



**AGREEMENT**

**Between**

**CITY OF MARGATE**

**and**

**ODYSSEY MANUFACTURING COMPANY**

**for**

**BID NO. 2015-006 – WATER TREATMENT PLANT  
ON-SITE SODIUM HYPOCHLORITE GENERATION  
EQUIPMENT REPLACEMENT**

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 ODYSSEY MANUFACTURING COMPANY, its successors and assigns, hereinafter referred to as "CONTRACTOR".

WITNESSETH, in consideration of the mutual terms and conditions, promises, covenants and payments hereinafter set forth, CITY and CONTRACTOR 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** - The written agreement between CITY and CONTRACTOR covering the WORK to be performed including other Contract Documents that are attached to the Agreement or made a part thereof.

**1.1.2 Not Used**

**1.1.3 Change Order** - A document which is signed by CONTRACTOR 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** - The City Commission of the CITY OF MARGATE, FLORIDA with whom CONTRACTOR has entered into an Agreement and for whom the WORK is to be provided.

**1.1.5 Contract Documents** - The Contract 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** - N/A or his authorized employees.

**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 CONTRACTOR fixing the date on which the Contract Time will commence to run and on which CONTRACTOR shall start to perform CONTRACTOR'S obligations under the Contract Documents.

**1.1.12 Project** - The total construction for which the CONTRACTOR 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** - An individual, firm or corporation having a direct contract with CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR 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.

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

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

**1.2.2** It is the intent of the OWNER and CONTRACTOR 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 CONTRACTOR are attached to this Agreement, made a part hereof and consist of the following:

- (1) This Agreement (pages 1 to 48, inclusive) and Bidding Requirements (pages A-1 to A-23, inclusive).
- (2) Plans and Specification Attachments
- (3) Construction performance bond, consisting of 1 page
- (4) Construction payment bond, consisting of 1 page
- (5) Insurance certificate(s)
- (6) Notice of Award and Notice to Proceed.
- (7) All applicable provisions of State, Federal or local law.
- (8) 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, CONTRACTOR, 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, CONTRACTOR finds a conflict, error or discrepancy in the Contract Documents, CONTRACTOR 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 AND SUPPLEMENTING CONTRACT DOCUMENTS:**

The Contract Documents may be amended 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 CONTRACTOR is a representation that CONTRACTOR 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, CONTRACTOR shall carefully study and compare the Contract Documents and check and verify pertinent figures shown thereon. CONTRACTOR shall promptly report in writing to CITY and ENGINEER any conflict, error or discrepancy which CONTRACTOR 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 ENGINEER 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 ENGINEER'S common law copyrights or other reserved rights.

## **ARTICLE 2**

### **CONTRACTOR'S SERVICES AND RESPONSIBILITIES**

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

**2.1.1** The CONTRACTOR 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 in the Contract Documents, the CONTRACTOR 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 CONTRACTOR shall be responsible for and shall coordinate all construction means, methods, techniques, sequences and procedures.

**2.1.4** The CONTRACTOR 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 CONTRACTOR, 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 demand for arbitration, claims, disputes and other matters in question relating to performance thereunder by both OWNER and CONTRACTOR. 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 CONTRACTOR shall correct WORK which does not conform to the Construction Documents.

**2.1.7** The CONTRACTOR 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 corrected in accordance with Article 9.

**2.1.8** The CONTRACTOR shall pay all sales, consumer, use and similar taxes which were in effect at the time the CONTRACTOR'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 CONTRACTOR's Proposal was first submitted to the OWNER.

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

**2.1.10** The CONTRACTOR shall pay royalties and license fees. The CONTRACTOR 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 CONTRACTOR has reason to believe the use of a required design, process or product is an infringement of a patent, the CONTRACTOR shall be responsible for such loss unless such information is promptly given to the OWNER.

**2.1.11** The CONTRACTOR shall be responsible to the OWNER for acts and omissions of the CONTRACTOR's employees and parties in privity of contract with the CONTRACTOR to perform a portion of the WORK, including their agents and employees.

**2.1.12** The CONTRACTOR shall keep the premises free from accumulation of waste materials or rubbish caused by the CONTRACTOR's operations. At the completion of the WORK, the CONTRACTOR shall remove from and about the Project the CONTRACTOR's tools, construction equipment, machinery, surplus materials, waste materials and rubbish.

