided to CITY along with two (2) record sets of full size prints. DESIGN BUILDER shall signify, by affixing an endorsement (seal/signature, as appropriate) on every sheet of the record set, that the WORK shown on the endorsed sheets was produced by DESIGN BUILDER. With the tracings and the record set of prints, DESIGN BUILDER shall submit a final set of design computations. The computations shall be bound in an 8 ½" by 11" format and shall be endorsed (seal/signature, as appropriate) by DESIGN BUILDER. Upon approval of the final design documents, CITY shall issue a written authorization to commence construction.

**2.2.4** All tracings, plans, drawings, diagrams, specifications, maps, reports and other design documents prepared or obtained under this Agreement shall be considered works made for hire and shall become the property of the CITY without restrictions or limitations on their use.

**2.2.5** DESIGN BUILDER will provide necessary weather protection against rain, wind, storms, heat as to maintain work and contents of building.

**2.2.6** Design-Builder represents and warrants to the City that all labor, materials and/or services furnished, and all Work performed by Design-Builder, 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 City. This warranty is not in lieu of, but is in addition to any other warranties, express or implied, which may be provided by law and by manufacturers, Subcontractors, and suppliers.

## **2.3 LIABILITY FOR USE OF WORK FOR INTENDED PURPOSE:**

As a material inducement for CITY to enter into this Agreement, DESIGN BUILDER has represented an expertise in professional design services in the construction of public construction projects similar to this one by qualified and licensed general construction Contractors. In reliance upon those representations, CITY hired DESIGN BUILDER to provide professional design services and complete construction services. DESIGN BUILDER shall be liable for any defective or negligent design, whether patent or latent, and/or any negligence, strict liability or breach of other legal duty or contractual obligation as such may be found by a court of competent jurisdiction.

## **2.4 SHOP DRAWINGS AND SAMPLES:**

**2.4.1** DESIGN BUILDER shall submit all required shop drawings, product data, material samples, and other submittals necessary for the execution of the WORK, in accordance with the approved design documents (design first, then shop drawings). The timeframe for submitting shop drawings shall be defined in the Notice to Proceed, based on the complexity of the project and following the completion and written approval of the applicable design phase by the City (e.g., 60% Design, 90% Design, or final design milestone). This submittal timeframe may be modified as necessary by the City to reflect the unique schedule, permitting needs, and sequencing of each project.

**2.4.2** DESIGN BUILDER shall also submit to ENGINEER for review and approval with such promptness as to cause no delay in WORK, all samples required by the Contract Documents and shall be identified clearly as to material, Supplier, pertinent data such as catalog numbers and the use for which intended.

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

**2.4.4** At the time of each submission, DESIGN BUILDER shall give ENGINEER specific written notice of each variation that the Shop Drawings or samples may have from the requirements of the Contract Documents, and, in addition, shall cause a specific notation to be made on each Shop Drawing submitted to ENGINEER for review and approval of each such variation. Failure to point out such departures shall not relieve DESIGN BUILDER from their responsibility to comply with the Contract Documents.

**2.4.5** Approval of the Shop Drawings by ENGINEER shall be general and shall not relieve DESIGN BUILDER of responsibility for the accuracy of such drawings nor for the proper fittings and construction of the WORK, nor for the furnishing of material or WORK required by the Agreement and not indicated on the drawings. No WORK called for by any Shop Drawing shall be done until the drawings have been approved by ENGINEER.

**2.4.6** The FIRM shall utilize Procore Technologies' construction management software program ("Procore Software") for the management of the Work. The FIRM will provide the City with access to the Procore Software in order to track the FIRM's Work on any Project, which is to include sharing all Procore Tools with the City such as RFI, Submittals, Inspections, Incidents, Observations, Punch List, Meetings, Schedule, Daily Log, Photos, Drawings, Specifications and Documents. These files will be downloaded and provided to the City prior to final acceptance. The Procore license shall be purchased and maintained by the FIRM.

## **2.5 SUPERVISION AND SUPERINTENDENCE:**

DESIGN BUILDER shall supervise and direct the WORK competently and efficiently, devoting such attention thereto and applying DESIGN BUILDER'S best skill, attention and expertise.

DESIGN BUILDER shall be solely responsible for and have control over the means, methods, techniques, sequences and procedures of construction. DESIGN BUILDER shall be responsible to see that the finished WORK complies fully and accurately with the Contract Documents.

## **2.6 RESIDENT SUPERINTENDENT:**

DESIGN BUILDER shall keep on the WORK site at all times during its progress a competent resident superintendent and any necessary assistants who must be able to effectively communicate in written and spoken English. Superintendent shall not be replaced without written notice to CITY unless the superintendent proves to be unsatisfactory to DESIGN BUILDER and ceases to be in their employ. The superintendent will be DESIGN BUILDER'S representative at the site and shall have authority to act on behalf of DESIGN BUILDER. All communications given to the superintendent shall be as binding as if given to DESIGN BUILDER.

## **2.7 LABOR:**

**2.7.1** Construction services shall be performed by qualified construction contractors licensed to do business in the State of Florida and suppliers, selected and paid by the DESIGN BUILDER.

**2.7.2** DESIGN BUILDER shall provide and pay for a sufficient number of competent, suitably qualified personnel to perform the WORK as required by the Contract Documents. DESIGN BUILDER shall not permit employment of unfit persons or persons not skilled in tasks on site. Except in connection with the safety or protection of persons or the WORK or property at the site or adjacent thereto, and except as otherwise indicated in the Contract Documents, all WORK at the site shall be performed during the hours of 8:00 a.m. and 5:00 p.m., and DESIGN BUILDER will not permit overtime work or the performance of WORK on Saturday, Sunday or any legal holiday without CITY'S written consent.

## **2.8 MATERIALS:**

**2.8.1** Unless otherwise specified herein, DESIGN BUILDER shall furnish, pay for and assume full responsibility for all materials, equipment, transportation, machinery, tools, appliances, water, heat, utilities and all other facilities and services necessary for the furnishing, performance, testing, start-up and proper completion of the WORK.

**2.8.2** DESIGN BUILDER warrants that all materials and equipment shall be of good quality and new, unless otherwise provided in the Contract Documents and that the WORK will be free from defects whether patent or latent in nature. All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions of the applicable supplier except as otherwise provided in the Contract Documents.

## **2.9 CONCERNING SUBCONTRACTORS, SUPPLIERS AND OTHERS:**

**2.9.1** Within fourteen (14) business days after completion and City approval of the applicable design milestone, and in any event prior to the commencement of physical construction work, the Design-Build Entity shall submit, in writing, to the City the names of all proposed subcontractors, suppliers, or other entities (including those furnishing

specially designed equipment or materials) who will perform principal portions of the Work. The City shall review and notify the Design-Build Entity in writing of any reasonable objection to any proposed person or entity. Failure of the City to reply within a reasonable time shall be deemed no objection. If the City has a reasonable objection to any proposed person or entity, the Design-Build Entity shall propose a substitute, subject to the same review process. The Design-Build Entity shall not change any previously approved subcontractor, supplier, or other entity without prior written notification and opportunity for the City to object on reasonable grounds.

**2.9.2** DESIGN BUILDER shall be fully responsible to CITY for all acts and omissions of the DESIGN BUILDER'S employees, Subcontractor, Suppliers and other persons directly or indirectly employed by their Subcontractors, suppliers and of persons for whose acts any of them may be liable and any other persons and organizations performing or furnishing of the WORK under a direct or indirect contract with DESIGN BUILDER. Nothing in the Contract Documents shall create any Contractual relationship between CITY and any such Subcontractor, supplier or other person or organization, nor shall it create any obligation on the part of CITY to pay or to see to the payment of any moneys due any such Subcontractor, supplier or other person or organization except as may otherwise be required by laws and regulations.

**2.9.3** All work performed for DESIGN BUILDER by a Subcontractor will be pursuant to an appropriate agreement between DESIGN BUILDER and the Subcontractor which specifically binds the Subcontractor to the applicable terms and conditions of the Contract Documents for the benefit of CITY.

## **2.10 PATENT FEES AND ROYALTIES:**

DESIGN BUILDER shall pay all license fees and royalties and assume all costs incident to the use in the performance of the WORK or the incorporation in the WORK of any invention, design, process, product or device which is the subject of patent rights or copyrights held by others.

## **2.11 PERMITS:**

The DESIGN BUILDER shall be required to obtain all necessary permits from the City Engineering and/or Building Departments. If the schedule of Proposal Prices does not include a permit allowance line item, permit fees should be included in your proposal. All permit applications shall be made using the City's online permitting system **ePermitting-ProjectDox** and can be obtained from the City's website at [www.margatefl.com](http://www.margatefl.com) under **BUILDING DEPARTMENT** for City Building permits and under **ENVIRONMENTAL AND ENGINEERING SERVICES DEPARTMENT** for City Engineering permits. City Building permit fees are NOT waived and the cost should be included in the proposal. Non-City permit fees (County and other regulatory agencies) are not waived and shall be included in the Proposal. City Engineering permits will not have a fee. Any questions regarding the requirements to obtain a permit from the City of Margate Building Department should be directed to (954) 970-3004. All City Engineering permits questions should be directed to DEES Department at (954) 972-0828.

## **2.12 LAWS AND REGULATIONS:**

DESIGN BUILDER shall comply with and give all notices required by laws, ordinances, rules, regulations and lawful orders of public authorities applicable to the performance of the WORK. CITY shall not be responsible for monitoring DESIGN BUILDER'S compliance with any laws and

regulations. DESIGN BUILDER shall promptly notify CITY if the Contract Documents are observed by DESIGN BUILDER to be at variance therewith.

### **2.13 RISK OF LOSS, TITLE:**

The risk of loss, injury or destruction shall be on DESIGN BUILDER until acceptance of the WORK by CITY. Title to the WORK shall pass to CITY upon acceptance of the WORK by CITY.

### **2.14 TAXES:**

DESIGN BUILDER shall pay all sales, consumer, use and other similar taxes required to be paid by DESIGN BUILDER in accordance with the laws and regulations of the State of Florida and its political subdivisions. DESIGN BUILDER is responsible for reviewing the pertinent state statutes involving such taxes and complying with all requirements.

### **2.15 USE OF PREMISES:**

**2.15.1** DESIGN BUILDER shall confine equipment, the storage of materials and equipment and the operations of workers to the project site and areas identified in and permitted by the Contract Documents and shall not unreasonably encumber the premises with equipment or other materials. DESIGN BUILDER shall assume full responsibility for any damage to any such land or area, or to the Owner or occupant thereof or of any land or areas contiguous thereto, resulting from the performance of the WORK. Should any claim be made against CITY by any such Owner or occupant because of the performance of the WORK, DESIGN BUILDER shall promptly attempt to settle with such other party by agreement or otherwise resolve the claim. The general indemnification provided elsewhere in this Contract specifically applies to claims arising out of DESIGN BUILDER'S use of the premises.

**2.15.2** During the progress of the WORK, DESIGN BUILDER shall keep the premises free from accumulations of waste materials, rubbish and other debris resulting from the WORK. At the completion of the WORK, DESIGN BUILDER shall remove all waste materials, rubbish and debris from and about the premises as well as all tools, appliances, equipment and machinery, and surplus materials, and shall leave the site clean and ready for occupancy by CITY. DESIGN BUILDER shall restore to original condition all property not designated for alteration by the Contract Documents.

**2.15.3** DESIGN BUILDER shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall DESIGN BUILDER subject any part of the WORK or adjacent property to stresses or pressures that will endanger it.

### **2.16 ACCESS TO WORK:**

DESIGN BUILDER shall provide CITY, CITY'S consultants, representatives and personnel, independent testing laboratories and governmental agencies with jurisdictional interests with access to the WORK at reasonable times for their observation, inspection and testing. DESIGN BUILDER shall provide them proper and safe conditions for such access and advise them of DESIGN BUILDER'S site safety procedures and programs so that they may comply therewith.

