



**BID NO. 2017-011  
PAINTING OF WATER TREATMENT PLANT  
STORAGE TANKS AND PIPING**

**BIDDING REQUIREMENTS  
CONTRACT FORMS  
CONDITIONS OF THE CONTRACT**

**PRE-BID CONFERENCE DATE AND TIME:** 10:00 A.M., Thursday, August 3, 2017  
(MANDATORY)

**BID OPENING DATE AND TIME:** 11:00 A.M., Wednesday, August 16, 2017

**BID BOND REQUIRED:** YES

**PERFORMANCE BOND REQUIRED:** YES

**PAYMENT BOND REQUIRED:** YES

**DEPARTMENT  
Department of Environmental and Engineering Services  
901 NW 66 Avenue  
Margate, Florida 33063**

**NOTE: THESE PLANS AND SPECS RELATE TO CITY SECURE  
INFRASTRUCTURE. PURSUANT TO LAW, THIS IS CONFIDENTIAL  
INFORMATION NOT "PUBLIC RECORD". BIDDER IS RESPONSIBLE  
TO MAINTAIN CONFIDENTIALITY OF THESE PLANS AND SPECS  
AND TO INSURE THAT SUCH PLANS AND SPECS ARE NOT  
DISTRIBUTED TO INDIVIDUALS AND CONCERNS AND FIRMS AND  
CONCERNS THAT DO NOT HAVE A REAL INTEREST IN THE BID.**

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## **PART I – BIDDING REQUIREMENTS**

## NOTICE INVITING BID

**SUBMITTING PROPOSALS:** Sealed bids will be received in the Office of the Purchasing Division, Finance Department, City Hall, 5790 Margate Boulevard, Margate, Florida 33063 until 11:00 A.M., Wednesday, August 16, 2017 for a completed project for the Painting of Water Treatment Plant Storage Tanks and Piping.

A **MANDAORY** Pre-Bid Conference followed by **MANDATORY** site visits will be held on Thursday, August 3, 2017 at 10:00 A.M. in the large conference room of the DEES Administration Building, located at 901 NW 66<sup>th</sup> Avenue, Margate, FL 33063. All bidders must have at least one representative attend the mandatory pre-bid conference and mandatory site visits.

All bids received will be publicly opened at the close of bidding in the Commission Chambers of City Hall. All bidders or their representatives are invited to be present.

It will be the sole responsibility of the bidders to deliver their proposal to the Purchasing Division on or before the date and time specified. Bids received after the specified date and time will not be considered, and will be returned unopened to the bidder.

**NO FAXED OR ELECTRONICALLY TRANSMITTED BIDS WILL BE ACCEPTED.** Bids must be submitted in a sealed envelope and plainly marked on the outside of the envelope; the bidder's name and address followed by "**SEALED BID FOR Painting of Water Treatment Plant Storage Tanks and Piping**", address where bid is to be delivered or mailed to, and the date and time of the bid opening.

Bids must be submitted on the Bid Proposal Form(s) provided herein. Failure to do so will be cause for bid to be rejected. Proposals having an erasure or correction must be initialed by the bidder in ink. Bids shall be signed in ink; all quotations shall be typewritten and filled in with pen and ink.

**COMPLETION OF WORK:** The Work shall be completed within 180 **calendar days** after the commencement date stated in the Notice to Proceed or Purchase Order.

**BID SECURITY:** Each bid shall be accompanied by a certified or cashier's check or bid bond in the amount of 5 percent of the total bid price payable to the City of Margate as a guarantee that the bidder, if its bid is accepted, will promptly execute the Agreement.

The bidder shall guarantee the Total Bid Price for a period of 90 calendar days from the date of bid opening.

**PROJECT ADMINISTRATION:** All communications and technical questions relative to this Work shall be directed to the ENGINEER and/or Owner prior to bid opening.

City of Margate  
Abidemi Ajayi, Engineer  
901 NW 66<sup>th</sup> Avenue, Suite A  
Margate, FL 33063

The City of Margate (Owner) reserves the right to waive informalities in any bid and further reserves the right to reject any and all bids and to take any other action that may be deemed necessary in its best interest.

**OWNER: CITY OF MARGATE**

## **GENERAL CONDITIONS**

### **INSTRUCTIONS TO BIDDERS**

- 1. DEFINED TERMS:** Terms used in these "Instructions to Bidders" and the "Notice Inviting Bids", which are defined in the General Conditions have the meanings assigned to them in the General Conditions. The term "bidder" means one who submits a bid directly to City, as distinct from a sub-bidder, who submits a bid to a bidder.
- 2. COMPETENCY OF BIDDER:** In selecting the bid, deemed to be in the best interest of the City of Margate (City), consideration will be given not only to the financial standing, but also to the general competency of the bidder for the performance of the Work covered by the bid. To this end, each bid shall be supported by a statement of the bidder's experience as of recent date on the form entitled "Information Required of Bidder," bound herein. A "No Bid" for the Work will be accepted from a contractor who does not hold a valid contractor's license in the State and County where the Work is to be performed (if required by the State and County) applicable to the type of Work bid upon at the time of opening Bids.
- 3. DISQUALIFICATION OF BIDDER:** More than one bid from an individual, firm, partnership, corporation, or association under the same or different names will not be considered. If the City believes that any bidder is interested in more than one bid for the Work contemplated, all bids in which such bidder is interested will be rejected. If the City believes that collusion exists among the bidders, all bids will be rejected.
- 4. BIDDER'S EXAMINATION OF CONTRACT DOCUMENTS AND SITE:**
  - 4.1** It is the responsibility of each bidder before submitting a bid, to:
    - (a)** Examine the Contract Documents thoroughly,
    - (b)** Visit the site to become familiar with local conditions that may affect cost, progress, or performance of the Work,
    - (c)** Consider federal, state and local Laws and regulations that may affect cost, progress, or performance of the Work,
    - (d)** Study and carefully correlate the bidder's observations with the Contract Documents, and,
    - (e)** Notify the Engineer or City of all conflicts, errors, or discrepancies in the Contract Documents.
  - 4.2 Not Used**
  - 4.3 Not Used**
  - 4.4** Information and data reflected in the Contract Documents with respect to underground utilities at or contiguous to the site is based upon information and data furnished to the City and the Engineer by the owners of such underground utilities or others, and the City does not assume responsibility for the accuracy or completeness thereof unless it is expressly provided otherwise in the Agreement or Contract Documents.
  - 4.5** Provisions concerning responsibilities for the adequacy of data furnished to prospective bidders on subsurface conditions, underground utilities and other physical conditions, and possible changes in the Contract Documents due to differing conditions appear in the Agreement.

**4.6** Before submitting a bid, each bidder will, at bidder's own expense, make or obtain any additional examinations, investigations, explorations, tests, and studies and obtain any additional information and data which pertain to the physical conditions (surface, sub-surface, and underground utilities) at or contiguous to the site or otherwise which may affect cost, progress or performance of the Work and which the bidder deems necessary to determine its bid for performing the Work in accordance with the time, price, and other terms and conditions of the Contract Documents.

**4.7** On request in advance, the City will provide each bidder access to the site to conduct such explorations and tests as each bidder deems necessary for submission of a bid. Bidder shall fill all holes and shall clean up and restore the site to its former condition upon completion of such explorations.