**2.1.13** The CONTRACTOR shall prepare Change Orders for the ENGINEER'S and OWNER'S 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 Sum or an extension of the Contract Time. The CONTRACTOR shall promptly inform the OWNER and ENGINEER in writing, of minor changes in the design and construction.

**2.1.14** The CONTRACTOR 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 CONTRACTOR shall complete items listed therein.

**2.1.15** The CONTRACTOR 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 permit, furnish, install, test, startup, provide completed work documentation and make operational one skid-mounted on-site sodium hypochlorite generation (OSHG) system to replace existing ClorTec OSHG system at the City of Margate (hereinafter referred to as "Owner") Water Treatment Plant (WTP). The WTP is located at 980 NW 66th Avenue, Margate, Florida 33063 (hereinafter referred to as "Site"). The OSHG equipment shall include, but is not limited to, the sodium hypochlorite generator skid with integral piping, valves, transformer-rectifier, system control cabinet with PLC, commercial strength hypochlorite dilution panel, blower, vent stack, cleaning cart, ancillary equipment as specified herein, testing, start-up and training services, and all interconnected piping, valves, electrical and controls (the "OSHG System"). The capacity of the new OSGH system shall be 1,500 pounds per day (ppd) to match the units being replaced.

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

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

**2.3 NOT USED.**

**2.4 SHOP DRAWINGS AND SAMPLES:**

**2.4.1** Within fourteen (14) calendar days after Contract Commencement, CONTRACTOR shall submit to ENGINEER for review and approval five (5) copies of all Shop Drawings for all equipment, apparatus, machinery, fixtures, piping, wiring, fabricated structures and manufactured articles. The purpose of the Shop Drawing is to show the suitability, efficiency, technique-of-manufacture, installation requirements, details of the item and evidence of compliance with the Contract Documents. The data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials and similar data to enable ENGINEER to review the information as required.

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

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

**2.4.5** Approval of the Shop Drawings by ENGINEER shall be general and shall not relieve CONTRACTOR 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.

**2.5 SUPERVISION AND SUPERINTENDENCE:**

CONTRACTOR shall supervise and direct the WORK competently and efficiently, devoting such attention thereto and applying CONTRACTOR's best skill, attention and expertise. CONTRACTOR shall be solely responsible for and have control over the means, methods, techniques, sequences and procedures of construction. CONTRACTOR shall be responsible to see that the finished WORK complies accurately with the Contract Documents.

## **2.6 RESIDENT SUPERINTENDENT:**

CONTRACTOR shall keep on the WORK at all times during its progress a competent resident superintendent and any necessary assistants who shall not be replaced without written notice to CITY unless the superintendent proves to be unsatisfactory to CONTRACTOR and ceases to be in his employ. The superintendent will be CONTRACTOR's representative at the site and shall have authority to act on behalf of CONTRACTOR. All communications given to the superintendent shall be as binding as if given to CONTRACTOR.

## **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 CONTRACTOR

**2.7.2** CONTRACTOR shall provide and pay for competent, suitably qualified personnel to perform the WORK as required by the Contract Documents. CONTRACTOR shall not permit employment of unfit persons or persons not skilled in tasks assigned to them. CONTRACTOR shall at all times maintain good discipline and order at the 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 CONTRACTOR 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, CONTRACTOR 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** CONTRACTOR 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 seven (7) calendar days after execution of the Contract and in any event prior to the commencement of any WORK hereunder, CONTRACTOR shall furnish, in writing to CITY, the names-of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the WORK. CITY shall advise CONTRACTOR, in writing, of any proposed person or entity to which CITY has a reasonable objection. Failure of CITY to reply promptly shall constitute notice of no reasonable objection. CONTRACTOR shall not contract with a proposed person or entity to whom CITY has made a reasonable and timely objection. If CITY has reasonable objection to a person or entity proposed by CONTRACTOR, CONTRACTOR shall propose another to whom CITY has no reasonable objection. CONTRACTOR shall not change a subcontractor, person or entity previously selected if CITY makes reasonable objection to such change.