## **2.17 SAFETY AND PROTECTION:**

**2.17.1** DESIGN BUILDER shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the WORK to prevent damage, injury or loss to all employees on the work site and other persons and organizations who may be affected thereby; all the WORK and materials and equipment to be incorporated therein, whether in storage on or off the site; and other property at the site or adjacent thereto.

**2.17.2** DESIGN BUILDER shall comply with all applicable laws and regulations of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss.

## **2.18 INDEMNIFICATION:**

DESIGN BUILDER agrees to indemnify, defend, save, and hold harmless the City of Margate, its officers and employees from or on account of all third party claims for damages, losses, liabilities, including but not limited to reasonable attorneys' fees, and costs (at the trial and appellate levels) arising from personal injury or property damage to the extent caused by the negligence, recklessness or intentional wrongful misconduct of the DESIGN BUILDER. The limitation for such indemnification shall be \$2,000,000 per occurrence, or 100% of the DESIGN BUILDER's total proposal price, whichever is higher. Nothing contained in the foregoing indemnification shall be construed to be a waiver of any immunity or limitation of liability the City may have under the doctrine of sovereign immunity or Section 768.28, Florida Statute.

**2.18.1** The Parties hereto acknowledge and agree that, to the extent that any portion of the indemnification provisions contained herein is deemed void or unenforceable in any action or proceeding, then such portion shall be considered severed such that it will not affect the remaining portions of these indemnification provisions.

**2.18.2** The Indemnitors' indemnity obligations under this Section shall also specifically include, without limitation, all claims, fines, penalties, damages, liability, costs, fees, expenses (including, without limitation, reasonable attorneys' fees and expenses) to the extent caused by the negligence, recklessness or intentional wrongful misconduct of the DESIGN BUILDER.

**2.18.3** To the extent reasonably practicable, the Design-Builder shall use commercially reasonable efforts to include in all Subcontracts provisions by which each Subcontractor agrees to defend, indemnify and hold harmless Design-Builder and the City from and against liability, damages, losses and costs, including, but not limited to, reasonable attorneys' fees for all trial and appellate levels, arising out of, in connection with, or resulting from the performance of the Work or any Subcontractor's obligations under the Design-Build Documents to the same extent and in the same manner as the Design-Builder is liable to the City pursuant to this provision.

**2.18.4** The provisions of this Section shall survive final completion and final payment or termination of this Agreement.

## **2.19 SURVIVAL OF OBLIGATIONS:**

All representations, indemnifications, warranties and guarantees made in, required by, or given in accordance with this Agreement, as well as all continuing obligations indicated in the Contract

Documents, shall survive final payment, completion and acceptance of the WORK and termination or completion of the Agreement.

## **2.20 CORRECTION AND REMOVAL OF DEFECTIVE WORK:**

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

## **2.21 CONTRACTOR DELIVERABLES:**

**2.21.1** Engineering Permit – three (3) sets of hard copies plus one (1) PDF copy.

**2.21.2** Engineer's cost estimate or copy of Contract.

**2.21.3** Building Permit – three (3) sets.

**2.21.4** Shop drawings – three (3) sets.

**2.21.5** Record Drawings (as built) – two (2) sets of hard Copies (one full and one-half size) plus one (1) PDF copy.

**2.21.6** Record Drawings (as built) – 1 AutoCAD (2010 version, geo referenced).

**2.21.7** Operation and Maintenance Manuals – Three hard copies plus one (1) PDF copy.

**The remainder of the page is intended to be blank.**

# **ARTICLE 3**

## **OWNER'S RESPONSIBILITIES**

**3.1** The OWNER shall designate a representative authorized to act on the OWNER'S behalf with respect to the Project. The OWNER or such authorized representative shall examine documents submitted by the DESIGN BUILDER and shall promptly render decisions pertaining thereto to avoid delay in the orderly progress of the WORK.

**3.2** The OWNER may appoint an on-site project representative to observe the WORK and to have such other responsibilities as the OWNER and DESIGN BUILDER agree in writing prior to execution of this Agreement.

**3.3** The OWNER shall cooperate with the DESIGN BUILDER in securing building and other permits, licenses and inspections, and shall pay the fees for such permits, licenses and inspections if the cost of such fees is not identified as being included in the DESIGN BUILDER's Proposal.

**3.4** If the OWNER observes or otherwise becomes aware of a fault or defect in the WORK or nonconformity with the Design or Construction Documents, the OWNER shall give prompt written notice thereof to the DESIGN BUILDER.

**3.5** The OWNER shall furnish required information and services and shall promptly render decisions pertaining thereto to avoid delay in the orderly progress of the design and construction.

**3.6** The OWNER shall communicate with contractors only through the DESIGN BUILDER.

**3.7** CITY shall furnish data required under the Contract Documents promptly.

**3.8** Except for permits and fees which are the responsibility of DESIGN BUILDER, CITY shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or permanent changes in existing facilities.

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

### **3.10 ENGINEER'S RESPONSIBILITIES:**

**3.10.1** ENGINEER will be CITY'S representative during the construction period and until final payment is due. ENGINEER shall also serve as the Project's Initial Decision Maker as described in Article 11 of this Agreement.

#### **3.10.2 Visits to Site:**

ENGINEER will make visits to the site at intervals appropriate to the various stages of construction to observe the progress and quality of the executed WORK and to



determine, in general, if the WORK is proceeding in accordance with the Contract Documents. ENGINEER'S efforts will be directed toward providing for CITY a greater degree of confidence that the completed WORK will conform to the Contract Documents. On the basis of such visits and on-site inspections, ENGINEER shall keep CITY informed of the progress of the WORK and shall endeavor to guard CITY against defects and deficiencies in the WORK.

### **3.10.3 Technical Clarifications and Interpretations:**

ENGINEER will issue, with reasonable promptness, such written clarifications or interpretations of the technical requirements of the Contract Documents as ENGINEER may determine necessary, which shall be consistent with or reasonably inferable from the overall intent of the Contract Documents. Should DESIGN BUILDER fail to request interpretation of questionable items in the Contract Documents neither CITY nor ENGINEER will thereafter entertain any excuse for failure to execute the WORK in a satisfactory manner.

**3.10.4** ENGINEER will interpret and decide matters concerning performance under the requirements of the Contract Documents upon written request of either CITY or DESIGN BUILDER. ENGINEER, in its role as Initial Decision Maker, will make initial decisions on all claims, disputes or other matters in question between CITY and DESIGN BUILDER pursuant to the requirements set forth in Article 11. Written notice of each such claim, dispute or other matter will be delivered by claimant to ENGINEER and the other party but in no event later than three (3) calendar days after the occurrence of the event giving rise thereto and written supporting data will be submitted to the ENGINEER and other party within five (5) calendar days after such occurrence. All written decisions of the ENGINEER on any claim, dispute or other matter will be final and binding upon CITY and DESIGN BUILDER unless a written notice of intention to appeal from ENGINEER'S written decision is delivered within five (5) calendar days after the date of such decisions and a formal proceeding is instituted by the appealing party in a forum of competent jurisdiction within thirty (30) calendar days of the date of such decision. The rendering of a decision by ENGINEER with respect to any such claim, dispute, or matter (except any which have been waived by the making or acceptance of final payment) is a condition precedent to any exercise by CITY or DESIGN BUILDER of such rights or remedies existing under the Contract Documents or by law.

### **3.10.5 Authorized Variations in WORK:**

ENGINEER may authorize minor variations in the WORK from the technical requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the Contract Time and are consistent with the overall intent of the Contract Documents. These may be accomplished by a field order and will be binding on CITY, and also on DESIGN BUILDER who shall perform the WORK involved promptly.

### **3.10.6 Rejecting Defective WORK:**

ENGINEER will have the authority to disapprove or reject WORK which ENGINEER believes to be defective or otherwise non-conforming, and will also have authority to require special inspections or testing of the WORK whether or not the WORK is fabricated, installed or completed.

# ARTICLE 4

## TIME

**4.1 TIME IS OF THE ESSENCE OF THIS CONTRACT.** 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 to the Contract Time, shall be complete no later than December 7, 2027. Failure to achieve timely, substantial and/or final completion shall be regarded as a breach of this Contract and subject to appropriate remedies including but not limited to liability for liquidated damages in accordance with Paragraph 4.13 herein.

**4.2** The DESIGN BUILDER shall provide services as expeditiously as is consistent with reasonable skill and care and the orderly progress of design and construction.

**4.3** Time limits stated in the Contract Documents are of the essence of this Agreement. The WORK to be performed under this Agreement shall commence upon execution of a notice to proceed unless otherwise agreed and, subject to authorized Modifications, Substantial Completion shall be achieved as indicated in Article 14.

**4.4** The Date of Substantial Completion of the WORK or an agreed upon portion thereof is the date when construction or an agreed upon portion thereof is sufficiently complete so the OWNER can occupy and utilize the WORK or agreed upon portion thereof for its intended use.

**4.5 The Project Schedule.** The schedule provided in the DESIGN BUILDER'S Proposal shall include a construction schedule consistent with Paragraph 4.2 above and the requirements of this section 4.5 (the "Project Schedule"). The Project Schedule, including the time required for design and construction, shall not exceed time limits current under the Design-Build Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Design-Build Documents.

**4.5.1** The Design-Builder shall perform the Work in general accordance with the original Project Schedule. The original Project Schedule and all subsequently submitted updated Project 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 design, 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 Design Build Documents (hereinafter referred to as "Milestone Dates"). Design-Builder shall provide the City with the original/planned, resource loaded Project Schedule electronic files. Upon review and acceptance by the of the Milestone Dates, the Project Schedule shall be deemed part of the Design-Build Documents and attached to the Agreement and is incorporated in the Design-Build Documents. The Design-Builder shall monitor the progress of the Work for conformance with the requirements of the Project Schedule and shall promptly advise the City of any delays or potential delays.

**4.7 Omitted.**

**4.8** Schedule float, defined as the total amount of time that an activity within a schedule can be delayed from its early start date without delaying the Project finish date, or intermediary milestone, will be a resource of the Project to be shared by the City and Design-Builder.

**4.9 Omitted.**

**4.10 Omitted.**

**4.11 CHANGE OF CONTRACT TIME:**

**ALL TIME LIMITS STATED IN THE CONTRACT DOCUMENTS ARE OF THE ESSENCE OF THE AGREEMENT. NO CLAIM FOR DAMAGES OR ANY CLAIM OTHER THAN FOR AN EXTENSION OF TIME SHALL BE MADE OR ASSERTED AGAINST THE CITY BY REASON OF ANY DELAYS.** DESIGN BUILDER shall not be entitled to an increase in the Contract Price or payment or compensation of any kind from CITY for direct, indirect, consequential, impact or other costs, expenses or damages including but not limited to costs of acceleration or inefficiency, arising because of delay, disruption, interference or hindrance from any cause whatsoever, whether such delay, disruption, interference be reasonable or unreasonable, foreseeable or unforeseeable, or avoidable or unavoidable; provided, however, that this provision shall not preclude recovery of damages by DESIGN BUILDER for hindrances or delays due solely to fraud, bad faith or active interference on the part of CITY or its agents. Otherwise, DESIGN BUILDER shall be entitled only to extensions of the Contract Time as the sole and exclusive remedy for such resulting delay, in accordance with and to that extent specifically provided above. No extension of time shall be granted for delays resulting from normal weather conditions prevailing in the area as defined by the average of the last ten (10) years of weather data as recorded by the United States Department of Commerce, National Oceanic and Atmospheric Administration at the Fort Lauderdale Weather Station. All requests for extensions of time other than those associated with changes in the Work, must be submitted in writing to the City within fourteen (14) 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.

**4.12 NO RECOVERY FOR EARLY COMPLETION:**

If the DESIGN BUILDER submits a schedule or expresses an intention to complete the WORK earlier than any required milestone or completion date, the CITY shall not be liable to the DESIGN BUILDER for any costs incurred because of delay or hindrance should the DESIGN BUILDER be unable to complete the WORK before such milestone or completion date. The duties, obligations and warranties of the CITY to the DESIGN BUILDER shall be consistent with and applicable only to the completion of the WORK and completion dates set forth in this Agreement.