**4.8** The land upon which the Work is to be performed, rights-of-way and easements for access thereto and other land designated for use by the Contractor in performing the Work are identified in the Contract Documents. All additional land and access thereto required for temporary construction facilities or storage of materials and equipment are to be provided by the Contractor. Easements for permanent structures or permanent changes in existing structures are to be obtained and paid for by the City unless otherwise provided in the Contract Documents.

**4.9** The submission of a bid will constitute an incontrovertible representation by the bidder that the bidder has complied with every requirement of "Bidder's Examination of Contract Documents and Site" contained herein, that without exception the bid is premised upon performing the Work required by the Contract Documents and such means, methods, techniques, sequences, or procedures of construction as may be indicated in or required by the Contract Documents, and that the Contract Documents are sufficient in scope and detail to indicate and convey understanding of all terms and conditions for performance of the Work.

**5. INTERPRETATIONS:** All questions about the meaning or intent of the Contract Documents are to be directed to the Engineer or City in writing. Interpretations or clarifications considered necessary by the Engineer or City in response to such questions will be issued by written addenda, mailed or delivered, to all parties recorded by the Engineer or City as having received the Contract Documents. **Questions received less than 7 days prior to the date for opening of bids may not be answered.** Only questions answered by formal written addenda will be binding. Oral and other interpretations or clarifications will be without legal effect. It is the Contractor's responsibility to contact the City prior to the bid opening to determine if any addenda have been issued on the project.

**6. BID SECURITY, BONDS:** Each bid shall be accompanied by a certified or cashier's check or approved bid bond in the amount stated in the "Notice Inviting Bids". Said check or bond shall be made payable to the City and shall be given as guarantee that the bidder, if awarded the Work will enter into an Agreement with the City, and shall furnish the necessary insurance certificates, payment and performance bonds, each of said bonds to be in the amount stated in the Agreement. In case of refusal or failure to enter into said Agreement, the check or bid bond, as the case may be, shall be forfeited to the Owner. If the bidder elected to furnish a bid bond as its bid security, the bidder shall use the bid bond form bound herein, or one conforming substantially to it in form.

**7. RETURN OF BID SECURITY:** Within 14 days after award of the Contract, the City will return the bid securities the bids not considered in making the award. All other bid securities will be held until the Agreement has been finally executed. They will then be returned to the respective bidders whose bids they accompany.

**8. BID FORM:** The bid shall be made on copies of the bidding schedule bound herein.

**9. SUBMISSION OF BIDS:** Refer to **Notice Inviting Bids**.

- 10. DISCREPANCIES IN BIDS:** In the event there is more than one bid item in a bidding schedule, the bidder shall furnish a price for all bid items in the schedule, and failure to do so will render the bid non-responsive and may cause its rejection. In the event there are unit price bid items in a bidding schedule and the "amount" indicated for a unit price bid item does not equal the product of the unit price and quantity, the unit price shall govern and the amount will be corrected accordingly, and the Contractor shall be bound by said correction. In the event there is more than one bid item in the bidding schedule and the total indicated for the schedule does not agree with the sum of the prices bid on the individual items, the prices bid on the individual items shall govern and the total for the schedule will be corrected accordingly, and the Contractor shall be bound by said correction.
- 11. QUANTITIES OF WORK:** The quantities of Work or material stated in unit price items of the bid are supplied only to give an indication of the general scope of the Work; the City does not expressly or by implication agree that the actual amount of Work or material will correspond therewith, and reserves the right after award to increase or decrease the amount of any unit price item of the Work by an amount up to and including 25 percent of any bid item, without a change in the unit price, and shall include the right to delete any bid item in its entirety, or to add additional bid items up to and including an aggregate total amount not to exceed 25 percent of the Contract Price.
- 12. WITHDRAWAL OF BID:** The bid may be withdrawn by the bidder by means of a written request, signed by the bidder or its properly authorized representative. Such written request must be delivered to the place stipulated in the Notice Inviting Bids for receipt of bids prior to the scheduled closing time for receipt of bids.
- 13. MODIFICATIONS AND UNAUTHORIZED ALTERNATIVE BIDS:** Unauthorized conditions, limitations, or provisos attached to the bid will render it informal and may cause its rejection as being non-responsive. The completed bid forms shall be without interlineations, alterations or erasures in the printed text. Alternative bids will not be considered unless called for. Oral, telegraphic, telephonic, or electronically transmitted bids or modifications will not be considered.
- 14. SUBSTITUTE OR "OR EQUAL" ITEMS:** Whenever materials or equipment are specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular supplier and the name is followed by the words "or-equal", the bidder may write the name of the substitute supplier (which the bidder considers as an "or-equal") in the Proposed Substitute Equipment/Material Supplier List in the Bid Form. These substitute suppliers will only be considered after award of the Contract. The procedure for the submittal of substitute or "or-equal" products is specified in the section entitled "Contractor Submittals" of the General Requirements.
- 15. AWARD OF CONTRACT:** Award of contract, if it be awarded, will be made to the bid which is deemed to be in the best interest of the City as determined in the sole discretion of the City. Unless otherwise specified, any such award will be made within the period stated in the Notice Inviting Bids that the bids are to remain open. Unless otherwise indicated, a single award will be made for all the bid items in an individual bidding schedule. In the event the Work is contained in more than one bidding schedule, the City may award schedules individually or in combination. In the case of 2 bidding schedules which are alternative to each other, only one of such alternative schedules will be awarded. The City reserves the right to accept or reject any or all bids, parts of bids, to waive formalities in any bid, or to take any other action that is deemed to be in the best interest of the City.
- 16. EXECUTION OF AGREEMENT:** The bidder to whom award is made shall execute a written agreement with the City on the form of agreement provided, shall secure all insurance, and shall furnish all certificates and bonds required by the Contract Documents within 14 calendar days after receipt of the Agreement forms from the City. Failure or refusal to enter into an Agreement as herein provided or to conform to any stipulated requirements in connection therewith shall be just cause for annulment of the award and forfeiture of the Bid Security. If the bidder who has been



awarded the bid pursuant to paragraph 16 refuses or fails to execute the agreement, the City may award the Contract to whichever bidder it determines next best serves its interest. On the failure or refusal of such second or third Bidder (who has been awarded the contract) to execute the Agreement, each such bidder's bid security shall be likewise forfeited to the City.

- 17. SITE INSPECTION:** Bidders is responsible for a site inspection and final determination of all materials, labor and equipment required in their proposal. Contractor will obtain complete data at the site and inspect surfaces that are to receive his Work. Before proceeding with Work, Contractor will be solely responsible for accuracy of measurements and laying out of Work; and will correct errors or defects due to faulty measurements taken, information obtained, layout, or due to failure to report discrepancies.
- 18. GOVERNMENT RESTRICTIONS:** In the event any governmental restrictions may be imposed which would necessitate alteration of the material quality, Workmanship, or performance of the items/services offered on the bid prior to delivery/performance, it shall be the responsibility of the successful bidder to notify the City at once, indicating in their letter the specific regulation which required an alteration. The City reserves the right to accept any such alteration, including any price adjustments occasioned hereby, or to cancel the contract at no further expense to the City.
- 19. PUBLIC ENTITY CRIMES INFORMATION STATEMENT:** "A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public Work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform Work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in s. 287.017 for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list."
- 20. DISCRIMINATORY VENDOR LIST:** An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid on a contract to provide goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public Work, may not submit bids on leases of real property to a public entity, may not awarded or perform Work as a contractor, supplier, subcontractor, or consultant under contract with any public entity, and may not transact business with any public entity.
- 21. COPYRIGHTS OR PATENT RIGHTS:** Bidder warrants that there has been no violation of copyrights or patent rights in manufacturing, producing, or selling the goods shipped or ordered, as a result of this bid.
- 22. TAXES:** The City of Margate is exempt from all federal and state taxes. Contractor shall pay all sales, consumer, use and other similar taxes required, to be paid by the 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.
- 23. STANDARDS OF SAFETY:** The bidder warrants that the product(s) and services supplied to the City conform in all respects to the standards set forth in the Occupational Safety and Health Act and its amendments and to any industry standards if applicable. Bid proposal must be accompanied by Material Safety Data Sheet(s). (Refer to attachment - Compliance with Occupational Safety and Health Act.)