**2.9.2** CONTRACTOR shall be fully responsible to CITY for all acts and omissions of the CONTRACTOR'S employees, Subcontractors, Suppliers and other persons directly or indirectly employed by his 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 CONTRACTOR. 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 CONTRACTOR by a Subcontractor will be pursuant to an appropriate agreement between CONTRACTOR 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:**

CONTRACTOR 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:**

CONTRACTOR shall obtain and pay for all permits and licenses. CONTRACTOR shall pay all governmental charges and inspection fees necessary including all CITY permit and inspection fees related to this Contract. CITY permit fees shall not be waived and should be included in your bid proposal. A CITY permit fee schedule can be obtained from the CITY's website at [www.margatefl.com](http://www.margatefl.com) under the Building Department by clicking on the link provided for permit fees.

**2.12 LAWS AND REGULATIONS:**

CONTRACTOR 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 CONTRACTOR's compliance with any laws and regulations. CONTRACTOR shall promptly notify CITY if the Contract Documents are observed by CONTRACTOR to be at variance therewith.

**2.13 RISK OF LOSS; TITLE:**

The risk of loss, injury or destruction shall be on CONTRACTOR 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:**

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

## **2.15 USE OF PREMISES:**

**2.15.1** CONTRACTOR 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. CONTRACTOR 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, CONTRACTOR 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 CONTRACTOR's use of the premises.

**2.15.2** During the progress of the WORK, CONTRACTOR shall keep the premises free from accumulations of waste materials, rubbish and other debris resulting from the WORK. At the completion of the WORK, CONTRACTOR 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. CONTRACTOR shall restore to original condition all property not designated for alteration by the Contract Documents.

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

## **2.16 ACCESS TO WORK:**

CONTRACTOR 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. CONTRACTOR shall provide them proper and safe conditions for such access and advise them of CONTRACTOR's site safety procedures and programs so that they may comply therewith.

## **2.17 SAFETY AND PROTECTION:**

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

## **2.18 INDEMNIFICATION:**

For the total amount of one (1) million dollars, CONTRACTOR agrees to indemnify, and hold harmless the CITY, its officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the indemnifying party and persons employed or utilized, including sub-contractors, by the indemnifying party in the performance of this construction contract. 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 of Section 768.28, Florida Statutes.

## **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, CONTRACTOR 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 ENGINEER, remove it from the site and replace it with non-defective WORK. CONTRACTOR shall bear all direct, indirect and consequential costs of such correction or removal (including but not limited to fees and charges of engineers, 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.

## ARTICLE 3

### OWNER'S AND ENGINEER'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 CONTRACTOR 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 CONTRACTOR agree in writing prior to execution of this Agreement.

**3.3** The OWNER shall cooperate with the CONTRACTOR 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 CONTRACTOR'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 CONTRACTOR.

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

**3.8** Except for permits and fees which are the responsibility of CONTRACTOR, 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 CONTRACTOR fails to supply sufficient skilled workers or suitable materials or equipment, or fails to furnish or perform the WORK in such a way that the completed WORK will conform to the Contract Documents, CITY may order CONTRACTOR 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 CONTRACTOR 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.

#### **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 ARCHITECT may determine necessary, which shall be consistent with or reasonably inferable from the overall intent of the Contract Documents. Should CONTRACTOR 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 CONTRACTOR. ENGINEER will make initial decisions on all claims, disputes or other matters in question between CITY and CONTRACTOR. 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) 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 CONTRACTOR unless a written notice of intention to appeal from ENGINEER'S written decision is delivered within five (5) 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) 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 CONTRACTOR 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 CONTRACTOR 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, 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, shall be complete within 150 calendar days from notice to proceed. Failure to achieve timely, substantial and/or final completion shall be regarded as a breach of this Contract and subject to appropriate remedies including but not limited to liability for liquidated damages in accordance with Paragraph 4.8 herein.

**4.2** The CONTRACTOR 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 schedule provided in the CONTRACTOR's Proposal shall include a construction schedule consistent with Paragraph 4.2 above.

**4.6** If the CONTRACTOR is delayed in the progress of the Project by acts or neglect of the OWNER, OWNER'S employees, separate contractors employed by the OWNER, changes ordered in the WORK not caused by the fault of the CONTRACTOR, labor disputes, fire, unusual delay in transportation, adverse weather conditions not reasonably anticipatable, unavoidable casualties, or other causes beyond the CONTRACTOR's control, or by delay authorized by the OWNER'S pending arbitration or another cause which the OWNER and CONTRACTOR agree is justifiable, the Contract Time shall be reasonably extended by Change Order.