**4.13 LIQUIDATED DAMAGES:**

Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the City can occupy or utilize the Work for its intended use, all permits and governmental approvals within Design Builder's responsibility for the Project have been obtained or to the extent any of the above are delayed by any issue that is not within Design Builder's responsibility, when

Design Builder has completed all items within its responsibility necessary for such conditions to have occurred.

Final Completion is the stage in the progress of the Work when the Work or designated portion thereof is fully completed, punch list items are resolved, and the Design-Builder has no remaining obligations under the Contract Documents.

Upon failure of the DESIGN BUILDER to complete the WORK within the time specified for completion, (plus approved extensions if any) DESIGN BUILDER shall pay to CITY the sum of Seven Hundred and Fifty dollars (\$750.00) for each calendar day that Substantial Completion of the WORK is delayed beyond the time specified in the Contract for Substantial Completion, as fixed and agreed liquidated damages and not as a penalty. In addition, the Design Builder shall pay the City the sum of Five Hundred dollars (\$500.00) for each calendar day that Final Completion of the Work is delayed beyond the time specific in the Contract for Final Completion.

Liquidated damages are hereby fixed and agreed upon between the parties, recognizing the impossibility of precisely ascertaining the amount of damages that will be sustained by CITY as a consequence of such delay and both parties desiring to obviate any question of dispute concerning the amount of said damages and the cost and effect of the failure of DESIGN BUILDER to complete the Contract on time. Regardless of whether or not a single Contract is involved, the above-stated liquidated damages shall apply separately to each portion of the WORK for which a time of completion is given. CITY shall have the right to deduct from and retain out of moneys which may be then due or which may become due and payable to DESIGN BUILDER, the amount of such liquidated damages and if the amount retained by CITY is insufficient to pay in full such liquidated damages, the DESIGN BUILDER shall pay in full such liquidated damages. DESIGN BUILDER shall be responsible for reimbursing CITY, in addition to liquidated damages or other per day damages for delay, for all costs of engineering, and inspection and other costs incurred in administering the construction of the project beyond the completion date specified or beyond an approved extension of time granted to DESIGN BUILDER whichever is later.

It is hereby agreed that the amount of the per diem assessment is not a penalty and not excessive in light of the circumstances known to the parties at the time this Contract is executed.

The above liquidated damage provision shall not affect the City's right to terminate this Contract nor shall it limit any of the other remedies as provided in the Contract. The City's exercise of its right to terminate this Contract shall not release the Design-Builder from its obligation to pay liquidated damages in the amount set forth herein. Such assessments shall be immediately due and payable to the City or, at the City's option may be deducted from payments that may be due and owing to the Design-Builder.

The City shall also be entitled to proceed directly against Design-Builder's Subcontractors and suppliers (in Design-Builder's name) responsible for delays in achieving Substantial Completion for the full amount of damages Owner has incurred. To assist the City with claims against Subcontractors and suppliers as set forth herein above, Design-Builder shall provide the City with Project records to assist the City in identifying Design-Builder's Subcontractors and suppliers responsible for delays in achieving Substantial Completion and or Final Completion. Any Subcontract Agreements providing for any delay damage amount lower than City's actual damages is subject to City's prior written approval.

# **ARTICLE 5**

## **PAYMENTS**

### **5.1 CONTRACT PRICE:**

CITY shall pay DESIGN BUILDER 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, the Contract Price of \$12,909,057.00.

### **5.2 PROGRESS PAYMENTS:**

**5.2.1** The DESIGN BUILDER shall deliver to the OWNER itemized Application for Payment in such detail as indicated in Article 14. DESIGN BUILDER may requisition payments for WORK completed during the project at intervals of not more than once a month. The DESIGN BUILDER'S requisition shall show a complete breakdown of the project components, the quantities completed and the amount due, together with a certification by the DESIGN BUILDER that the DESIGN BUILDER has disbursed to all subcontractors and suppliers their pro-rata shares of the payment out of previous progress payments received by the DESIGN BUILDER for all WORK completed and materials furnished in the previous period or properly executed releases of liens by all subcontractors, suppliers and materialmen who were included in the DESIGN BUILDER'S previous applications for payment, and any other supporting documentation as may be required by the ENGINEER or Contract Documents. Each requisition shall be submitted in triplicate to the ENGINEER for approval. The CITY shall make payment to the DESIGN BUILDER within thirty (30) calendar days after approval by the ENGINEER of the DESIGN BUILDER'S requisition for payment.

**5.2.2** Five percent (5%) of all monies earned by the DESIGN BUILDER shall be retained by the CITY until the WORK is totally completed as specified, and accepted by the CITY unless, at some point during the construction period, a retainage reduction is required to comply with Section 218.735(8), Florida Statutes.

**5.3** The Application for Payment shall constitute a representation by the DESIGN BUILDER to the OWNER that, to the best of the DESIGN BUILDER'S knowledge, information and belief, the design and construction have progressed to the point indicated; the quality of the WORK covered by the application is in accordance with the Contract Documents; and the DESIGN BUILDER is entitled to payment in the amount requested.

**5.4** The DESIGN BUILDER shall pay each subcontractor, upon receipt of payment from the OWNER, out of the amount paid to the DESIGN BUILDER on account of such Subcontractor's WORK, the amount to which said Subcontractor is entitled in accordance with the terms of the DESIGN BUILDER'S contract with such Subcontractor. The DESIGN BUILDER shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to sub-Subcontractors in similar manner.

**5.5** The OWNER shall have no obligation to pay or to be responsible in any way for payment to a Subcontractor of the DESIGN BUILDER except as may otherwise be required by law.

**5.6** No progress payment or partial or entire use or occupancy of the Project by the OWNER shall constitute an acceptance of WORK not in accordance with the Contract Documents.

**5.7** The DESIGN BUILDER warrants that: (1) title to WORK, materials and equipment covered by an Application for Payment will pass to the OWNER either by incorporation in construction or upon receipt of payment by the DESIGN BUILDER, whichever occurs first; (2) WORK, materials and equipment covered by previous Applications for Payment are free and clear of liens, claims, security interests or encumbrances, hereinafter referred to as "liens"; and (3) no WORK, materials or equipment covered by an Application for Payment will have been acquired by the DESIGN BUILDER, or any other person performing work at the site or furnishing materials or equipment for the Project, subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by the DESIGN BUILDER or such other person.

**5.8** If the Agreement provides for retainage, within 30 calendar days after reaching the earlier of substantial completion or beneficial occupancy, the CITY and the contractor will inspect the work and develop a punch list covering those items required to render complete, satisfactory, and acceptable the construction services purchased by the CITY. The punch list will include a schedule of values that provides the estimated cost to complete each item on the punch list. If the CITY and DESIGN BUILDER are unable to agree on an item or value, the CITY has final discretion whether to include an item and the amount for valuation of the cost to complete each item on the punch list. Within 20 business days after the creation of the punch list, the remaining contract balance, including retainage, will be paid to the contractor less an amount equal to 150 percent of the cost to complete the items on the punch list. Upon reaching final acceptance for an item or all items, the 150 percent withheld for each item will be released with final payment. For projects valued at \$10 million or more, the 30 calendar day period may be extended to 45 calendar days.

#### **5.9 FINAL INSPECTION:**

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

#### **5.10 FINAL APPLICATION FOR PAYMENT:**

After DESIGN BUILDER has completed all such corrections to the satisfaction of CITY and ENGINEER and delivered all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, marked up record documents and other documents required by the Contract Documents, and after ENGINEER has indicated that the WORK is acceptable, DESIGN BUILDER may make application for final payment. The final application for payment shall be accompanied by (1) complete and legally effective releases or waivers of all liens arising out of or filed in connection with the WORK; or (2) DESIGN BUILDER'S receipts in full covering all labor, materials and equipment for which a lien could be filed; or (3) a final affidavit stating that all laborers, materialmen, suppliers and Subcontractors who worked for DESIGN BUILDER under this Contract have been paid in full or if the fact be otherwise, identifying the name of each lienor who has not been paid in full and the amount due or to become due each for labor, services or materials furnished. If any Subcontractor or supplier fails to furnish a release or receipt in full, DESIGN BUILDER may furnish a bond satisfactory to CITY to indemnify CITY against any lien.

In addition, DESIGN BUILDER shall also submit with the final application for payment, the completed set of "As-Built" drawings for review and approval. The "As-Built" drawings shall be

prepared, sealed and certified by a professional registered land surveyor licensed by the State of Florida. Final payment to DESIGN BUILDER shall not be made until said drawings have been reviewed and approved by ENGINEER. Prior to approval, if necessary, the drawings may be returned to DESIGN BUILDER for changes or modifications if in the opinion of ENGINEER they do not represent correct or accurate "As-Built" drawings.

#### **5.11 FINAL PAYMENT AND ACCEPTANCE:**

**5.11.1** If, on the basis of ENGINEER'S observation of the WORK during construction and final inspection, and ENGINEER'S review of the final Application for Payment and accompanying documentation, ENGINEER is satisfied that the WORK has been completed and DESIGN BUILDER'S other obligations under the Contract Documents have been fulfilled, ENGINEER will, within ten (10) calendar days after receipt of the final Application for Payment, indicate in writing ENGINEER'S recommendation of payment and present the Application to CITY for payment. Thereupon ENGINEER will give written notice to CITY and DESIGN BUILDER that the WORK is acceptable. Otherwise, ENGINEER will return the Application to DESIGN BUILDER, indicating in writing the reasons for refusing to recommend final payment, in which case DESIGN BUILDER shall make the necessary corrections and resubmit the Application. Thirty (30) calendar days after presentation to CITY of the Application and accompanying documentation, in appropriate form and substance, and with ENGINEER'S recommendation and notice of acceptability, the amount recommended by ENGINEER will become due and will be paid by CITY to DESIGN BUILDER.

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

**5.11.3** Final payment, constituting the entire unpaid balance of the Contract Price, shall be paid by the CITY to the DESIGN BUILDER when the WORK has been completed, the Contract fully performed, and a final certificate for payment has been issued by the ENGINEER. The making of final payment shall constitute a waiver of claims by CITY except those arising from:

- .1 Liens, claims, security interests or encumbrances arising out of this Agreement and unsettled.
- .2 Faulty or defective WORK and latent defects discovered after acceptance.
- .3 Failure of the WORK to comply with the requirements of the Contract Documents.
- .4 Terms of special warranties required by the Contract Documents.

.5 Any of DESIGN BUILDER'S continuing obligations under this Agreement.

The acceptance of final payment by DESIGN BUILDER or the Subcontractor for materials and supplies shall constitute a waiver of claims by that payee except those previously made in writing and identified by payee as unsettled at the time of final application for payment.

#### **5.12 CITY'S RIGHT TO WITHHOLD PAYMENT:**

The CITY may withhold in whole or in part, final payment or any progress payment to such extent as may be necessary to protect itself from loss on account of:

**5.12.1** Defective WORK not remedied within the cure period provided by the City.

**5.12.2** Claims filed or reasonable evidence indicating the probable filing of claims by other parties against the DESIGN BUILDER.

**5.12.3** Failure of the DESIGN BUILDER to make timely payments to Subcontractors or suppliers for materials or labor.

**5.12.4** Damage to another DESIGN BUILDER or separate contractor not remedied.

**5.12.5** Liability for liquidated damages has been incurred by the DESIGN BUILDER.

**5.12.6** Reasonable evidence that the WORK cannot be completed for the unpaid balance of the Contract Price.

**5.12.7** Reasonable evidence that the WORK will not be completed within the Contract Time.

**5.12.8** Failure to carry out the WORK in accordance with the Contract Documents.

When the above grounds are removed or resolved or the DESIGN BUILDER 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.