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.

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.

Roadways have school crossing areas that are active before 8:30 A.M. and after 2:00 P.M. Contractor shall keep all crosswalk areas clear during periods when school children are present. All sidewalks shall be kept clear of any excess debris and shall not be barricaded or taped off during nights and weekends.

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 site; and other property at the site or adjacent thereto.

**24. NO BID:** Refer to "Statement of No Bid" form incorporated into the bid proposal package.

**25. OMISSION OF DETAILS:** Omission of any essential details from these specifications will not relieve the contractor of supplying such Work as specified.

**26. CITY PERMITS:** The Contractor shall be required to obtain all necessary permits from the City Engineering and/or Building Departments. If the schedule of Bid Prices does not include a permit allowance line item, permit fees 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. Any questions regarding the requirements to obtain a permit from the City of Margate Building Department should be directed to (954) 970-3004.

**27. NOTICE TO PROCEED:** The contractor shall commence Work within ten (10) days after receipt of a Notice to Proceed from the City unless otherwise stated. After start of Work, Contractor to remain on site until Work is completed.

**28. LIABILITY INSURANCE:** The bidder will assume the full duty, obligation, and expense of obtaining all insurance required. The City of Margate and Engineer shall be **additional insured** under all policies required by this proposal and shall be required to provide all necessary endorsements to the City of Margate. The successful bidder shall furnish to the Purchasing Division, City of Margate, 5790 Margate Blvd., Margate, Florida 33063 certificates of insurance which indicate the insurance coverage has been obtained or otherwise secured in a manner satisfactory to the City in an amount equal to 100% of the requirements provided herein and shall be presented to City prior to issuance of any contract(s) or award(s) document(s) which meets the requirements as outlined on the accompanying Agreement. Additionally, any subcontractor hired by the Contractor for this project shall provide insurance coverage as stated herein. 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.

**29. IDENTICAL TIE BIDS:** Refer to the "Drug Free Workplace Program" form attachment for information on how tie bids will be handled.

**30. CONFLICT OF INTEREST:** For purposes of determining any possible conflict of interest, all bidders must disclose if any City of Margate employee or elected official is also an owner,

corporate officer, or employee of their business. If such a relationship(s) exist, the proposer must file a statement with the Supervisor of Elections, pursuant to Florida State Statute 112.311.

- 31. FORCE MAJEURE:** Seller's failure to make, or buyer's failure to take, any delivery or deliveries when due, if caused by Force Majeure as hereinafter defined, shall not constitute a default hereunder nor subject the party so failing to any liability to the other, provided however, the party affected by such Force Majeure shall promptly notify the other of the existence thereof and its expected duration and the estimated effect thereof upon its ability obligations hereunder.

Such party shall promptly notify the other party when such Force Majeure circumstance has ceased to affect its ability to perform its obligations hereunder. The quantity to be delivered hereunder shall be reduced to the extent of the deliveries omitted for such cause or causes, unless both parties agree that the total quantity delivered hereunder remain unchanged. As used herein, the term Force Majeure shall mean and include an ACT OF GOD or the public enemy, accident, explosion, fire, storm, earthquake, flood, drought, perils of the sea, strikes, lockouts, labor troubles, riots, sabotage, embargo, war (whether or not declared and whether or not the United States is a participant) Federal, State, or Municipal Law, regulation, order, license, priority, seizure, requisition, or allocation, failure to delay from transportation, shortage of or inability to obtain supplies, equipment, fuel, labor, or any other circumstances of a similar or different nature beyond the reasonable control of the party so failing.

**32. WARRANTIES:**

**Warranty of Title:**

Successful Offeror warrants that all equipment delivered under the contract shall be of new manufacture and that successful Offeror possesses good and clear title to said equipment and there are no pending liens, claims, or encumbrance whatsoever against said equipment.

**Warranty of Specifications:**

Successful Offeror warrants that all equipment, materials and Workmanship furnished, whether furnished by the Successful Offeror or its subcontractors and suppliers, will comply with the specifications, drawings and other descriptions supplied or adopted and that all services will be performed in a Workmanlike manner.

**Warranty of Merchantability:**

Successful Offeror warrants that all equipment and materials to be supplied pursuant to the Agreement will be merchantable, or good quality and free from defects, whether patent or latent in material and Workmanship, and fit for the ordinary purposes for which it is intended.

**Warranty of Material and Workmanship:**

Successful Offeror warrants all material and Workmanship for a minimum of one (1) year from date of completion and acceptance by City. If within one (1) year after acceptance by City, or within such larger period of time as may be prescribed by Law, any of the Work is found to be defective or not in accordance with the bid/contract documents, successful Offeror shall promptly, after receipt of written notice from City to do so, correct the Work unless City has previously given successful Offeror a written acceptance of such condition. This obligation shall survive termination of the contract.

**Warranty of Fitness for a Particular Purpose:**

Successful Offeror warrants the equipment shall be fit for, and sufficient for, the purpose(s) intended and outlined within this bid/proposal package. Successful Offeror understands and agrees that City

is purchasing the equipment in reliance upon the skill of the successful Offeror in furnishing the equipment suitable for the purpose stated.

If the equipment cannot be used in the manner stated in the bid/proposal, then City, at its sole discretion, may return the equipment to successful Offeror for a full refund of any and all moneys paid for the equipment.

- 33. CANCELLATION FOR UNAPPROPRIATED FUNDS:** The obligation of the City for payment to a Contractor is limited to the availability of funds appropriated in the current fiscal period, and continuation of the contract into a subsequent fiscal period is subject to appropriation of funds, unless otherwise authorized by law.
- 34. PRESENCE OF ASBESTOS MATERIALS:** If in the course of Work, the Contractor encounters any existing materials which he suspects contain asbestos, the Contractor will stop Work in that area immediately and notify the City.
- 35. SPECIAL CONDITIONS:** Any and all Special Conditions that may vary from the General Conditions shall have precedence.
- 36. NON-COLLUSIVE STATEMENT:** By submitting this proposal, the Proposer affirms that this proposal is without previous understanding, agreement, or connection with any person, business, or corporation submitting a proposal for the same materials, supplies, service, or equipment, and that this proposal is in all respects fair, and without collusion or fraud. (Refer to "Non-Collusive Affidavit" form attached.)
- 37. 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 or Section 768.28, Florida Statutes.
- 38. 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.
- 39. DISPUTES:** NOT WITHSTANDING ANY OTHER PROVISIONS PROVIDED IN 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.
- 40. LITIGATION VENUE:** This agreement shall have been deemed to have been executed within the State of Florida. The validity, construction, and effect of this Agreement shall be governed by the laws of the State of Florida. Any claim, objection or dispute arising out of this Agreement shall

be litigated only in the courts of the Seventeenth Judicial Circuit in and for Broward County, Florida.