#### **4.7 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.** CONTRACTOR 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 CONTRACTOR for hindrances or delays due solely to fraud, bad faith or active interference on the part of CITY or its agents. Otherwise, CONTRACTOR 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.

#### **4.8 NO RECOVERY FOR EARLY COMPLETION.**

If the CONTRACTOR 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 CONTRACTOR for any costs incurred because of delay or hindrance should the CONTRACTOR be unable to complete the WORK before such milestone or completion date. The duties, obligations and warranties of the CITY to the CONTRACTOR shall be consistent with and applicable only to the completion of the WORK and completion dates set forth in this Agreement.

#### **4.9 LIQUIDATED DAMAGES:**

Upon failure of the CONTRACTOR to complete the WORK within the time specified for completion, (plus approved extensions if any) CONTRACTOR shall pay to CITY the sum of five hundred and xx/100 dollars (\$500.00) for each calendar day that the completion of the WORK is delayed beyond the time specified in the Contract for completion, as fixed and agreed liquidated damages and not as a penalty. 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 CONTRACTOR 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 CONTRACTOR, the amount of such liquidated damages and if the amount retained by CITY is insufficient to pay in full such liquidated damages, the CONTRACTOR shall pay in full such liquidated damages. CONTRACTOR 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 CONTRACTOR whichever is later.

## **ARTICLE 5**

### **PAYMENTS**

#### **5.1 CONTRACT SUM**

CITY shall pay CONTRACTOR in current funds as full compensation for the performance of all the WORK subject to additions and deductions by Change Order as provided in this Agreement, the Contract Sum of \$467,100.00

#### **5.2 PROGRESS PAYMENTS**

**5.2.1** The CONTRACTOR shall deliver to the OWNER itemized Application for Payment in such detail as indicated in the CITY approved Schedule of Values. CONTRACTOR may requisition payments for WORK completed during the Project at intervals of not more than once a month. The CONTRACTOR'S requisition shall show a complete breakdown of the Project components, the quantities completed and the amount due, together with a certification by the CONTRACTOR that the CONTRACTOR has disbursed to all subcontractors and suppliers their pro-rata shares of the payment out of previous progress payments received by the CONTRACTOR 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 CONTRACTOR'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 CONTRACTOR within thirty (30) calendar days after approval by the ENGINEER of the CONTRACTOR'S requisition for payment.

**5.2.2** Ten percent (10%) of all monies earned by the CONTRACTOR 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 Florida Statute 218.735(8).

**5.3** The Application for Payment shall constitute a representation by the CONTRACTOR to the OWNER that, to the best of the CONTRACTOR'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 CONTRACTOR is entitled to payment in the amount requested.

**5.4** The CONTRACTOR shall pay each subcontractor, upon receipt of payment from the OWNER, out of the amount paid to the CONTRACTOR on account of such subcontractor's WORK, the amount to which said subcontractor is entitled in accordance with the terms of the CONTRACTOR'S contract with such subcontractor. The CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR, 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 CONTRACTOR, 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 CONTRACTOR or such other person.

**5.8** If the Contract provides for retainage, then at date of Substantial Completion or occupancy of the WORK or any agreed upon portion thereof by the OWNER, whichever occurs first, the CONTRACTOR may apply for and the OWNER, if the CONTRACTOR has satisfied the requirements of the Contract relating to retainage, shall pay the CONTRACTOR the amount retained, if any, for the WORK or for the portion completed or occupied, less the reasonable value of incorrect or incomplete WORK. Final payment of such withheld sum shall be made upon correction or completion of such WORK.

**5.9 FINAL INSPECTION:**

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

**5.10 FINAL APPLICATION FOR PAYMENT:**

After CONTRACTOR 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, CONTRACTOR 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) CONTRACTOR'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 CONTRACTOR 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, CONTRACTOR may furnish a bond satisfactory to CITY to indemnify CITY against any lien.

In addition, CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR's other obligations under the Contract Documents have been fulfilled, ENGINEER will, within ten (10) 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 CONTRACTOR that the WORK is acceptable. Otherwise, ENGINEER will return the Application to CONTRACTOR, indicating in writing the reasons for refusing to recommend final payment, in which case CONTRACTOR shall make the necessary corrections and resubmit the Application. Thirty (30) 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 CONTRACTOR.