#### **5.13 FINAL PAYMENT:**

**5.13.1** Neither final payment nor amounts retained, if any, shall become due until the DESIGN BUILDER submits to the OWNER (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Project for which the OWNER or OWNER'S property might be liable have been paid or otherwise satisfied, (2) consent of surety, if any, to final payment, (3) a certificate that insurance required by the Contract Documents is in force following completion of the WORK, and (4) if required by the OWNER, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens arising out of this Agreement, to the extent and in such form as may be designated by the OWNER. If a DESIGN BUILDER refuses to furnish a release or waiver required by the OWNER, the DESIGN BUILDER may furnish a bond satisfactory to the OWNER to indemnify the OWNER against such lien. If such lien remains unsatisfied after payments are made, the DESIGN BUILDER shall reimburse the OWNER for moneys the latter may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.



**5.13.2** Final payment constituting the entire unpaid balance due shall be paid by the OWNER to the DESIGN BUILDER upon the OWNER'S receipt of the DESIGN BUILDER'S final Application for Payment when the WORK has been completed and the Contract fully performed except for those responsibilities of the DESIGN BUILDER which survive final payment.

**5.13.3** The making of final payment shall not constitute a waiver of any claims by the OWNER.

**5.13.4** Acceptance of final payment shall constitute a waiver of all claims by the DESIGN BUILDER except those previously made in writing in compliance with Article 11 and identified by the DESIGN BUILDER as unsettled at the time of final Application for Payment.

**The remainder of the page is intended to be blank.**

## **ARTICLE 6**

### **PROTECTION OF PERSONS AND PROPERTY**

**6.1** The DESIGN BUILDER shall be responsible for initiating, maintaining and providing supervision of OSHA standards for safety precautions and programs in connection with the WORK.

**6.2** The DESIGN BUILDER shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to (1) employees on the WORK and other persons who may be affected thereby; (2) the WORK and materials and equipment to be incorporated therein; and (3) other property at or adjacent to the site.

**6.3** The DESIGN BUILDER shall give notices and comply with applicable laws, ordinances, rules, regulations and orders of public authorities bearing on the safety of persons and property and their protection from damage, injury or loss.

**6.4** The DESIGN BUILDER shall be liable for damage or loss (other than damage or loss to property insured under the property insurance provided or required by the Contract Documents to be provided by the OWNER) to property at the site caused in whole or in part by the DESIGN BUILDER, a Subcontractor of the DESIGN BUILDER or anyone directly or indirectly employed by either of them, or by anyone for whose acts they may be liable.

**6.5 HURRICANE PRECAUTIONS:** During such periods of times that are designated by the United States Weather Bureau as a hurricane warning or alert; all construction materials or equipment will be secured against displacement by wind forces; provided that where a full complement of personnel is employed or otherwise in attendance, or engaged for such purposes, formal construction procedures or use of materials or equipment may continue allowing such reasonable time as may be necessary to secure such materials or equipment before winds of hurricane force are anticipated. Construction materials and equipment will be secured by guying and shoring, or removing or tying down loose materials, equipment and construction sheds. In advance of executing this Agreement, Design-Builder shall provide a hurricane preparedness plan for the City's approval, which shall comply with the requirements of section 6.5 herein which will be provided and become a part of this Agreement.

**The remainder of the page is intended to be blank.**

# **ARTICLE 7**

## **INSURANCE AND BONDS**

### **7.1 DESIGN BUILDER'S LIABILITY INSURANCE:**

**7.1.1** The DESIGN BUILDER shall purchase and maintain in a company or companies authorized to do business in the State of Florida, such insurance as will protect the DESIGN BUILDER from claims set forth below which may arise out of or result from operations under the Contract by the DESIGN BUILDER or by a DESIGN BUILDER of the DESIGN BUILDER, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable:

.1 claims under workers' or workmen's compensation, disability benefit and other similar employee benefit laws which are applicable to the WORK to be performed;

.2 claims for damages because of bodily injury, occupational sickness or disease, or death of the DESIGN BUILDER'S employees under any applicable employer's liability law;

.3 claims for damages because of bodily injury, sickness or disease, or death of persons other than the DESIGN BUILDER'S employees;

.4 claims for damages covered by usual personal injury liability coverage which are sustained (1) by a person as a result of an offense directly or indirectly related to employment of such person by the DESIGN BUILDER or (2) by another person;

.5 claims for damages, other than to the WORK at the site, because of injury to or destruction of tangible property, including loss of use; and

.6 claims for damages for bodily injury or death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle.

**7.1.2** The insurance required by the above Subparagraph 7.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever are greater.

**7.1.3** The DESIGN BUILDER'S liability insurance shall include contractual liability insurance applicable to the DESIGN BUILDER'S obligations.

**7.1.4** Certificates of Insurance, and copies of policies, acceptable to the OWNER shall be delivered to the OWNER at the time of execution of Contract. These Certificates as well as insurance policies required by this Paragraph shall contain a provision that coverage will not be canceled or allowed to expire until at least thirty calendar days prior written notice has been given to the OWNER.

If any of the foregoing insurance coverage is required to remain in force after final payment, an additional certificate evidencing continuation of such coverage shall be submitted along with the application for final payment.

## **7.2 PAYMENT AND PERFORMANCE BONDS:**

**7.2.1** Within fifteen (15) calendar days after Notice of Award and in any event prior to commencing WORK, the DESIGN BUILDER shall execute and furnish to CITY a performance bond and a payment bond, each written by a corporate surety, having a resident agent in the State of Florida and having been in business with a record of successful continuous operation for at least five (5) years. The surety shall hold a current certificate of authority from the Secretary of Treasury of the United States as an acceptable surety on federal bonds in accordance with United States Department of Treasury Circular No. 570. If the amount of the Bond exceeds the underwriting limitation set forth in the circular, in order to qualify, the net retention of the surety company shall not exceed the underwriting limitation in the circular and the excess risks must be protected by coinsurance, reinsurance, or other methods, in accordance with Treasury Circular 297, revised September 1, 1978 (31 DFR, Section 223.10, Section 223.11). Further, the surety company shall provide CITY with evidence satisfactory to CITY, that such excess risk has been protected in an acceptable manner. The surety company shall have at least the following minimum rating of B+ to A+, in accordance with the latest edition of A.M. Best's Insurance Guide, published by Alfred M. Best Company, Inc., Ambest Road, Oldwick, New Jersey 08858.

**7.2.2** Two (2) separate bonds are required and both must be approved by the CITY. The penal sum stated in each bond shall be the amount equal to the total amount payable under the terms of the Contract. The performance bond shall be conditioned that the DESIGN BUILDER perform the contract in the time and manner prescribed in the Contract. The payment bond shall be conditioned that the DESIGN BUILDER promptly make payments to all persons who supply the DESIGN BUILDER with labor, materials and supplies used directly or indirectly by the DESIGN BUILDER in the prosecution of the WORK provided for in the Contract and shall provide that the surety shall pay the same in the amount not exceeding the sum provided in such bonds, together with interest at the maximum rate allowed by law; and that they shall indemnify and save harmless the CITY to the extent of any and all payments in connection with the carrying out of said Contract which the CITY may be required to make under the law.

**7.2.3** Pursuant to the requirements of Section 255.05(l)(a), Florida Statutes, it shall be the duty of the DESIGN BUILDER to record the aforesaid payment and performance bonds in the public records of Broward County, with the DESIGN BUILDER to pay all recording costs.

## **7.3 BONDS, REDUCTION AND FINAL PAYMENT:**

Such bonds shall continue in effect for one (1) year after final payment becomes due except as otherwise provided by law or regulation or by the Contract Documents with the final sum of said bonds reduced after final payment to an amount equal to twenty five percent (25%) of the Contract Price, or an additional bond shall be conditioned that DESIGN BUILDER shall correct any defective or faulty WORK or material which appears within one (1) year after final completion of the Contract, upon notification by the CITY.

## **7.4 DUTY TO SUBSTITUTE SURETY:**

If the surety on any Bond furnished by DESIGN BUILDER is declared bankrupt or becomes insolvent or its right to do business is terminated in the State of Florida or it ceases to meet the

requirements of other applicable laws or regulations, DESIGN BUILDER shall within seven (7) calendar days thereafter substitute another bond and surety, both of which must be acceptable to CITY.

## **7.5 INSURANCE:**

**7.5.1 AT THE TIME OF EXECUTION OF THE CONTRACT, THE DESIGN BUILDER SHALL SUBMIT CERTIFICATE(S) OF INSURANCE EVIDENCING THE REQUIRED COVERAGE/S AND SPECIFICALLY PROVIDING THAT THE CITY OF MARGATE IS AN ADDITIONAL INSURED (WHERE INDICATED) WITH RESPECT TO THE REQUIRED COVERAGE AND THE OPERATIONS OF THE DESIGN BUILDER UNDER THE CONTRACT.** Insurance Companies selected must be acceptable by the CITY. All of the policies of insurance so required to be purchased and maintained shall contain a provision or endorsement that the coverage afforded shall not be cancelled, materially changed or renewal refused until at least thirty (30) calendar days written notice has been given to CITY by certified mail.

The DESIGN BUILDER shall procure and maintain at its own expense and keep in effect during the full term of the Contract a policy or policies of insurance which must include the following coverage and minimum limits of liability: **Additionally, any Subcontractor hired by the DESIGN BUILDER for this project shall provide insurance coverage as stated herein.**

### **BUILDER'S RISK NOT REQUIRED**

~~(a) Builder's Risk The DESIGN BUILDER shall maintain builder's risk insurance for any Property or Project in the course of construction in an amount at least equal to 100% of the estimated completed Project value as well as subsequent modifications of that sum. Coverage shall be provided on an All-Risk basis including coverage for the perils of wind and flood. DESIGN BUILDER shall assume all responsibility for any coinsurance penalties, deductibles, or uncovered self-insurance retention. The policy shall be endorsed with an "Occupancy Endorsement" or similar endorsement, amending the automatic termination of coverage in the event the project is partially occupied, or put to its intended use prior to completion of construction. If a sublimit applies to the perils of wind or flood, the sublimit shall not be less than 25% of the projected completed value of the Project. The deductible shall not exceed \$10,000.00 nor shall a wind percentage deductible, when applicable, exceed five percent 5%. The coverage shall be kept in force until final payment has been made in accordance with other applicable Contract requirements, or until DESIGN BUILDER and the CITY has any Property interest in the Project, or until DESIGN BUILDER and the CITY mutually consent to the termination, whichever occurs first. This insurance shall include interest of the CITY, DESIGN BUILDER, SUBCONTRACTOR AND SUB-SUBCONTRACTORS in the Project.~~

~~Partial Occupancy or use of the WORK shall not commence until insurance company or companies providing insurance as required have consented to such partial occupancy or use. DESIGN BUILDER shall take reasonable steps to notify and obtain consent of the insurance company or companies, and agrees to take no action, other than upon mutual consent, with respect to occupancy or use of the WORK that could lead to cancellation, lapse, or reduction of insurance.~~

~~The coverage shall be kept in full force and effect until Final Completion or until DESIGN BUILDER and CITY mutually consent to the termination, whichever occurs first. The DESIGN BUILDER agrees and understands the CITY shall not provide any Builder's Risk insurance on behalf of DESIGN BUILDER for loss or damage to WORK, or to any other property of owned, hired, or hired, or borrowed by the DESIGN BUILDER.~~

~~DESIGN BUILDER agrees this coverage shall be provided on a primary basis, and shall be in accordance with all of the limits terms and conditions set forth herein.~~

- (b) Worker's Compensation Insurance for statutory obligations imposed by Worker's Compensation or Occupational Disease Laws, including, where applicable, the United States Longshoremen's and Harbor Worker's Act, the Federal Employers' Liability Act and the Homes Act. Employer's Liability Insurance shall be provided with a minimum of One Hundred Thousand and xx/100 dollars (\$100,000.00) per accident. DESIGN BUILDER shall agree to be responsible for the employment, conduct and control of its employees and for any injury sustained by such employees in the course of their employment.