**41. OTHER GOVERNMENTAL AGENCIES:** If CONTRACTOR is awarded a contract as a result of this bid proposal, CONTRACTOR will, if he have sufficient capacity or quantity available, provide to other governmental agencies, so requesting, the product or services awarded in accordance with the terms and conditions of the bid proposal and resulting contract. Prices shall be FOB Delivered to the requesting agency.

**42. EMERGENCY RESPONSE LOCATIONS:** When delivering to emergency response locations (Fire Stations, Police, Utilities, etc.) where rescue, fire, police and emergency repair vehicles are being dispatched, the successful bidder shall take all steps to ensure that free egress and ingress of emergency vehicles are allowed. No delivery trucks shall be left unattended. In the event that a vehicle is to be left unattended, city personnel must be notified and the driver must state where they will be at all times.

**43. ASSIGNMENT:** The contractor shall not transfer or assign the performance required by this bid without the proper written consent of the City. Any award issued pursuant to this bid invitation and monies which may become due hereunder are not assignable except with prior written approval of the City.

**44. WORKING HOURS AND INSPECTIONS:** The City of Margate's Working hours are Monday through Thursday 8 A.M. – 6 P.M. Contractor must plan for and schedule inspections within the City's Working hours.

Contractor can perform Work Monday – Saturday from Dawn to Dusk. Work on Sunday 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.

**45. RECORDING OF BONDS:** Pursuant to the requirements of Section 255.05(l)(a), Florida Statutes, it shall be the duty of the Contractor to record payment and performance bonds in the public records of Broward County, with the Contractor to pay all recording costs.

**46. LUMBER:** Section 4 Subsection (3) of Section 255.20, Florida Statutes, is amended to read: 255.20 Local bids and contracts for public construction Works; specification of state-produced lumber.

(3)(a) All county officials, boards of county commissioners, school boards, city councils, city commissioners, and all other public officers of state boards or commissions that are charged with the letting of contracts for public Work, for the construction of public bridges, buildings, and other structures must specify in the contract lumber, timber, and other forest products produced and manufactured in this state, if wood is a component of the public Work, and if such products are available and their price, fitness, and quality are equal.

(3)(b) This subsection does not apply:

1. To plywood specified for monolithic concrete forms.
2. If the structural or service requirements for timber for a particular job cannot be supplied by native species, or
3. If the construction is financed in whole or in part from federal funds with the requirement that there be no restrictions as to species or place of manufacture.
4. To transportation projects for which federal aid funds are available.

**47. LIQUIDATED DAMAGES:** Provisions for liquidated damages, if any, are set forth in the Agreement.

- 48. REGULATIONS:** All applicable laws and regulations of the Federal Government, State of Florida, Broward County, and Ordinances of the City of Margate will apply to any resulting award of contract.
- 49. ASSIGNMENT:** The Contractor shall not transfer or assign the performance required by this bid without the proper written consent of the Owner. Any award issued pursuant to this bid invitation and monies which may become due hereunder are not assignable except with prior written approval of the Owner.

**BID PROPOSAL FORM BID NO.**

**BID TO: CITY COMMISSION  
CITY OF MARGATE**

1. The undersigned bidder proposes and agrees, if this bid is accepted, to enter into an Agreement with the OWNER in the form included in the Contract Documents to perform the WORK as specified or indicated in said Contract Documents entitled:

**BID NO. 2017-011  
PAINTING OF WATER TREATMENT PLANT STORAGE  
TANKS AND PIPING**

2. Bidder accepts all of the terms and conditions of the Contract Documents, including without limitation those in the "Notice Inviting Bids", and "Instructions to Bidders", dealing with the disposition of the bid security.
3. The bid will remain open for the period stated in the "Notice Inviting Bids", unless otherwise required by law. Bidder will enter into an Agreement within the time and in the manner required in the "Notice Inviting Bids" and the "Instructions to Bidders", and will furnish the insurance certificates, Payment Bond and Performance Bond required by the Contract Documents.
4. It is the Contractor's responsibility to contact the City @ (954) 935-5346 prior to the bid opening to determine if any addenda have been issued on the project. Bidder has examined copies of all the Contract Documents including the following addenda (receipt of all of which is acknowledged):

Number	_____	Date	_____
	_____		_____
	_____		_____

5. Bidder has familiarized itself with the nature and extent of the Contract Documents, WORK, site, locality where the WORK is to be performed, the legal requirements (federal, state and local laws, ordinances, rules and regulations), and the conditions affecting cost, progress or performance of the WORK and has made such independent investigations as bidder deems necessary.
6. This bid is genuine and not made in the interest of or on behalf of any undisclosed person, firm or corporation and is not submitted in conformity with any agreement or rules of any group, association, organization or corporation. Bidder has not directly or indirectly induced or solicited any other bidder to submit a false or sham bid. Bidder has not solicited or induced any person, firm or corporation to refrain from bidding and Bidder has not sought by collusion to obtain for itself any advantage over any other bidder or over Owner.

To all the foregoing, and including all Bid Schedule(s) and information required of bidder contained in this Bid Form, said Bidder further agrees to complete the Work required under the Contract Documents within the Contract Time stipulated in said Contract Documents, and to accept in full payment thereof the Contract Price based on the total bid price(s) named in the aforementioned bidding schedule(s).

**BID PROPOSAL FORM BID NO. 2017-011**

NAME OF FIRM \_\_\_\_\_

ADDRESS: \_\_\_\_\_

NAME OF SIGNER  
(Print or Type) \_\_\_\_\_

TITLE OF SIGNER \_\_\_\_\_

SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

TELEPHONE NO: \_\_\_\_\_ FACSIMILE NO: \_\_\_\_\_

E-MAIL: \_\_\_\_\_

**BID NO. BID NO. 2017-011**



**SCHEDULE OF BID PRICES – BID NO. 2017-011****Tnemec – (the specified product)****TO: CITY COMMISSION****CITY OF MARGATE****(Please fill in all blanks and return with your proposal.)**

In accordance with your request for proposals and the specifications contained herein, the undersigned proposes the following:

\*\*\*\*\*

ITEM NO.	DESCRIPTION	QTY	UNIT	UNIT COST	TOTAL COST
1	MOBILIZATION	1	LS	\$	\$
2	2 M GALLON CONCRETE GROUND STORAGE TANK	1	LS	\$	\$
3	2 M GALLON CONCRETE GROUND STORAGE TANK – CORAL GATE	1	LS	\$	\$
4	CLARIFIER INTERIOR ONLY	2	LS	\$	\$
5	LOCATION 1 – SURFACE PREPARATION, PAINTING, AND PIPE IDENTIFICATION	1	LS	\$	\$
6	LOCATION 2 – SURFACE PREPARATION, PAINTING, AND PIPE IDENTIFICATION	1	LS	\$	\$
7	LOCATION 3 – SURFACE PREPARATION, PAINTING, AND PIPE IDENTIFICATION	1	LS	\$	\$
8	LOCATION 4 – SURFACE PREPARATION, PAINTING, AND PIPE IDENTIFICATION	1	LS	\$	\$
9	LOCATION 5 – SURFACE PREPARATION, PAINTING, AND PIPE IDENTIFICATION	1	LS	\$	\$
10	LOCATION 6 – SURFACE PREPARATION, PAINTING, AND PIPE IDENTIFICATION	1	LS	\$	\$
11	LOCATION 7 – SURFACE PREPARATION, PAINTING, AND PIPE IDENTIFICATION	1	LS	\$	\$
12	LOCATION 8 – SURFACE PREPARATION, PAINTING, AND PIPE IDENTIFICATION	1	LS	\$	\$
13	LOCATION 9 – SURFACE PREPARATION, PAINTING, AND PIPE IDENTIFICATION	1	LS	\$	\$