**5.11.2** If, through no fault of CONTRACTOR, final completion of the WORK is significantly delayed and if ENGINEER so confirms, CITY shall, upon receipt of CONTRACTOR'S final Application for Payment and recommendation of ENGINEER, and without terminating the Agreement, make payment of the balance due for that portion of the WORK fully completed and accepted. If the remaining balance to be held by 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 CONTRACTOR to ENGINEER with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

**5.11.3** Final payment, constituting the entire unpaid balance of the Contract Sum, shall be paid by the CITY to the CONTRACTOR 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 CONTRACTOR's continuing obligations under this Agreement.

The acceptance of final payment by CONTRACTOR 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.

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

**5.12.3** Failure of the CONTRACTOR to make payments to subcontractors or suppliers for materials or labor.

**5.12.4** Damage to another contractor not remedied.

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

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

**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 CONTRACTOR provides a surety bond or a consent of surety satisfactory to the CITY which will protect the CITY in the amount withheld, payment may be made in whole or in part.

## **5.13 FINAL PAYMENT**

**5.13.1** Neither final payment nor amounts retained, if any, shall become due until the CONTRACTOR 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 CONTRACTOR refuses to furnish a release or waiver required by the OWNER, the CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR upon the OWNER'S receipt of the CONTRACTOR's final Application for Payment when the WORK has been completed and the Contract fully performed except for those responsibilities of the CONTRACTOR which survive final payment.

**5.13.3** The making of final payment shall constitute a waiver of all claims by the OWNER except those arising from:

- .1 unsettled liens;
- .2 faulty or defective WORK appearing after Substantial Completion;
- .3 failure of the WORK to comply with requirements of the Contract Documents;
- .4 terms of special warranties required by the Contract Documents.

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

## ARTICLE 6

### PROTECTION OF PERSONS AND PROPERTY

**6.1** The CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR, a subcontractor of the CONTRACTOR 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.

## ARTICLE 7

### INSURANCE AND BONDS

#### 7.1 CONTRACTOR'S LIABILITY INSURANCE

**7.1.1** The CONTRACTOR shall purchase and maintain in a company or companies authorized to do business in the State of Florida, such insurance as will protect the CONTRACTOR from claims set forth below which may arise out of or result from operations under the Contract by the CONTRACTOR or by a contractor of the CONTRACTOR, 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 CONTRACTOR'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 CONTRACTOR'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 CONTRACTOR 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 CONTRACTOR's liability insurance shall include contractual liability insurance applicable to the CONTRACTOR'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 days prior written notice has been given to the OWNER.

If any of the foregoing insurance coverages are 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 CONTRACTOR 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 CONTRACTOR perform the contract in the time and manner prescribed in the contract. The payment bond shall be conditioned that the CONTRACTOR promptly make payments to all persons who supply the CONTRACTOR with labor, materials and supplies used directly or indirectly by the CONTRACTOR 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 CONTRACTOR to record the aforesaid payment and performance bonds in the public records of Broward County, with the CONTRACTOR to pay all recording costs.

## **7.3 BONDS, REDUCTION AFTER 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 CONTRACTOR 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 CONTRACTOR 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, CONTRACTOR shall within seven (7) 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 CONTRACTOR SHALL SUBMIT CERTIFICATE(S) OF INSURANCE EVIDENCING THE REQUIRED COVERAGE AND SPECIFICALLY PROVIDING THAT THE CITY OF MARGATE IS AN ADDITIONAL INSURED WITH RESPECT TO THE REQUIRED COVERAGE AND THE OPERATIONS OF THE CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR for this Project shall provide insurance coverage as stated herein.**

(a) Builder's Risk - The CONTRACTOR 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. Contractor 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 CONTRACTOR and the CITY has any Property interest in the Project, or until CONTRACTOR and the CITY mutually consent to the termination, whichever occurs first. This insurance shall include interest of the CITY, CONTRACTOR, 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. CONTRACTOR 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 CONTRACTOR and CITY mutually consent to the termination, whichever occurs first. The CONTRACTOR agrees and understands the CITY shall not provide any Builder's Risk insurance on behalf of CONTRACTOR for loss or damage to WORK, or to any other property of owned, hired, or borrowed by the CONTRACTOR.