- (c) Comprehensive Automobile Liability Insurance for all owned, non-owned and hired automobiles and other vehicles used by the DESIGN BUILDER in the performance of the WORK with the following minimum limits of liability:

\$1,000,000.00 Combined single Limit, Bodily Injury and Property Damage Liability, per occurrence

- (d) Comprehensive General Liability with the following minimum limits of liability:

\$2,000,000.00 Combined Single Limit, Bodily Injury, Environmental Pollution, and Property Damage Liability, per occurrence

Coverage shall specifically include the following with minimum limits not less than those required for Bodily Injury Liability and Property Damage:

1. Premises and operations;
2. Independent Contractors;
3. Product and Completed Operations Liability;
4. Broad Form Property Damage;
5. Broad Form Contractual Coverage applicable to the Contract and specifically confirming the indemnification and hold harmless agreement in the Contract; and Personal Injury coverage with employment contractual exclusions removed and deleted.

- (e) Professional Liability Errors & Omissions with the following minimum limits of liability:

\$1,000,000.00, per occurrence

**7.5.2** The required insurance coverage shall be issued by an insurance company authorized and licensed to do business in the State of Florida, with the following minimum rating of B+ to A+, in accordance with the latest edition of A.M. Best's Insurance Guide.

**7.5.3** All required insurance policies shall preclude any underwriter's rights of recovery or subrogation against CITY with the express intention of the parties being that the required insurance coverage protect both parties as the primary coverage for any and all losses covered by the above described insurance.

**7.5.4** The DESIGN BUILDER shall ensure that any company issuing insurance to cover the requirements contained in this Contract agrees that they shall have no recourse against CITY for payment or assessments in any form on any policy of insurance.

**7.5.5** The clauses "Other Insurance Provisions" and "Insurers Duties in the Event of an occurrence, Claim or Suit" as it appears in any policy of insurance in which CITY is named as an additional named insured shall not apply to CITY. CITY shall provide written notice of occurrence within a reasonable time of the actual notice of such an event.

**7.5.6** The DESIGN BUILDER shall not commence performance of its obligations under this Agreement until after it has obtained all of the minimum insurance herein described and the same has been approved.

**7.5.7** The DESIGN BUILDER agrees to perform the WORK under the Contract as an independent DESIGN BUILDER, and not as a Subcontractor, agent or employee of CITY.

**7.5.8** Violation of the terms of this paragraph and its subparts shall constitute a breach of the Contract and CITY, at its sole discretion, may cancel the Contract and all rights, title and interest of the DESIGN BUILDER shall thereupon cease and terminate.

## **7.6 CITY'S LIABILITY AND INSURANCE:**

CITY shall not be responsible for purchasing and maintaining any insurance to protect the interests of DESIGN BUILDER, Subcontractors or others on the WORK. CITY specifically reserves all statutory and common law rights and immunities and nothing herein is intended to limit or waive same including, but not limited to, the procedural and substantive provisions of Florida Statute 768.28 and Florida Statute 95.11.

## **7.7 LOSS OF USE INSURANCE:**

The OWNER, at the OWNER'S option, may purchase and maintain such insurance as will insure the OWNER against loss of use of the OWNER'S property due to fire or other hazards, however caused. The OWNER waives all rights of action against the DESIGN BUILDER, and its Contractors and their agents and employees, for loss of use of the OWNER'S property, including consequential losses due to fire or other hazards, however caused, to the extent covered by insurance under this Paragraph.

# **ARTICLE 8**

## **CHANGES IN THE WORK**

### **8.1 CHANGES IN THE WORK:**

**8.1.1** CITY, without invalidating this Agreement, may order additions, deletions or revisions to the WORK. Such additions, deletions or revisions shall be authorized by a Written Amendment, Change Order or Work Directive Change.

**8.1.2** All Change Orders which, individually or when cumulatively added to amounts authorized pursuant to prior change Orders for this project, increase the cost of the WORK to CITY or which extend the time for completion, must be formally authorized and approved by the CITY'S Commission prior to their issuance and before WORK may begin. No claim against CITY for extra WORK in furtherance of such change order shall be allowed unless prior approval has been obtained.

Notwithstanding the above paragraph, Change Orders which individually or when cumulatively added to amounts authorized, pursuant to prior Change Orders for this project, increase the cost of the WORK to the CITY not in excess of ten percent (10%) or \$50,000. (whichever is less) may be approved by signed approval of the City Manager of the City of Margate.

**No claim against CITY for extra WORK in furtherance of a Change Order shall be allowed unless prior approval pursuant to this section has been obtained.**

**8.1.3** The Contract Price and Contract Time shall be changed only by Change Order or written Amendment.

**8.1.4** Proposed Change orders shall be prepared by the ENGINEER on forms provided by CITY. When submitted for approval, they shall carry the signature of the ENGINEER and the DESIGN BUILDER.

**8.1.5** If CITY and DESIGN BUILDER are unable to agree as to the extent, if any, of an adjustment in the Contract Price or an adjustment of the Contract times that should be allowed as a result of a Work Change Directive, a claim may be made therefore pursuant to the requirements of Article 11.

**8.1.6** DESIGN BUILDER shall not be entitled to an increase in the Contract Price or an extension of the Contract times with respect to any WORK performed that is not required by the Contract Documents as amended, modified and supplemented and which has not previously been approved in writing by the City.

**8.1.7** If notice of any change affecting the general scope of the WORK or the provisions of the Contract Documents is required by the provisions of any bond to be given to a surety, the giving of any such notice will be DESIGN BUILDER'S responsibility and the amount of each applicable bond shall be adjusted accordingly.

**8.1.8** Any claim for adjustment in the Contract Price or time shall be based upon written notice delivered by the party making the claim to the other parties and to ENGINEER in compliance with the requirements of Article 11 and not later than three (3)



calendar days after the occurrence or event giving rise to the claims and stating the general nature of the claim. No claim for an adjustment in the Contract Price or an extension of the Contract Time will be valid if not submitted in accordance with this Paragraph and Article 11.

**8.1.9** The cost or credit to CITY from a change in the WORK shall be determined by only by mutual agreement of the parties.

## **8.2 CHANGE ORDERS:**

**8.2.1** A Change Order is a written order signed by the OWNER and DESIGN BUILDER, and issued after execution of this Agreement, authorizing a change in the WORK or adjustment in the Contract Price or Contract Time. The Contract Price and Contract Time may be changed only by Change Order executed by the parties in writing.

**8.2.2** Cost or credit to the OWNER resulting from a change in the WORK shall be determined in one or more of the following ways:

- .1 by mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 by unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 by cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 by the method provided below.

**8.2.3** If none of the methods set forth in Clauses 8.2.2.1, 8.2.2.2 or 8.2.2.3 is agreed upon, the DESIGN BUILDER, provided a written order signed by the OWNER is received, shall promptly proceed with the WORK involved. The cost of such WORK shall then be determined on the basis of reasonable expenditures and savings of those performing the WORK attributable to the change, including the expenditures for design services and revisions to the Contract Documents. In case of an increase in the Contract Price, the cost shall include a reasonable allowance for overhead and profit. Unless otherwise provided in the Contract Documents, cost shall be limited to the following: cost of materials, including sales tax and cost of delivery; cost of labor, including social security, old age and unemployment insurance, and fringe benefits required by agreement or custom; workers' or workmen's compensation insurance; bond premiums; rental value of equipment and machinery; additional costs of supervision and field office personnel directly attributable to the change, and fees paid to engineers and other professionals. Pending final determination of cost to the OWNER, payments on account shall be made on the Application for Payment. The amount of credit to be allowed by the DESIGN BUILDER to the OWNER for deletion or change which results in a net decrease in the Contract Price will be actual net cost. When both additions and credits covering related WORK or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of the net increase, if any, with respect to that change.

**8.2.4** If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are so changed in a proposed Change Order that application of agreed unit prices to quantities proposed will cause substantial

inequity to the OWNER or DESIGN BUILDER, applicable unit prices shall be equitably adjusted.

### **8.3 CONCEALED CONDITIONS:**

By execution of this Agreement, DESIGN BUILDER has satisfied itself as to all conditions necessary to fulfill this Contract. No contract adjustments shall be allowed for concealed conditions nor different site conditions than anticipated. With the exception of claims arising from unforeseeable conditions, claims for additional costs or extensions of time because of the failure of Design-Builder to familiarize itself with the Project's site conditions will not be allowed. The Design-Builder 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 limitations as to access associated with the Project; (3) anticipated labor supply and costs; and (4) availability and cost of materials, tools and equipment. Except for claims arising from conditions which the Design-Builder could not have reasonably foreseen, the City shall not be required to make any adjustment in the Contract Sum or grant an extension to the Agreement Time in connection with any failure by the Design-Builder to comply with the requirements of this Section 8.3

### **8.4 REGULATORY CHANGES:**

The DESIGN BUILDER shall be compensated for changes in the WORK necessitated by the enactment or revision of codes, laws or regulations subsequent to the submission of the DESIGN BUILDER'S Proposal.

**The remainder of the page is intended to be blank.**

## **ARTICLE 9**

### **WARRANTIES, TESTS AND INSPECTIONS CORRECTION OF DEFECTIVE WORK**

#### **9.1 WARRANTY OF TITLE:**

The DESIGN BUILDER warrants to the CITY that it possesses good, clear and marketable title to all equipment and materials provided hereunder and there are no pending liens, claims or encumbrances whatsoever against said equipment and materials.

#### **9.2 WARRANTY OF SPECIFICATIONS:**

The DESIGN BUILDER warrants that all equipment, materials and workmanship furnished, whether furnished by the DESIGN BUILDER or its sub-Subcontractors and suppliers, will comply with the specifications, drawings and other descriptions supplied or adopted and that all services will be performed in a workmanlike manner.

#### **9.3 WARRANTY OF MERCHANTABILITY:**

DESIGN BUILDER warrants that any and all equipment to be supplied pursuant to the Agreement is merchantable, free from defects, whether patent or latent in material or workmanship and fit for the ordinary purposes for which it is intended. Offeror shall confer to the City all warranties offered by manufacturers.

#### **9.4 CORRECTION PERIOD:**

DESIGN BUILDER warrants all material and workmanship for a minimum of one (1) year from date of final acceptance by the CITY. If within one (1) year after the date of final completion or such longer period of time as may be prescribed by laws or regulations or by the terms of any applicable special guarantee required by the Contract Documents, any WORK is found to be defective, whether observed before or after acceptance by CITY, DESIGN BUILDER shall promptly, without cost to CITY and in accordance with CITY'S written instructions, either correct such defective WORK, or, if it has been rejected by CITY, remove it from the site and replace it with WORK that is not defective and satisfactorily correct and remove and replace any damage to other WORK or the work of others resulting therefrom. If DESIGN BUILDER does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, CITY may have the defective workmanship corrected or the rejected WORK removed and replaced, and all direct, indirect and consequential costs of such removal and replacement (including but not limited to fees and charges of engineers, DESIGN BUILDER ENGINEER'S, attorneys and other professionals) will be paid by DESIGN BUILDER.

**9.4.1** Where defective WORK (and damage to other WORK resulting therefrom) has been corrected, removed or replaced under this paragraph, the correction period hereunder with respect to such WORK will be extended for an additional period of one (1) year after such correction or removal and replacement has been satisfactorily completed .

**9.4.2** Nothing contained in this Article shall be construed to establish a period of limitation with respect to other obligations which DESIGN BUILDER might have under the Contract Documents. Establishment of the time period of one (1) year as described

in Paragraph 9.4.1 relates only to the specific obligation of the DESIGN BUILDER to correct the WORK, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish DESIGN BUILDER'S liability with respect to the DESIGN BUILDER' S obligation other than specifically to correct the WORK.

**9.5** DESIGN BUILDER warrants to the CITY that it will comply with all applicable federal, state and local laws, regulations and orders in carrying out its obligations under the Contract.

**9.6** DESIGN BUILDER warrants to the CITY that it is not insolvent, it is not in bankruptcy proceedings or receivership, nor is it engaged in or threatened with any litigation, arbitration or other legal or administrative proceedings or investigations of any kind which would have an adverse effect on its ability to perform its obligations under the Contract.