ITEM NO.	DESCRIPTION	QTY	UNIT	UNIT COST	TOTAL COST
14	LOCATION 10 – SURFACE PREPARATION, PAINTING, AND PIPE IDENTIFICATION	1	LS	\$	\$
15	LOCATION 11 – SURFACE PREPARATION, PAINTING, AND PIPE IDENTIFICATION	1	LS	\$	\$
16	LOCATION 12 – SURFACE PREPARATION, PAINTING, AND PIPE IDENTIFICATION	1	LS	\$	\$

TOTAL BASE BID AMOUNT

(Sum of Items 1 through 16)

\*\*\*\*\*

**Note:** City permit fees shall not be waived and should be included in your bid proposal.

**DESCRIPTION**

**TOTAL COST**

**TOTAL COST OF BASE BID** \$ \_\_\_\_\_

**ALLOWANCE** \$ **25,000.00**

**COST OF INDEMNIFICATION** \$ **100.00**

**GRAND TOTAL FOR ALL ITEMS** \$ \_\_\_\_\_

\*\*\*\*\*

**ALL BIDS MUST BE SIGNED WITH THE VENDOR NAME AND BY AN OFFICER OR EMPLOYEE HAVING THE AUTHORITY TO BIND THE COMPANY OR FIRM BY SIGNATURE.**

**MATERIAL SAFETY DATA SHEETS ENCLOSED?** YES \_\_\_\_\_ NO \_\_\_\_\_

**SPECIFICATION SHEETS/BROCHURES?** YES \_\_\_\_\_ NO \_\_\_\_\_

**WILL YOUR FIRM ACCEPT PAYMENT VIA A CITY OF MARGATE VISA CARD?**  
YES \_\_\_\_\_ NO \_\_\_\_\_

**HAVE YOUR INSURANCE REPRESENTATIVE REVIEW THE SAMPLE INSURANCE CERTIFICATE TO ENSURE COMPLIANCE.**

# SCHEDULE OF BID PRICES – BID NO. BID NO. 2017-011

## Alternate Coating Materials<sup>1</sup>

**Note:** For alternate bid, bidder must submit specification sheets for the proposed coating materials

**TO: CITY COMMISSION**

**CITY OF MARGATE**

**(Please fill in all blanks and return with your proposal.)**

In accordance with your request for proposals and the specifications contained herein, the undersigned proposes the following:

\*\*\*\*\*

ITEM NO.	DESCRIPTION	QTY	UNIT	UNIT COST	TOTAL COST
1	MOBILIZATION	1	LS	\$	\$
2	2 M GALLON CONCRETE GROUND STORAGE TANK	1	LS	\$	\$
3	2 M GALLON CONCRETE GROUND STORAGE TANK – CORAL GATE	1	LS	\$	\$
4	CLARIFIER INTERIOR ONLY	2	LS	\$	\$
5	LOCATION 1 – SURFACE PREPARATION, PAINTING, AND PIPE IDENTIFICATION	1	LS	\$	\$
6	LOCATION 2 – SURFACE PREPARATION, PAINTING, AND PIPE IDENTIFICATION	1	LS	\$	\$
7	LOCATION 3 – SURFACE PREPARATION, PAINTING, AND PIPE IDENTIFICATION	1	LS	\$	\$
8	LOCATION 4 – SURFACE PREPARATION, PAINTING, AND PIPE IDENTIFICATION	1	LS	\$	\$
9	LOCATION 5 – SURFACE PREPARATION, PAINTING, AND PIPE IDENTIFICATION	1	LS	\$	\$
10	LOCATION 6 – SURFACE PREPARATION, PAINTING, AND PIPE IDENTIFICATION	1	LS	\$	\$
11	LOCATION 7 – SURFACE PREPARATION, PAINTING, AND PIPE IDENTIFICATION	1	LS	\$	\$
12	LOCATION 8 – SURFACE PREPARATION, PAINTING, AND PIPE IDENTIFICATION	1	LS	\$	\$
13	LOCATION 9 – SURFACE PREPARATION, PAINTING, AND PIPE IDENTIFICATION	1	LS	\$	\$

ITEM NO.	DESCRIPTION	QTY	UNIT	UNIT COST	TOTAL COST
14	LOCATION 10 – SURFACE PREPARATION, PAINTING, AND PIPE IDENTIFICATION	1	LS	\$	\$
15	LOCATION 11 – SURFACE PREPARATION, PAINTING, AND PIPE IDENTIFICATION	1	LS	\$	\$
16	LOCATION 12 – SURFACE PREPARATION, PAINTING, AND PIPE IDENTIFICATION	1	LS	\$	\$

TOTAL BASE BID AMOUNT

(Sum of Items 1 through 16)

<sup>1</sup> Item to be used only with approval from the Engineer and City

\*\*\*\*\*

**Note:** City permit fees shall not be waived and should be included in your bid proposal.

DESCRIPTION	TOTAL COST
TOTAL COST OF BASE BID	\$ _____
ALLOWANCE	\$ 25,000.00
COST OF INDEMNIFICATION	\$ 100.00
GRAND TOTAL FOR ALL ITEMS	\$ _____

\*\*\*\*\*

**ALL BIDS MUST BE SIGNED WITH THE VENDOR NAME AND BY AN OFFICER OR EMPLOYEE HAVING THE AUTHORITY TO BIND THE COMPANY OR FIRM BY SIGNATURE.**

MATERIAL SAFETY DATA SHEETS ENCLOSED? YES \_\_\_\_\_ NO \_\_\_\_\_

SPECIFICATION SHEETS/BROCHURES? YES \_\_\_\_\_ NO \_\_\_\_\_

WILL YOUR FIRM ACCEPT PAYMENT VIA A CITY OF MARGATE VISA CARD?  
YES \_\_\_\_\_ NO \_\_\_\_\_

**HAVE YOUR INSURANCE REPRESENTATIVE REVIEW THE SAMPLE INSURANCE CERTIFICATE TO ENSURE COMPLIANCE.**

**BIDDER'S GENERAL INFORMATION:**

The bidder shall furnish the following information. Additional sheets shall be attached as required. Failure to complete Item Nos. 1, 3, and 8 will cause the bid to be non-responsive and may cause its rejection. In any event, no award will be made until all of the Bidder's General Information (i.e., items I through 9 inclusive) is delivered to the OWNER.

- (1) Contractor's name and address:

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- (2) Contractor's telephone number: \_\_\_\_\_

- (3) Contractor's license: Primary classification \_\_\_\_\_

State License Number \_\_\_\_\_

Supplemental classifications held, if any: \_\_\_\_\_

Name of Licensee, if different from (1) above: \_\_\_\_\_

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- (4) Name of person who inspected site of proposed WORK for your firm:

Name: \_\_\_\_\_ Date of Inspection: \_\_\_\_\_

- (5) Name, address, and telephone number of surety company and agent who will provide the required bonds on this contract: \_\_\_\_\_

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- (6) Attach to this bid, the experience resume of the person who will be designated chief construction superintendent or on site construction manager.