CONTRACTOR 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's 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. CONTRACTOR 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 CONTRACTOR 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:

\$1,000,000.00 Combined Single Limit, Bodily Injury 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.

**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 CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR agrees to perform the WORK under the Contract as an independent CONTRACTOR, 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 CONTRACTOR 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 CONTRACTOR, 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 CONTRACTOR, 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 \$25,000 (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 CONTRACTOR.

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

**8.1.6** CONTRACTOR shall not be entitled to an increase in the Contract Price or an extension of the Contract Time with respect to any WORK performed that is not required by the Contract Documents as amended, modified and supplemented.

**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 CONTRACTOR'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 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.

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

## **8.2 CHANGE ORDERS**

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

**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 CONTRACTOR, 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 Sum, 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 CONTRACTOR to the OWNER for deletion or change which results in a net decrease in the Contract Sum 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 CONTRACTOR, applicable unit prices shall be equitably adjusted.

### **8.3 CONCEALED CONDITIONS**

By execution of this agreement, CONTRACTOR 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.

### **8.4 REGULATORY CHANGES**

The CONTRACTOR 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 CONTRACTOR's proposal.

## ARTICLE 9

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

#### 9.1 WARRANTY OF TITLE:

The CONTRACTOR 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 CONTRACTOR warrants that all equipment, materials and workmanship furnished, whether furnished by the CONTRACTOR or its sub-contractors 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:

CONTRACTOR 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.

#### 9.4 CORRECTION PERIOD:

CONTRACTOR warrants all material and workmanship for a minimum of one (1) year from date of 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, CONTRACTOR 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 CONTRACTOR 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, ENGINEER'S, attorneys and other professionals) will be paid by CONTRACTOR.

**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 CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR'S liability with respect to the CONTRACTOR'S obligation other than specifically to correct the WORK.

**9.5** CONTRACTOR 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** CONTRACTOR 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** CONTRACTOR 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 CONTRACTOR is a party.

**9.8** CONTRACTOR 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 CONTRACTOR. All warranties shall remain in full force and effect, notwithstanding acceptance and payment by CITY.

**9.10 TESTS AND INSPECTIONS:**

**9.10.1** CONTRACTOR shall give CITY timely notice of readiness of the WORK for all required inspections, tests or approvals. CONTRACTOR 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 CONTRACTOR to any inspectors, directly or indirectly is strictly prohibited and any such action on the part of the CONTRACTOR will constitute a breach of this Agreement.

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

**9.11** The CONTRACTOR shall promptly correct WORK rejected by the OWNER or known by the CONTRACTOR 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 CONTRACTOR under this Agreement. Paragraph 9.11 relates only to the specific obligation of the CONTRACTOR 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 CONTRACTOR's liability with respect to the CONTRACTOR'S obligations other than correction of the WORK.

**9.13** If the CONTRACTOR 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 CONTRACTOR or other persons or entities.

**9.14** If the CONTRACTOR defaults or neglects to carry out the WORK in accordance with the Contract Documents and fails within seven 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 CONTRACTOR and seven days following receipt by the CONTRACTOR 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 CONTRACTOR costs of correcting such deficiencies. If the payments then or thereafter due the CONTRACTOR are not sufficient to cover the amount of the deduction, the CONTRACTOR shall pay the difference to the OWNER.

## 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 CONTRACTOR, as soon as practicable after execution of this Agreement, shall furnish to the OWNER in writing the names of the persons or entities the CONTRACTOR will engage as subcontractors for the Project.

**10.4.2** Nothing contained in the CONTRACTOR 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 CONTRACTORS:**

**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 CONTRACTOR claims that delay or additional cost is involved because of such action by the OWNER, the CONTRACTOR shall make such claims as provided in Subparagraph 11.6.

**10.5.2** The CONTRACTOR shall afford the OWNER'S separate contractors reasonable opportunity for introduction and storage of their materials and equipment for execution of their work. The CONTRACTOR shall incorporate and coordinate the CONTRACTOR'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, 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.

**10.7 SUCCESSORS AND ASSIGNS:**

This Agreement shall be binding on successors, assigns, and legal representatives of and persons in privity of the Contract with the OWNER or CONTRACTOR. 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 CONTRACTOR and supersedes any prior negotiations, representations or agreements. This Agreement may be amended only by written instrument signed by both OWNER and CONTRACTOR.