**9.7** DESIGN BUILDER warrants to the CITY that the consummation of the WORK provided for in the Contract Documents will not result in the breach of any term or provision of, or constitute a default under any indenture, mortgage, contract, or agreement to which the DESIGN BUILDER is a party.

**9.8** DESIGN BUILDER warrants that there has been no violation of copyrights of patent rights either in the United States of America or in foreign countries in connection with the WORK of the Contract.

**9.9** No warranty, either express or implied, may be modified, excluded or disclaimed in any way by DESIGN BUILDER. All warranties shall remain in full force and effect, notwithstanding acceptance and payment by CITY.

**9.10 TESTS AND INSPECTIONS:**

**9.10.1** DESIGN BUILDER shall give CITY timely notice of readiness of the WORK for all required inspections, tests or approvals. DESIGN BUILDER shall assume full responsibility, pay all costs in connection therewith and furnish CITY the required certificates of inspection, testing or approval for all materials, equipment or the WORK or any part thereof unless otherwise specified herein.

**9.10.2** Inspectors shall have no authority to permit deviations from nor to relax any of the provisions of the Contract Documents, nor to delay the Agreement by failure to inspect the materials and WORK with reasonable promptness.

**9.10.3** The payment of any compensation whatever may be its character or form, or the giving of any gratuity or the granting of any favor by the DESIGN BUILDER to any inspectors, directly or indirectly is strictly prohibited and any such action on the part of the DESIGN BUILDER will constitute a breach of this Agreement.

**9.10.4** The City of Margate's working hours are Monday through Friday 8AM to 6PM. CONTRACTOR shall be responsible to plan for and schedule inspections within the City's working hours.

**9.11** The DESIGN BUILDER shall promptly correct WORK rejected by the OWNER or known by the DESIGN BUILDER to be defective or failing to conform to the Construction Documents, whether observed before or after Substantial Completion and whether or not fabricated, installed or completed, and shall correct WORK under this Agreement found to be defective or nonconforming within a period of one year from the date of Substantial Completion of the WORK or designated portion thereof, or within such longer period provided by any applicable special warranty in the Contract Documents

**9.12** Nothing contained in this Article 9 shall be construed to establish a period of limitation with respect to other obligations of the DESIGN BUILDER under this Agreement. Paragraph 9.11 relates only to the specific obligation of the DESIGN BUILDER to correct the WORK and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the DESIGN BUILDER'S liability with respect to the DESIGN BUILDER'S obligations other than correction of the WORK.

**9.13** If the DESIGN BUILDER fails to correct the defective WORK as required or persistently fails to carry out the WORK in accordance with the Contract Documents, the OWNER, by written order signed personally or by an agent specifically so empowered by the OWNER in writing, may stop the WORK, or any portion thereof, until the cause for such order has been eliminated; however the OWNER'S right to stop the WORK shall not give rise to a duty on the part of the OWNER to exercise the right for benefit of the DESIGN BUILDER or other persons or entities.

**9.14** If the DESIGN BUILDER defaults or neglects to carry out the WORK in accordance with the Contract Documents and fails within seven calendar days after receipt of written notice from the OWNER to commence and continue correction of such default or neglect with diligence and promptness, the OWNER may give a second written notice to the DESIGN BUILDER and seven calendar days following receipt by the DESIGN BUILDER of that second notice and without prejudice to other remedies the OWNER may correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the DESIGN BUILDER costs of correcting such deficiencies. If the payments then or thereafter due the DESIGN BUILDER are not sufficient to cover the amount of the deduction, the DESIGN BUILDER shall pay the difference to the OWNER.

**The remainder of the page is intended to be blank.**

# **ARTICLE 10**

## **MISCELLANEOUS PROVISIONS**

**10.1** This Agreement shall be governed by the law where the WORK is located.

**10.2** The table of contents and the headings of articles and paragraphs are for convenience only and shall not modify rights and obligations created by this Agreement.

**10.3** In case a provision of this Agreement is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not be affected.

### **10.4 SUBCONTRACTS:**

**10.4.1** The DESIGN BUILDER, as soon as practicable after execution of this Agreement, shall furnish to the OWNER in writing the names of the persons or entities the DESIGN BUILDER will engage as Subcontractors for the Project.

**10.4.2** Nothing contained in the DESIGN BUILDER Contract Documents shall create a professional obligation or contractual relationship between the OWNER and any third party.

### **10.5 WORK BY OWNER OR OWNER'S SUBCONTRACTORS:**

**10.5.1** The OWNER reserves the right to perform work related to, but not part of, the Project and to award separate contracts in connection with other work at the site. If the DESIGN BUILDER claims that delay or additional cost is involved because of such action by the OWNER, the DESIGN BUILDER shall make such claims as provided in Article 11.

**10.5.2** The DESIGN BUILDER shall afford the OWNER'S separate Contractors reasonable opportunity for introduction and storage of their materials and equipment for execution of their work. The DESIGN BUILDER shall incorporate and coordinate the DESIGN BUILDER'S WORK with work of the OWNER'S separate Contractors as required by the Contract Documents.

**10.5.3** Costs caused by defective or ill-timed WORK shall be borne by the party responsible.

### **10.6 CLAIMS FOR DAMAGES:**

Should either party to Agreement suffer injury or damage to person or property because of an act or omission of the other party, the other party's employees or agents, or another for whose acts the other party is legally liable, a claim shall be made in writing to the other party within a reasonable time after such injury or damage is or should have been first observed. Claims shall comply with Article 11 of the Agreement.

### **10.7 SUCCESSORS AND ASSIGNS:**

**10.7.1** This Agreement shall be binding on successors, assigns, and legal representatives of and persons in privity of the contract with the OWNER or DESIGN

BUILDER. Neither party shall assign, sublet or transfer an interest in this Agreement without the written consent of the other.

**10.8 EXTENT OF AGREEMENT:**

This Contract represents the entire agreement between the OWNER and DESIGN BUILDER and supersedes any prior negotiations, representations or agreements. This Agreement may be amended only by written instrument signed by both OWNER and DESIGN BUILDER.

**10.9 NO WAIVER:**

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.

**10.10 HOURS OF WORK:**

CONTRACTOR can perform work Monday-Saturday from Dawn-Dusk. Work on Sunday or at night is not permitted unless a special request is made to the CITY 48 hours in advance. All requests must be approved by the City Manager.

**The remainder of the page is intended to be blank.**

# ARTICLE 11

## CLAIMS AND DISPUTES

**11.1 Claims.** A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Agreement. The term "Claim" also includes other disputes and matters in question between the City and Design-Builder arising out of or relating to the Agreement. The responsibility to substantiate Claims shall rest with the party making the Claim. Submittal of a request for Change Order shall not be considered notice of a Claim required by this Article.

**11.2 Time Limits on Claims.** The Design-Builder and the City shall commence all Claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other, arising out of or related to the Agreement in accordance with the requirements of the binding dispute resolution method selected herein, within the time period specified by applicable law, but in any case not more than seven (7) years after the date of Substantial Completion of the Work. The Design-Builder waives all claims and causes of action not commenced in accordance with this Section 11.2.

**11.3 Notice of Claims.** Claims by the Design-Builder or the City for an increase in the Contract Sum or the Contract Time or for Liquidated Damages must be made within fourteen (14) days after occurrence of the event giving rise to such Claim.

**11.4 Continuing Contract Performance.** Pending final resolution of a Claim, except as otherwise agreed in writing, the Design-Builder shall proceed diligently with performance of the Agreement.

**11.5 Claims for Additional Cost.** If the Design-Builder intends to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the portion of the Work that relates to the Claim.

**11.6 Claims for Additional Time.** If the Design-Builder intends to make a Claim for an increase in the Agreement Time, written notice as provided herein shall be given. The Design-Builder's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work, along with a detailed Time Impact Analysis. If exceptional or unusual adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.

**11.7 Claims for Consequential Damages.** The Design-Builder and the City hereby mutually waive Claims against each other for consequential damages arising out of or relating to this Contract except for any Claims covered by Design-Builder's applicable insurance. This waiver includes damages incurred by the Design-Builder 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. Nothing contained in this Section 11.7 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Design-Build Documents.

### **11.8 Initial Decision**

**11.8.1** An initial decision shall be required as a condition precedent to mediation of all Claims between the City and Design-Builder initiated prior to the date final payment is due. Unless



otherwise mutually agreed in writing, the Engineer shall serve as the Initial Decision Maker and shall render the initial decision on Claims.

### **11.8.2 Procedure**

**11.8.2.1** If either party initiates a Claim, the other party shall provide a written response within ten (10) days after receipt of the notice of Claim. Thereafter, the Initial Decision Maker shall render an initial decision within ten (10) days of receiving the response: (1) rejecting the Claim in whole or in part, (2) approving the Claim in whole or in part, (3) suggesting a compromise, or (4) indicating that it is unable to render an initial decision because the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim.

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

**11.8.2.3** If the Initial Decision Maker requests that either party furnish additional supporting data, the party shall respond, within five (5) 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.

**11.8.2.4** The Initial Decision shall (1) be in writing; (2) state the reasons therefor; and (3) identify any change in the Contract Sum or Contract Time or both. The Initial Decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

**11.8.2.5** In the event of a Claim against the Design-Builder, the City 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 Design-Builder's default, the City may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

**11.9 Mediation.** All Claims which are not resolved by an Initial Decision are subject to mediation, which shall be a condition precedent to litigation. Mediation shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. The written agreement to mediate shall be filed with the person or entity administering the mediation. 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.

**11.10 Litigation.** Litigation of Claims, disputes or other matters in question between the City and Design-Builder arising out of or relating to this Agreement or breach thereof, which are not resolved by mediation, shall be subject to and decided by litigation exclusively in the state courts of Broward County, Florida. Design-Builder and City consent to the venue of the State Courts of Broward County, Florida 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.

**11.11 Prevailing Party.** In the event of any dispute arising out of or related to this Agreement, the prevailing party shall be entitled to recover the cost of such action including reasonable

attorneys' fees and paralegal fees 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 Design-Build Documents, including without limitation, (i) the enforcement or interpretation of a party's rights or obligations under the Design-Build Document (whether in contract, tort, or both), or (ii) the declaration of any rights or obligations under the Design-Build 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 Design-Build 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. In addition, 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").

**The remainder of the page is intended to be blank.**

# **ARTICLE 12**

## **TERMINATION OF THE AGREEMENT**

### **12.1 TERMINATION BY THE OWNER :**

CITY'S Right to Terminate upon the occurrence of any one or more of the following events:

**12.1.1** If DESIGN BUILDER commences a voluntary case under any chapter of the Bankruptcy Code as now or hereafter in effect, or if DESIGN BUILDER takes any equivalent or similar action by filing a petition or otherwise under any other federal or state law in effect at such time relating to the bankruptcy or insolvency.

**12.1.2** If a petition is filed against DESIGN BUILDER under any chapter of the Bankruptcy Code as now or hereafter in effect at the time of filing, or if a petition is filed seeking any such equivalent or similar relief against DESIGN BUILDER under any other federal or state law in effect at the time relating to bankruptcy or insolvency.

**12.1.3** If DESIGN BUILDER makes a general assignment for the benefit of creditors.

**12.1.4** If a trustee, receiver, custodian or agent of DESIGN BUILDER is appointed under applicable law or under Contract, whose appointment or authority to take charge of property of DESIGN BUILDER is for the purpose of enforcing a Lien against such property or for the purpose of general administration of such property for the benefit of DESIGN BUILDER'S creditors.

**12.1.5** If DESIGN BUILDER admits in writing an inability to pay its debts generally as they become due.

**12.1.6** If DESIGN BUILDER fails to perform the WORK in accordance with the Contract Documents (including but not limited to, failure to supply sufficient skilled Workers or suitable materials or equipment or failure to adhere to the progress schedule as same may be revised from time to time).