- (7) Attach to this bid a financial statement, references, and other information, sufficiently comprehensive to permit an appraisal of Contractor's current financial condition.

**BID NO. 2017-011**

(8) List 3 projects completed as of recent date involving Work of similar type and complexity:

PROJECT NAME	CONTRACT PRICE	NAME, ADDRESS AND TELEPHONE NUMBER OF OWNER

(9) Subcontractors: The bidder further proposes that as part of their submittal, attached is a list of subcontracting firms or businesses that will be awarded subcontracts for portions of the Work in the event the bidder is awarded the Contract:

**BID NO. 2017-011**

## BID BOND

### KNOW ALL MEN BY THESE PRESENTS:

That we \_\_\_\_\_ as Principal, and \_\_\_\_\_ as Surety, are held and firmly bound unto City of Margate, hereinafter called "City" in the sum of (\$ \_\_\_\_\_) \_\_\_\_\_ dollars, (not less than 5 percent of the total amount of the bid) for the payment of which sum, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

**WHEREAS**, said Principal has submitted a bid to said City to perform the Work required under the bidding schedule of the City's Contract Documents entitled:

**BID NO. 2017-011  
PAINTING OF WATER TREATMENT PLANT STORAGE  
TANKS AND PIPING**

**NOW THEREFORE**, if said Principal is awarded a contract by said City and, within the time and in the manner required in the "Notice Inviting Bids" and the "Instructions to Bidders" enters into a written Agreement on the form of the agreement bound with said Contract Documents, furnishes the required certificates of insurance, and furnishes the required Performance Bond, then this obligation shall be null and void, otherwise it shall remain in full force and effect. In the event suit is brought upon this bond by said City and City prevails, said Surety shall pay all costs incurred by said City in such suit, including a reasonable attorney's fee to be fixed by the court.

**SIGNED AND SEALED**, this \_\_\_\_\_ day of \_\_\_\_\_, 2017

\_\_\_\_\_  
(Principal)

\_\_\_\_\_  
(Surety)

By: \_\_\_\_\_  
(SIGNATURE)

By: \_\_\_\_\_  
(SIGNATURE)

STATE OF FLORIDA ,COUNTY OF BROWARD: BEFORE ME PERSONALLY APPEARED THE ABOVE TO ME WELL KNOWN AND KNOWN TO ME TO BE THE PERSONS DESCRIBED IN AND WHO EXECUTED THE FOREGOING INSTRUMENT, AND ACKNOWLEDGED TO AND BEFORE ME THAT THEY EXECUTED SAID INSTRUMENT FOR THE PURPOSES THEREIN EXPRESSED.

WITNESS MY HAND AND OFFICIAL SEAL, THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2017

NOTARY PUBLIC: \_\_\_\_\_



## REFERENCE SHEET

In order to receive Bid Award consideration on the proposed bid, it is a mandatory requirement that the following "Information Sheet" must be completed and returned with your bid. This information may be used in determining the Bid Award for this contract.

BIDDER (COMPANY NAME): \_\_\_\_\_

ADDRESS: \_\_\_\_\_ TELEPHONE NO: \_\_\_\_\_

CONTACT PERSON: \_\_\_\_\_ TITLE: \_\_\_\_\_

NUMBER OF YEARS IN BUSINESS: \_\_\_\_\_

ADDRESS OF NEAREST FACILITY: \_\_\_\_\_

LIST THREE (3) COMPANIES OR GOVERNMENTAL AGENCIES WHERE THESE PRODUCTS AND SERVICES HAVE BEEN PROVIDED IN THE LAST YEAR.

1. Company Name: \_\_\_\_\_

Address: \_\_\_\_\_

Contact Person: \_\_\_\_\_ Title: \_\_\_\_\_

Phone: \_\_\_\_\_

2. Company Name: \_\_\_\_\_

Address: \_\_\_\_\_

Contact Person: \_\_\_\_\_ Title: \_\_\_\_\_

Phone: \_\_\_\_\_

3. Company Name: \_\_\_\_\_

Address: \_\_\_\_\_

Contact Person: \_\_\_\_\_ Title: \_\_\_\_\_

Phone: \_\_\_\_\_

BID NO: 2017-011



**NON-COLLUSIVE AFFIDAVIT FOR BID NO. 2017-011**  
**PAINTING OF WATER TREATMENT PLANT STORAGE TANKS AND PIPING**

State of \_\_\_\_\_)

County of \_\_\_\_\_)

\_\_\_\_\_ being first duly sworn, deposes  
and says that:

He/she is the \_\_\_\_\_, (Owner, Partner, Officer, Representative or Agent) of \_\_\_\_\_, the Offeror that has submitted the attached Proposal;

He/she is fully informed regarding the preparation and contents of the attached Proposal and of all pertinent circumstances regarding such Proposal;

Such Proposal is genuine and is not a collusive or sham Proposal;

Neither the said Offeror nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this affiant, have in any way colluded, conspired, connived or agreed, directly or indirectly, with any other Offeror, firm, or person to submit a collusive or sham Proposal in connection with the Work for which the attached Proposal has been submitted; or to refrain from bidding in connection with such Work; or have in any manner, directly or indirectly, sought by agreement or collusion, or communication, or conference with any Offeror, firm, or person to fix the price or prices in the attached Proposal or of any other Offeror, or to fix any overhead, profit, or cost elements of the Proposal price or the Proposal price of any other Offeror, or to secure through any collusion, conspiracy, connivance, or unlawful agreement any advantage against (Recipient), or any person interested in the proposed Work;

The price or prices quoted in the attached Proposal are fair and proper and are not tainted by any collusion, conspiracy, connivance, or unlawful agreement on the part of the Offeror or any other of its agents, representatives, owners, employees or parties in interest, including this affiant.

Signed, sealed and delivered in the presence of:

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

By \_\_\_\_\_

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

**ACKNOWLEDGMENT**  
**NON-COLLUSIVE AFFIDAVIT FOR BID NO. 2017-011**  
**PAINTING OF WATER TREATMENT PLANT STORAGE TANKS AND PIPING**

State of Florida  
County of \_\_\_\_\_

On this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, the undersigned Notary Public of the State of Florida, personally appeared

\_\_\_\_\_ and  
(Name(s) of individual(s) who appeared before notary)

whose name(s) is/are Subscribed to within the instrument, and he/she/they acknowledge that he/she/they executed it.

WITNESS my hand  
and official seal.