**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.

**ARTICLE 11**

**DISPUTES**

**NOT WITHSTANDING ANY OTHER PROVISION OF THIS CONTRACT , ANY DISPUTE ARISING UNDER THIS CONTRACT WHICH IS NOT DISPOSED OF BY AGREEMENT SHALL BE DECIDED BY THE CITY MANAGER OF THE CITY OF MARGATE, FLORIDA, WHO SHALL REDUCE HIS DECISION IN WRITING AND FURNISH A COPY THEREOF TO THE CONTRACTOR. THE DECISION OF THE CITY MANAGER OF THE CITY OF MARGATE, FLORIDA AND THOSE PERSONS TO WHOM HE DELEGATES AUTHORITY TO DECIDE DISPUTES, SHALL BE FINAL AND CONCLUSIVE UNLESS DETERMINED BY A COURT OF COMPETENT JURISDICTION TO BE FRAUDULENT, CAPRICIOUS, ARBITRARILY, OR GROSSLY ERRONEOUS AS TO NECESSARILY IMPLY BAD FAITH, OR NOT SUPPORTED BY SUBSTANTIAL EVIDENCE.**

## **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 CONTRACTOR commences a voluntary case under any chapter of the Bankruptcy Code as now or hereafter in effect, or if CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR under any other federal or state law in effect at the time relating to bankruptcy or insolvency.

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

**12.1.4** If a trustee, receiver, custodian or agent of CONTRACTOR is appointed under applicable law or under contract, whose appointment or authority to take charge of property of CONTRACTOR 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 CONTRACTOR'S creditors.

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

**12.1.6** If CONTRACTOR persistently 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 CONTRACTOR disregards laws or regulations of any public body having jurisdiction.

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

### **12.1.9 Termination for Convenience of CITY:**

Upon thirty (30) days written notice to CONTRACTOR, 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 CONTRACTOR must state that the Contract is being terminated for the convenience of the 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, CONTRACTOR shall promptly discontinue all WORK at the time and to the extent indicated on the notice of termination, terminate 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. CONTRACTOR 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 days' written notice to the CONTRACTOR in the event that the Project is abandoned. If such termination occurs, the OWNER shall pay the CONTRACTOR 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 CONTRACTOR defaults or persistently 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 CONTRACTOR fails to correct the defaults, failure or neglect within seven days after being given notice, the OWNER may then give a second written notice and, after an additional seven 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 CONTRACTOR or, at the OWNER'S option, may terminate the employment of the CONTRACTOR and take possession of the site and of all materials, equipment, tools and construction equipment and machinery thereon owned by the CONTRACTOR and finish the WORK by whatever method the OWNER may deem expedient. If the unpaid balance of the Contract Sum exceeds the expense of finishing the WORK, the excess shall be paid to the CONTRACTOR, but if the expense exceeds the unpaid balance, the CONTRACTOR shall pay the difference to the OWNER.

## **12.2 TERMINATION BY CONTRACTOR:**

**12.2.1** If ENGINEER fails to recommend payment for a period of thirty (30) days through no fault of CONTRACTOR or if CITY fails to make payment thereon for a period of thirty (30) days, CONTRACTOR may, upon seven (7) additional 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 payment when due, the CONTRACTOR may give written notice of the CONTRACTOR'S intention to terminate this Agreement. If the CONTRACTOR fails to receive payment within thirty days after receipt of such notice by the OWNER, the CONTRACTOR may give a second written notice and, thirty 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.

## 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 CONTRACTOR FOR PERFORMING THE WORK. ALL DUTIES, RESPONSIBILITIES AND OBLIGATIONS ASSIGNED TO OR UNDERTAKEN BY CONTRACTOR SHALL BE AT HIS EXPENSE WITHOUT CHANGE IN CONTRACT PRICE.**

**13.1.2 THE CONTRACT PRICE MAY ONLY BE CHANGED BY A CHANGE ORDER 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) DAYS) AFTER THE OCCURRENCE OF THE EVENT GIVING RISE TO THE AMOUNT OF THE CLAIM WITH SUPPORTING DATA SHALL BE DELIVERED WITHIN TWENTY (20) 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 CONTRACTOR'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 CONTRACTOR 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 CONTRACTOR in the performance of the WORK under schedules of job classifications agreed upon by CITY and CONTRACTOR. 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 CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR 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 THE WORK IN THE EVENT OF CHANGE ORDER:**

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

**13.3.1** Payroll costs and other compensation of CONTRACTOR'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 CONTRACTOR whether at the site or in CONTRACTOR'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 CONTRACTOR'S fee.