**12.1.7** If DESIGN BUILDER disregards laws or regulations of any public body having jurisdiction.

**12.1.8** If DESIGN BUILDER otherwise violates any provision of the Contract Documents CITY may, after giving DESIGN BUILDER and the Surety seven (7) calendar days written notice to the extent permitted by laws and regulations, terminate the services of the DESIGN BUILDER, exclude DESIGN BUILDER from the site and take possession of the WORK and of all DESIGN BUILDER'S tools, appliances, construction equipment and machinery at the site and use the same to full extent they could be used by DESIGN BUILDER (without liability to DESIGN BUILDER for trespass or conversion), Incorporate in the WORK all materials and equipment stored at the site or for which has paid DESIGN BUILDER but which are stored elsewhere, and finish the WORK as CITY may deem expedient. In such case DESIGN BUILDER shall not be entitled to receive any further payment until the WORK is finished.

**12.1.9 Termination for Convenience of CITY:** Upon seven (7) calendar days written notice to DESIGN BUILDER, CITY may, without cause and without prejudice to any other right or remedy, terminate the agreement for CITY'S convenience whenever CITY determines that such termination is in the best interests of CITY. Where the agreement is terminated for the convenience of CITY, the notice of termination to DESIGN BUILDER must state that the Contract is being terminated for the convenience CITY under the termination clause the effective date of the termination and the extent of termination. Upon receipt of the notice of termination for convenience, DESIGN BUILDER shall promptly discontinue all WORK at the time and to the extent indicated on the notice of termination, terminated all outstanding Subcontractors and purchase orders to the extent that they relate to the terminated portion of the Contract, and refrain from placing further orders and Subcontracts. DESIGN BUILDER shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

**12.1.10** This Agreement may be terminated by the OWNER upon fourteen calendar days' written notice to the DESIGN BUILDER in the event that the Project is abandoned. If such termination occurs, the OWNER shall pay the DESIGN BUILDER for work completed and for proven loss sustained upon materials, equipment, tools and construction equipment and machinery, including reasonable profit and applicable damages.

**12.1.11** If the DESIGN BUILDER defaults or otherwise fails or neglects to carry out the WORK in accordance with the Contract Documents or fails to perform the provisions of this Agreement, the OWNER may give written notice that the OWNER intends to terminate this Agreement. If the DESIGN BUILDER fails to correct the defaults, failure or neglect within seven calendar days after being given notice, the OWNER may then give a second written notice and, after an additional seven calendar days, the OWNER may without prejudice to any other remedy make good such deficiencies and may deduct the cost thereof from the payment due the DESIGN BUILDER or, at the OWNER'S option, may terminate the employment of the DESIGN BUILDER and take possession of the site and of all materials, equipment, tools and construction equipment and machinery thereon owned by the DESIGN BUILDER and finish the WORK by whatever method the OWNER may deem expedient. If the unpaid balance of the Contract Price exceeds the expense of finishing the WORK, the excess shall be paid to the DESIGN BUILDER, but if the expense exceeds the unpaid balance, the DESIGN BUILDER shall pay the difference to the OWNER.

**12.1.12 Transfer of Digital Data.** Upon termination of the Design-Builder by the City, the Design-Builder shall assign to the City all permits, shop drawings, submittals. In addition, the Design-Builder will provide to the City archived copies of all digital databases related to this Project, including but not limited to Building Information Modeling (if any) and all construction management and financial software (such as Procore, or other software used by the Design-Builder) (the "Project Management and Financial Software"). All data contained in such Project Management and Financial Software platform shall remain intact as kept during the ordinary course of business even after termination. Design-Builder is precluded from modifying or deleting any digital data therein. This provision expressly survives termination of this Agreement. Design-Builder shall work with the City and assist the City in all related transfers and

assignments. Design-Builder is obligated to provide for and facilitate a smooth transfer and assignment of all information and documents listed above.

## **12.2 TERMINATION BY DESIGN BUILDER:**

**12.2.1** If ENGINEER fails to recommend payment of undisputed amounts for a period of thirty (30) calendar days through no fault of DESIGN BUILDER or if CITY fails to make payment of undisputed amounts thereon for a period of thirty (30) calendar days, DESIGN BUILDER may, upon seven (7) additional calendar days written notice to CITY and ENGINEER, terminate the Contract and recover from the Contract payment for WORK executed and for proven loss with respect to materials, equipment, tools and construction equipment and machinery.

**12.2.2** If the OWNER fails to make undisputed payment when due, the DESIGN BUILDER may give written notice of the DESIGN BUILDER'S intention to terminate this Agreement and provide the City with a reasonable opportunity to cure. If the DESIGN BUILDER fails to receive undisputed payment within an additional thirty calendar days after receipt of such notice by the OWNER, the DESIGN BUILDER may give a second written notice and, thirty calendar days after receipt of such second written notice by the OWNER, may terminate this Agreement and recover from the OWNER payment for WORK executed and for proven losses sustained upon materials, equipment, tools, and construction equipment and machinery, including reasonable profit and applicable damages.

**The remainder of the page is intended to be blank.**

# **ARTICLE 13**

## **BASIS OF COMPENSATION**

### **13.1 CHANGES IN CONTRACT PRICE:**

**13.1.1 THE CONTRACT PRICE CONSTITUTES THE TOTAL COMPENSATION (SUBJECT TO AUTHORIZED ADJUSTMENTS) PAYABLE TO DESIGN BUILDER FOR PERFORMING THE WORK. ALL DUTIES, RESPONSIBILITIES AND OBLIGATIONS ASSIGNED TO OR UNDERTAKEN BY DESIGN BUILDER SHALL BE AT THEIR EXPENSE WITHOUT CHANGE IN CONTRACT PRICE.**

**13.1.2 THE CONTRACT PRICE MAY ONLY BE CHANGED BY A CHANGE ORDER EXECUTED BY THE PARTIES IN WRITING OR BY A WRITTEN AMENDMENT. ANY CLAIM FOR AN INCREASE OR DECREASE IN THE CONTRACT PRICE SHALL BE BASED ON WRITTEN NOTICE DELIVERED TO ENGINEER PROMPTLY (BUT IN NO EVENT LATER THAN TEN (10) CALENDAR DAYS) AFTER THE OCCURRENCE OF THE EVENT GIVING RISE TO THE AMOUNT OF THE CLAIM WITH SUPPORTING DATA SHALL BE DELIVERED WITHIN TWENTY (20) CALENDAR DAYS AND SHALL BE ACCOMPANIED BY CLAIMANT'S WRITTEN STATEMENT THAT THE AMOUNT CLAIMED COVERS ALL KNOWN AMOUNTS (DIRECT, INDIRECT AND CONSEQUENTIAL) TO WHICH THE CLAIMANT IS ENTITLED AS A RESULT OF THE OCCURRENCE OF SAID EVENT. NO RESOLUTION OF A CLAIM FOR ADJUSTMENT IN THE CONTRACT PRICE SHALL BE EFFECTIVE UNTIL APPROVED BY CITY COMMISSION IN WRITING. NO CLAIM FOR ADJUSTMENT IN THE CONTRACT PRICE WILL BE VALID IF NOT SUBMITTED IN ACCORDANCE WITH THIS PARAGRAPH.**

**13.1.3** The value of any WORK covered by a change order or of any claim for an increase or decrease in the Contract Price shall be determined in one of the following ways:

- .1** Where the WORK involved is covered by unit prices contained in the Contract Documents, by application of unit prices to the quantities of the items involved.
- .2** By mutual acceptance of a lump sum (which may include an allowance for overhead and profit including any Subcontractor fees) which shall not exceed twenty five percent (25%). If the negotiated lump sum change order exceeds the percentages set forth for "Cost of WORK" it must be accompanied by a detailed explanation justifying the increase.
- .3** On the basis of the cost of the WORK (determined as provided in Paragraphs 13.2 and 13.3) plus a DESIGN BUILDER'S fee for overhead and profit (determined as provided in Paragraph 13.4).

### **13.2 COST OF THE WORK IN THE EVENT OF CHANGE ORDER:**

The term "Cost of the WORK" means the sum of all direct costs necessarily incurred and paid by DESIGN BUILDER in the proper performance of the WORK. Except as otherwise may be agreed to in writing by CITY, such costs shall be in amounts no higher than those prevailing in the locality of the project, shall include only the following items and shall not include any of the costs itemized in Paragraph 13.3:

**13.2.1** Payroll costs for employees in the direct employ of DESIGN BUILDER in the performance of the WORK under schedules of job classifications agreed upon by CITY and DESIGN BUILDER. Payroll costs for employees not employed full time on the WORK shall be apportioned on the basis of their time spent on the WORK. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits which shall include social security contributions, unemployment, excise and payroll taxes, worker's compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. Such employees shall include superintendents and foremen at the site. The expenses of performing WORK after regular working hours, on Saturday, Sunday or legal holidays, shall not be included in the above unless authorized in writing by CITY.

**13.2.2** Cost of all materials and equipment furnished and incorporated in the WORK, including costs of transportation and storage thereof, and suppliers field services required in connection therewith. All cash discounts, rebates and refunds and all returns from sale of surplus materials and equipment shall accrue to CITY, and DESIGN BUILDER shall make provisions so that they may be obtained.

**13.2.3** Supplemental costs including the following:

- .1 Cost, including transportation and maintenance of all materials, supplies, equipment, machinery, appliances, office and temporary facilities at the site and hand tools not owned by the workers, which are consumed in the performance of the WORK.
- .2 Rentals of all construction equipment and machinery and the parts thereof whether rented from DESIGN BUILDER or others in accordance with rental agreements approved by CITY with the advice of ENGINEER, and the costs of transportation, loading, unloading, installation, dismantling and removal thereof, all in accordance with terms of said rental agreements, the rental of any such equipment, machinery or parts shall cease when the use thereof is no longer necessary for the WORK.
- .3 Sales, consumer, use or similar taxes related to the WORK, and for which DESIGN BUILDER is liable, imposed by laws and regulations.
- .4 Royalty payments and fees for permits and licenses.
- .5 The cost of utilities, fuel and sanitary facilities at the site.
- .6 Minor expenses such as telegrams, long distance telephone calls, telephone service at site, express message and similar petty cash items in connection with the WORK.
- .7 Cost of premiums for additional bonds and insurance required because of changes in the WORK.

### **13.3 NOT INCLUDED IN THE COST OF WORK IN THE EVENT OF A CHANGE ORDER:**

The term cost of the WORK shall not include any of the following:

**13.3.1** Payroll costs and other compensation of DESIGN BUILDER'S officers, executives, principals, (of partnership and sole proprietorships), general managers, engineers, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks and other personnel employed by DESIGN BUILDER whether at the site or in DESIGN BUILDER'S principal or a branch office for general administration of the WORK and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 13.2.1 - all of which are to be considered administrative costs covered by DESIGN BUILDER'S fee.

**13.3.2** Expenses of DESIGN BUILDER'S principal and branch offices other than DESIGN BUILDER'S office at the site.

**13.3.3** Any part of DESIGN BUILDER'S capital expenses, including interest on DESIGN BUILDER'S capital employed for the WORK and charges against DESIGN BUILDER for delinquent payments.

**13.3.4** Cost of premiums for all bonds and all insurance whether or not DESIGN BUILDER is required by the Contract Documents to purchase and maintain the same.

**13.3.5** Costs due to the negligence of DESIGN BUILDER, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective WORK, disposal of materials or equipment wrongly supplied and making good any damage to property.

**13.3.6** Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraph 13.2.

### **13.4 DESIGN BUILDER'S FEE IN THE EVENT OF A CHANGE ORDER:**

DESIGN BUILDER'S fee allowed to DESIGN BUILDER for overhead and profit shall be determined as follows:

**13.4.1** A mutually acceptable negotiated fee:

**13.4.1** For costs incurred under Paragraphs 13.2.1 and 13.2.2 DESIGN BUILDER'S fee shall not exceed ten percent (10%).