NOTARY PUBLIC  
SEAL OF OFFICE:

\_\_\_\_\_  
NOTARY PUBLIC, STATE OF FLORIDA

\_\_\_\_\_  
(Name of Notary Public: Print,  
Stamp, or Type as Commissioned)

☐ Personally known to me, or  
☐ Produced identification:

\_\_\_\_\_  
(Type of Identification Produced)

☐ DID take an oath, or ☐ DID NOT take an oath

## DRUG-FREE WORKPLACE PROGRAM FORM

In accordance with Section 287.087, State of Florida Statutes, preference shall be given to businesses with Drug-free Workplace Programs. Whenever two or more bids which are equal with respect to price, quality and service are received for the procurement of commodities or contractual service, a bid received from a business that certifies that it has implemented a Drug-free Workplace Program shall be given preference in the award process. In the event that none of the tied vendors have a Drug-free Workplace program in effect the City reserves the right to make final Decisions in the City's best interest. In order to have a Drug-free Workplace Program, a business shall:

1. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Workplace and specifying the actions that will be taken against employees for violations of such prohibition.
2. Inform employees about the dangers of drug abuse in the Workplace, the business's policy of maintaining a drug-free Workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations.
3. Give each employee engaged in providing the commodities or contractual services that are under bid a copy of the statement specified in subsection (1).
4. In the statement specified in subsection (1), notify employees that, as a condition of Working on the commodities or contractual services that are under bid, the employee will abide by the terms of the statement and will notify the employer of any conviction of, or plea of guilty or nolo contendere to, any violation of Chapter 893 or of any controlled substance law of the United States or of any State, for a violation occurring in the Workplace no later than five (5) days after such conviction.
5. Impose a sanction on, or require the satisfactory participation in a drug abuse assistance or rehabilitation program if such is available in the employee's community by any employee who is convicted.
6. Make a good faith effort to continue to maintain a drug-free Workplace through implementation.

If bidder's company has a Drug-free Workplace Program, so certify below:

**AS THE PERSON AUTHORIZED TO SIGN THE STATEMENT, I CERTIFY THAT THIS FIRM COMPLIES FULLY WITH THE ABOVE REQUIREMENTS.**

**SIGNATURE OF BIDDER:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

**BID NO: 2017-011**

## **COMPLIANCE WITH OCCUPATIONAL SAFETY AND HEALTH ACT**

Bidder certifies that all material, equipment, etc. contained in this bid meets all O.S.H.A. requirements. Bidder further certifies that if he/she is the successful bidder, and the material, equipment, etc., delivered is subsequently found to be deficient in any O.S.H.A. requirement in effect on date of delivery, all costs necessary to bring the material, equipment, etc. into compliance with the aforementioned requirements shall be borne by the bidder.

### **OCCUPATIONAL HEALTH AND SAFETY MATERIAL SAFETY DATA SHEET REQUIRED:**

In compliance with Chapter 442, Florida Statutes, any item delivered from a contract resulting from this bid must be accompanied by a MATERIAL SAFETY DATA SHEET (MSDS). The MSDS must include the following information:

- A. The chemical name and the common name of the toxic substance.
- B. The hazards or other risks in the use of the toxic substances, including:
  - 1. The potential for fire, explosion, corrosivity and reactivity;
  - 2. the known acute and chronic health effects of risks from exposure, including the medical conditions which are generally recognized as being aggravated by exposure to the toxic substance; and
  - 3. the primary routes of entry and symptoms of overexposure.
- C. The proper precautions, handling practices, necessary personal protective equipment, and other safety precautions in the use of or exposure to the toxic substances, including appropriate emergency treatment in case of overexposure.
- D. The emergency procedure for spills, fire, disposal and first aid.
- E. A description in lay terms of the known specific potential health risks posed by the toxic substances intended to alert any person reading this information.
- F. The year and month, if available, that the information was compiled and the name, address and emergency telephone number of the manufacturer responsible for preparing the information.

BID NO: 2017-011

## PERFORMANCE BOND

## KNOW ALL MEN BY THESE PRESENTS:

That we, \_\_\_\_\_ as Contractor and  
\_\_\_\_\_ as Surety, are held and firmly bound  
unto the City of Margate, Florida hereinafter called CITY in the sum of (\$\_\_\_\_\_) \_\_\_\_\_  
dollars, lawful money of the United States, for the  
payment of which well and truly to be made, we bind ourselves, our heirs, executors, successors  
and assigns, jointly and severally, firmly by these presents.

**WHEREAS**, said Contractor has been awarded and is about to enter into the annexed Agreement with said City to perform the Work as specified or indicated in the Bid Documents entitled:

**BID NO. 2017-011**  
**PAINTING OF WATER TREATMENT PLANT**  
**STORAGE TANKS AND PIPING**

**NOW, THEREFORE,** if the said Contractor shall fully and faithfully perform all the requirements of said Bid Documents required to be performed on its part, at the times and in the manner specified herein, inclusive of the one year maintenance period if necessary, then this obligation shall be null and void, otherwise it shall remain in full force and effect.

**PROVIDED**, that any alterations in the Work to be done or the materials to be furnished, or changes in the time of completion, which may be made pursuant to the terms of said Bid Documents, shall not in any way release said Contractor or said Surety thereunder, nor shall any extensions of time granted under the provisions of said Bid Documents, release either said Contractor or said Surety, and notice of such alterations or extensions of the Agreement is hereby waived by said Surety.

**SIGNED and SEALED**, this \_\_\_\_\_ day of \_\_\_\_\_, 2017

(CONTRACTOR)

(SURETY)

BY: \_\_\_\_\_ BY: \_\_\_\_\_  
(SIGNATURE) (SIGNATURE)

STATE OF FLORIDA, COUNTY OF BROWARD:

BEFORE ME PERSONALLY APPEARED THE ABOVE TO ME WELL KNOWN AND KNOWN TO ME TO BE THE PERSONS DESCRIBED IN AND WHO EXECUTED THE FOREGOING INSTRUMENT, AND ACKNOWLEDGED TO AND BEFORE ME THAT THEY EXECUTED SAID INSTRUMENT FOR THE PURPOSES THEREIN EXPRESSED.

WITNESS MY HAND AND OFFICIAL SEAL, THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2017

NOTARY PUBLIC: \_\_\_\_\_

## PAYMENT BOND

### KNOW ALL MEN BY THESE PRESENTS:

That we \_\_\_\_\_ as Contractor  
and \_\_\_\_\_ as Surety, are held  
and firmly bound unto the City of Margate, Florida, hereinafter called "City", in the sum of  
(\$ \_\_\_\_\_) \_\_\_\_\_ dollars, for the payment  
of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators,  
successors, and assigns, jointly and severally, firmly by these presents.

**WHEREAS**, said Contractor has been awarded and is about to enter into the annexed  
Agreement with said City to perform the Work as specified or indicated in the Contract  
Documents entitled:

**BID NO. 2017-011  
PAINTING OF WATER TREATMENT PLANT STORAGE  
TANKS AND PIPING**

**NOW THEREFORE**, if said Contractor, or subcontractor, fails to pay for any materials,  
equipment, or other supplies, or for rental of same, used in connection with the performance of  
Work contracted to be done, or for amounts due under applicable State law for any Work or  
labor thereon, said Surety will pay for the same in an amount not exceeding the sum specified  
above, and, in the event suit is brought upon this bond, a reasonable attorney's fee to be fixed  
by the court. This bond shall inure to the benefit of any persons, companies, or corporations  
entitled to file claims under applicable State law.

**PROVIDED**, that any alterations in the Work to be done or the materials to be furnished, or  
changes in the time of completion, which may be made pursuant to the terms of said Contract  
Documents, shall not in any way release said Contractor or said Surety thereunder, nor shall  
any extensions of time granted under the provisions of said Contract Documents release either  
said Contractor or said Surety, and notice of such alterations or extensions of the Agreement is  
hereby waived by said Surety.