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

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

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

**13.3.5** Costs due to the negligence of CONTRACTOR, 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 CONTRACTOR'S FEE IN THE EVENT OF CHANGE ORDER:**

CONTRACTOR's fee allowed to CONTRACTOR for overhead and profit shall be determined as follows:

**13.4.1** A mutually acceptable negotiated fee.

**13.4.2** For costs incurred under Paragraphs 13.2.1 and 13.2.2 CONTRACTOR's fee shall not exceed ten percent (10%).

**13.4.3** 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.

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

**13.4.5** 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 CHANGE ORDER:**

Whenever the cost of any WORK is to be determined pursuant to Paragraphs 13.2 or 13.3, CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR and one (1) or more subcontractors and the change is an increase in the Contract Price, the overhead and profit percentage for the CONTRACTOR and each subcontractor shall be itemized separately.

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

### **13.6 REIMBURSABLE EXPENSES IN 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 CONTRACTOR 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 the CONTRACTOR is:

Odessey Manufacturing Company  
1484 Massaro Blvd.  
Tampa, Florida 33619

The business address of the CITY is:

City Manager  
City of Margate  
5790 Margate Blvd.  
Margate, Florida 33063

The business address of the ENGINEER is::

Mr. Kelly McAtee  
Department of Environmental and Engineering Services  
6630 NW 9th Street  
Margate, FL 33063

All "Notice To Owner / Notice of Contractor" forms are to be sent to:

Mr. Kelly McAtee  
Department of Environmental and Engineering Services 6630  
NW 9th Street  
Margate, FL 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 CONTRACTOR 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** CONTRACTOR shall not assign or transfer the Contract or its rights, title or interests therein without CITY'S prior written approval. The obligations undertaken by CONTRACTOR pursuant to the Contract shall not be delegated or assigned to any other person or firm unless CITY shall first consent in writing to the assignment. Violation of the terms of this Paragraph shall constitute a breach of Contract by CONTRACTOR and the CITY may, at its discretion, cancel the Contract and all rights, title and interest of CONTRACTOR shall thereupon cease and terminate.

**14.3.3** CONTRACTOR and its employees, volunteers and agents shall be and remain 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 CONTRACTOR relating in any way 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, CONTRACTOR agrees to submit to an audit by an independent certified public accountant selected by CITY. CONTRACTOR shall allow CITY to inspect, examine and review the records of CONTRACTOR 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 LITIGATION VENUE: The parties waive the privilege of venue and agree that all litigation between them shall take place in the state court of Broward County, Florida.**

**14.5 WAIVER OF JURY TRIAL: CITY AND CONTRACTOR 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.**

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 the City Commission the \_\_\_\_\_ day of \_\_\_\_\_, 2015 and Odyssey Manufacturing Company, signing by and through its representatives is duly authorized to execute same.

**CITY OF MARGATE**

\_\_\_\_\_  
Joanne Simone, Mayor

\_\_\_\_\_ day of \_\_\_\_\_, 2015

\_\_\_\_\_  
Douglas E. Smith, City Manager

\_\_\_\_\_ day of \_\_\_\_\_, 2015

ATTEST:

\_\_\_\_\_  
Joseph J. Kavanagh, City Clerk

\_\_\_\_\_ day of \_\_\_\_\_, 2015

APPROVED AS TO FORM:

\_\_\_\_\_  
Eugene M. Steinfeld, City Attorney

\_\_\_\_\_ day of \_\_\_\_\_, 2015

**CONTRACTOR**

**FOR CORPORATION:**

---

Marvin T. Rakes, **President**

**(CORPORATE SEAL)**

**AGREEMENT BETWEEN CITY OF MARGATE AND CONTRACTOR FOR THE PROPOSED  
CITY OF MARGATE WATER TREATMENT PLANT ON-SITE SODIUM HYPOCHLORITE  
GENERATION SYSTEM EQUIPMENT REPLACEMENT BID NO. 2015-006**