**13.4.2** No fee shall be payable on the basis of costs itemized under Paragraphs 13.2.3.1, 13.2.3.2, 13.2.3.3, 13.2.3.4, 13.2.3.5, 13.2.3.6, 13.2.3.7, 13.3, 13.3.1, 13.3.2, 13.3.3, 13.3.4, 13.3.5 and 13.3.6.

**13.4.3** The amount of credit to be allowed by DESIGN BUILDER to CITY for any such change which results in a net decrease plus a deduction in DESIGN BUILDER'S fee by an amount equal to ten percent (10%) for the net decrease.



**13.4.4** When both additions and credits are involved in any one change the combined overhead and profit shall be figured on the basis of net increase if any, however, profit will not be paid on any WORK not performed.

### **13.5 COST BREAKDOWN IN THE EVENT OF A CHANGE ORDER:**

Whenever the cost of any WORK is to be determined pursuant to Paragraphs 13.2 or 13.3, DESIGN BUILDER will submit in form acceptable to ENGINEER an itemized cost breakdown together with supporting data. Whenever a change in the WORK is to be based upon mutual acceptance of a lump sum, whether the amount is an addition, credit or no-change-in-cost, the DESIGN BUILDER shall submit an estimate substantiated by a complete itemized breakdown.

(a) The breakdown shall list quantities and unit prices for materials, labor, equipment and other items of cost.

(b) Whenever a change involves the DESIGN BUILDER and one (1) or more Subcontractors and the change is an increase in the Contract Price, the overhead and profit percentage for the DESIGN BUILDER and each Subcontractor shall be itemized separately.

The Owner shall compensate the DESIGN BUILDER in accordance with Article 5, Payments, and the other provisions of this Agreement as described below.

### **13.6 REIMBURSABLE EXPENSES IN THE EVENT OF CHANGE ORDER:**

**13.6.1** Reimbursable Expenses are in addition to the compensation for Basic and Additional Services and include actual expenditures made by the DESIGN BUILDER in the interest of the Project for the expenses listed as follows:

**13.6.2** FOR REIMBURSABLE EXPENSES, compensation shall be a multiple of 1.10 times the amounts expended.

# **ARTICLE 14**

## **OTHER PROVISIONS**

### **14.1 NOTICE AND COMPUTATION OF TIME:**

#### **14.1.1 Giving Notice:**

All notices required by any of the Contract Documents shall be in writing and shall be deemed delivered upon mailing by certified mail, return receipt requested to the following:

The business address of DESIGN BUILDER is:

Globaltech, Inc.  
901 Yamato Road, Suite 220  
Boca Raton, FL 33431

The business address of CITY is:

City of Margate  
5790 Margate Blvd.  
Margate, Florida 33063

### **14.2 COMPUTATION OF TIME:**

When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation. A calendar day of twenty four (24) hours measured from midnight to the next midnight shall constitute a day.

### **14.3 MISCELLANEOUS:**

**14.3.1** The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto, and, in particular but without limitation, the warranties, guaranties and obligations imposed upon DESIGN BUILDER and all of the rights and remedies available to CITY thereunder, are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available to any or all of them which are otherwise imposed or available by laws or regulations, by special warranty or guarantee or by other provisions of the Contract Documents, and the provisions of this Paragraph will be as effective as if repeated specifically in the Contract Documents, and the provisions of this Paragraph will survive final payment and termination or completion of the Agreement.

**14.3.2** DESIGN BUILDER shall not assign or transfer the Contract or its rights, title or interests therein without CITY'S prior written approval. The obligations undertaken by DESIGN BUILDER 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 DESIGN BUILDER and the CITY may, at its discretion, cancel the Contract and all rights, title and interest of DESIGN BUILDER shall thereupon cease and terminate.

**14.3.3** DESIGN BUILDER and its employees, volunteers and agents shall be and remain an independent contractors and not agents or employees of CITY with respect to all of the acts and services performed by and under the terms of this Agreement. This Agreement shall not in any way be construed to create a partnership, association or any other kind of joint undertaking or venture between the parties hereto.

**14.3.4** CITY reserves the right to audit the records of DESIGN BUILDER relating in anyway to the WORK to be performed pursuant to this Agreement at any time during the performance and term of the Contract and for a period of three (3) years after completion and acceptance by CITY. If required by CITY, DESIGN BUILDER agrees to submit to an audit by an independent certified public accountant selected by CITY. DESIGN BUILDER shall allow CITY to inspect, examine and review the records of DESIGN BUILDER at any and all times during normal business hours during the term of the Contract.

**14.3.5** The remedies expressly provided in this Agreement to CITY shall not be deemed to be exclusive but shall be cumulative and in addition to all other remedies in favor of CITY now or hereafter existing at law or in equity.

**14.3.6** The validity, construction and effect of this Contract shall be governed by the laws of the State of Florida. Any claim, objection or dispute arising out of this Contract shall be litigated in the Seventeenth Judicial circuit in and for Broward County, Florida.

**14.3.7** Should any part, term or provision of this Agreement be by the courts decided to be invalid, illegal or in conflict with any law of the State, the validity of the remaining portion or provision shall not be affected thereby.

**14.4 CITY AND DESIGN BUILDER 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 CONSTRUCTION OF THE WORK, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR THE ACTIONS OR INACTIONS OF ANY PARTY.**

**14.5 NO CONTINGENT FEE:** The DESIGN BUILDER warrants that it has not employed or retained any company or person, other than a bona fide employee work solely for DESIGN BUILDER to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm other than a bona fide employee working solely for DESIGN BUILDER any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this provision, the CITY shall have the right to terminate the Agreement without liability at its discretion, to deduct from the Contract Price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

**14.6 TRUTH IN NEGOTIATIONS CERTIFICATE:** Pursuant to Section 287.055, Florida Statutes, and the Truth in Negotiations Act (TINA), for any lump sum or cost plus a fixed fee professional services contract over the threshold amount provided in Section 287.017, Florida Statutes CATEGORY FOUR, the City requires the execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation of this Agreement are accurate, complete, and current at the time of contracting. Any additions to the

original Contract Price charged on an hourly price shall be adjusted to exclude any significant sums, by which the CITY determines the additions to the Contract Price were increased due to inaccurate, incomplete, or non-current wage rates and other factual unit costs. Any such adjustments shall be made within one year following the end of this Agreement (see attached Truth In Negotiations Certificate).

**14.7 PUBLIC ENTITY CRIMES INFORMATION STATEMENT:** “A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in s. 287.017 for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.”

**14.8 DISCRIMINATORY VENDOR LIST:** An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid on a contract to provide goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not awarded or perform work as a contractor, supplier, subcontractor, or consultant under contract with any public entity, and may not transact business with any public entity.

**14.9 COPYRIGHTS OR PATENT RIGHTS:** Bidder warrants that there has been no violation of copyrights or patent rights in manufacturing, producing, or selling the goods shipped or ordered, as a result of this bid.

**14.10 NON-COLLUSIVE STATEMENT:** By submitting this proposal, the Proposer affirms that this proposal is without previous understanding, agreement, or connection with any person, business, or corporation submitting a proposal for the same materials, supplies, service, or equipment, and that this proposal is in all respects fair, and without collusion or fraud (Refer to Non- Collusive Affidavit attached).

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

**TRUTH IN NEGOTIATIONS CERTIFICATE**

**RFQ 2025-008**

Pursuant to Section 287.055, Florida Statutes, and the Truth in Negotiations Act (TINA) for any lump-sum or cost plus a fixed fee professional services contract over the threshold amount provided in Section 287.017, Florida Statutes, CATEGORY FOUR, the CITY requires the DESIGN BUILDER to execute this Truth In Negotiations Certificate as part of the Contract Documents.

The DESIGN BUILDER hereby certifies, covenants, and warrants that wage rates and other factual unit costs supporting the compensation for this project's agreement are accurate, complete and current at the time of contracting. Any additions to the original Contract Price charged on an hourly price shall be adjusted to exclude any significant sums, by which the CITY determines the additions to the Contract Price were increased due to inaccurate, incomplete, or non-current wage rates and other factual unit costs. Any such adjustments shall be made within one year following the end of this Agreement.

The hereby undersigned representative submits this certificate that they are an authorized representative of the DESIGN BUILDER who may legally bind the proposer and attest to the accuracy of the information:

B. Rahmani  
Authorized Signature  
BRUCE RAHMANI  
Printed Name  
VP OF CONSTRUCTION  
Title  
Globaltech, Inc.  
Name of Entity/Corporation

STATE OF Florida  
COUNTY OF Palm Beach

The foregoing instrument was acknowledged before me by means of X physical presence or \_\_\_ online notarization on this 4 day of December, 2025, by

Bruce Rahmani (name of person whose signature is being notarized) as the  
VP of Construction (title) of Globaltech, Inc. (name of  
entity/corporation, personally known to me as described herein \_\_\_\_\_, or produced a  
\_\_\_\_\_ (type of identification) as identification, and who did/did not take an oath.

R. Cloyd  
Notary Public  
\_\_\_\_\_

My Commission Expires: June 11, 2029

NOTARY SEAL ABOVE



## Affidavit Attesting to Noncoercive Conduct for Labor or Services

Nongovernment Entity name:

Globaltech, Inc.

("Vendor")

Vendor

FEIN: 65-0577611

Address: 901 Yamato Rd #220

City: Boca Raton

State: FL

Zip: 33431

Phone number: (561) 997-6433

Email Address: Bruce@globaltechdb.com

As a nongovernmental entity executing, renewing, or extending a contract with a government entity, **Vendor** is required to provide an affidavit under penalty of perjury attesting that **Vendor** does not use coercion for labor or services in accordance with Section 787.06, Florida Statutes.

As defined in Section 787.06(2)(a), coercion means:

1. Using or threatening to use physical force against any person;
2. Restraining, isolating, or confining or threatening to restrain, isolate, or confine any person without lawful authority and against her or his will;
3. Using lending or other credit methods to establish a debt by any person when labor or services are pledged as a security for the debt, if the value of the labor or services as reasonably assessed is not applied toward the liquidation of the debt, the length and nature of the labor or service are not respectively limited and defined;
4. Destroying, concealing, removing, confiscating, withholding, or possessing any actual or purported passport, visa, or other immigration document, or any other actual or purported government identification document, of any person;
5. Causing or threatening to cause financial harm to any person;
6. Enticing or luring any person by fraud or deceit; or
7. Providing a controlled substance as outlined in Schedule I or Schedule II of Section 893.03 to any person for the purpose of exploitation of that person.

As a person authorized to sign on behalf of **Vendor**, I certify that **Vendor** does not use coercion for labor or services in accordance with Section 787.06.

Written Declaration

**Under penalties of perjury, I declare that I have read the foregoing Affidavit and that the facts stated in it are true.**

By:

B. Rahmani

Authorized Signature

Print Name and Title: BRUCE RAHMANI VP OF CONSTRUCTION

Date: 12/4/25



WITNESS WHEREOF, the parties hereto have made an executed Agreement on the respective dates under each signature; City of Margate through its City Commission signing by and through its Mayor and City Manager, authorized to execute same by City Commission the 4 of December 2025 and Bruce Rahman, VP of Construction signing by and through its' representatives is duly authorized to execute same.



**CITY OF MARGATE**

\_\_\_\_\_  
Antonio V. Arserio, Mayor

\_\_\_\_ day of \_\_\_\_\_, 20\_\_

ATTEST:

\_\_\_\_\_  
Jennifer M. Johnson, City Clerk

\_\_\_\_ day of \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
Cale Curtis, City Manager

\_\_\_\_ day of \_\_\_\_\_, 20\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
David N. Tolces, City Attorney

\_\_\_\_ day of \_\_\_\_\_, 20\_\_

# GLOBALTECH, INC.

FOR CORPORATION:

  
Vice President of Construction

(CORPORATE SEAL)

  
Secretary



AGREEMENT BETWEEN CITY OF MARGATE AND GLOBALTECH, INC. FOR RFQ 2025-008 WWTP HEADWORKS REHABILITATION