**SIGNED and SEALED**, this \_\_\_\_\_ day of \_\_\_\_\_, 2017

\_\_\_\_\_  
(CONTRACTOR) \_\_\_\_\_ (SURETY)

By: \_\_\_\_\_ By: \_\_\_\_\_  
(SIGNATURE) (SIGNATURE)

STATE OF FLORIDA ,COUNTY OF BROWARD:

BEFORE ME PERSONALLY APPEARED THE ABOVE TO ME WELL KNOWN AND KNOWN  
TO ME TO BE THE PERSONS DESCRIBED IN AND WHO EXECUTED THE FOREGOING  
INSTRUMENT, AND ACKNOWLEDGED TO AND BEFORE ME THAT THEY EXECUTED SAID  
INSTRUMENT FOR THE PURPOSES THEREIN EXPRESSED.

WITNESS MY HAND AND OFFICIAL SEAL, THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2017

NOTARY PUBLIC:\_\_\_\_\_



**CITY OF MARGATE  
STATEMENT OF NO BID**

**IF YOU DO NOT INTEND TO BID ON THIS PROPOSAL, RETURN THIS FORM TO  
ADDRESS WHERE BID IS TO BE SUBMITTED:**

I/We have declined to bid on your proposal No: 2017-011

Bid Description: BID NO. 2017-011 - PAINTING OF WATER TREATMENT PLANT  
STORAGE TANKS AND PIPING

For the following reason:

- \_\_\_\_\_ 1. Specifications are too tight, i.e. geared toward one brand or manufacturer only (Explain reason below)
- \_\_\_\_\_ 2. Insufficient time to respond to invitation.
- \_\_\_\_\_ 3. We do not offer this commodity/service or equivalent.
- \_\_\_\_\_ 4. Our product/service schedule would not permit us to perform.
- \_\_\_\_\_ 5. Unable to meet specifications.
- \_\_\_\_\_ 6. Unable to meet bonding requirements.
- \_\_\_\_\_ 7. Specifications unclear (Explain below).
- \_\_\_\_\_ 8. Other (Specify below).

REMARKS: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attach additional pages if required.

I/We understand that if the NO BID form is not executed and returned, our name may be deleted from the list of qualified bidders for the City of Margate.

COMPANY NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_  
\_\_\_\_\_

TELEPHONE NO: \_\_\_\_\_ DATE: \_\_\_\_\_

SIGNATURE OF BIDDER: \_\_\_\_\_

## **PART II – SAMPLE FORM OF AGREEMENT**

**PART III – TECHNICAL SPECIFICATIONS  
(ATTACHED CD)**

**DISK INCLUDES: LOCATION  
DESCRIPTIONS, PHOTOGRAPHS, AND  
APPENDIX “A” AND “B” INSPECTION  
REPORTS**



**AGREEMENT**  
**Between**  
**CITY OF MARGATE**

**and**

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**for**

**Bid No. 2017-011**  
**Painting of Water Treatment Plant Storage Tanks and Piping**

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 \_\_\_\_\_, 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** – City of Margate  
Department of Environmental and Engineering Services  
Attn: Abidemi Ajayi  
901 NW 66<sup>th</sup> Avenue  
Margate, Florida 33063

**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-28, 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 provide services for painting of WTP storage tanks and piping in accordance with the Contract Documents.

**CONTRACTOR will provide necessary weather protection against rain, wind, storms, and heat as to maintain WORK and/or 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 SUPERVISON 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. If the Schedule of Bid Prices does not include a permit allowance line item, permit fees 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. Any questions regarding the requirements to obtain a permit from the City of Margate Building Department should be directed to (954) 970-3004.

## **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 or 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 (AS APPLICABLE):**

- 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 180 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 Section 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 Section 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 \_\_\_\_\_

#### **5.2 PROGRESS PAYMENTS:**

**5.2.1** The CONTRACTOR shall deliver to the OWNER an 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 Subsection 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 Section 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:

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

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

\$2,000,000.00 Combined Single Limit, Bodily Injury 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 section 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 Section.

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

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

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

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

**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 Subsections 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 Section, 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 Subsection 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 8 A.M. to 6 P.M. 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. Section 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 Sections 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 Section 10.6.

**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 SECTION.**

**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 Sections 13.2 and 13.3) plus a CONTRACTOR'S fee for overhead and profit (determined as provided in Section 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 Section 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 Subsection 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 Section 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 Subsections 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 Subsections 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 Sections 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:

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:

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

#### **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 Section will be as effective as if repeated specifically in the Contract Documents,, and



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

**14.6 PUBLIC RECORDS:**

**14.6.1** CONTRACTOR agrees to keep and maintain public records in CONTRACTOR's possession or control in connection with CONTRACTOR's performance under this Agreement. CONTRACTOR additionally agrees to comply specifically with the provisions of Section 119.0701, Florida Statutes. CONTRACTOR shall ensure that

public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law, for the duration of the Agreement, and following completion of the Agreement until the records are transferred to the OWNER.

**14.6.2** Upon request from the OWNER custodian of public records, CONTRACTOR shall provide the OWNER with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided by Chapter 119, Florida Statutes, or as otherwise provided by law.

**14.6.3** Unless otherwise provided by law, any and all records, including but not limited to reports, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of the OWNER.

**14.6.4** Upon completion of this Agreement or in the event of termination by either party, any and all public records relating to the Agreement in the possession of the CONTRACTOR shall be delivered by the CONTRACTOR to the CITY MANAGER, at no cost to the OWNER, within seven (7) days. All such records stored electronically by CONTRACTOR shall be delivered to the OWNER in a format that is compatible with the OWNER'S information technology systems. Once the public records have been delivered upon completion or termination of this Agreement, the CONTRACTOR shall destroy any and all duplicate public records that are exempt or confidential and exempt from public records disclosure requirements.

**14.6.5** Any compensation due to CONTRACTOR shall be withheld until all records are received as provided herein.

**14.6.6** CONTRACTOR's failure or refusal to comply with the provisions of this section shall result in the immediate termination of this Agreement by the OWNER.

### **Section 119.0701(2)(a), Florida Statutes**

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

**Custodian of Records: JOSEPH KAVANAGH, CITY CLERK**

**Mailing address: 5790 Margate Boulevard, Margate, FL 33063**

**Telephone number: 954-935-5325**

**Email: JJKAVANAGH@MARGATEFL.COM**

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 \_\_\_\_\_, 2017 and \_\_\_\_\_, signing by and through its representatives is duly authorized to execute same.

**CITY OF MARGATE**

\_\_\_\_\_  
Tommy Ruzzano, Mayor

\_\_\_\_\_ day of \_\_\_\_\_, 2017

\_\_\_\_\_  
Samuel A. May, Interim City Manager

\_\_\_\_\_ day of \_\_\_\_\_, 2017

ATTEST:

APPROVED AS TO FORM:

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

\_\_\_\_\_ day of \_\_\_\_\_, 2017

\_\_\_\_\_  
Douglas R. Gonzales, City Attorney

\_\_\_\_\_ day of \_\_\_\_\_, 2017

**CONTRACTOR**

**FOR CORPORATION:**

\_\_\_\_\_  
**President**

**(CORPORATE SEAL)**

\_\_\_\_\_  
**Secretary**

**AGREEMENT BETWEEN CITY OF MARGATE AND CONTRACTOR FOR THE PROPOSED  
PAINTING OF WATER TREATMENT PLANT STORAGE TANKS AND PIPING  
BID NO. 2017-011**