

**SECTION VI
TOWN OF CUTLER BAY
EMERGENCY DEBRIS REMOVAL SERVICES
RFP #15-02**

AGREEMENT

THIS AGREEMENT is made this _____ day of _____, 2015 by and between the Town of Cutler Bay, Florida (the "Town") and _____ (the "Contractor").

The parties, for the consideration provided for below, mutually agree as follows:

1. **SCOPE OF WORK** The Contractor shall furnish all labor, materials, supervision, equipment, supplies, and incidentals required to perform the Scope of Work as outlined in the Request for Proposal No. 15-02 for emergency Debris Removal Services ("RFP"), including the Detailed Specifications set forth herein, which RFP is incorporated herein by reference and made a part hereof, and the terms and conditions of this Agreement (the "Work").
2. **COMPENSATION/PAYMENT**
 - 2.2 Contractor shall provide the Town with an invoice on a monthly basis.
 - 2.2 For Work completed and performed. Fees shall be paid in arrears each month, pursuant to Contractor's invoice, which shall be based upon Work completed for each task invoiced. The Town shall pay the Contractor in accordance with the Florida Prompt Payment Act after approval an acceptance of the Work by the Town Manager or his designee. No payments shall be due or payable for Work not performed or materials not furnished. If there is a dispute with regard to an invoice, the Town may withhold payment until all requested supporting materials are received from Contractor and the dispute is resolved.
 - 2.3 Contractor shall be compensated in accordance with the unit prices specified in the Proposal, attached hereto as Exhibit "A", based upon the actual Work and approved by the Town completed for the month.
3. **TERM** This Agreement shall be effective upon execution by both parties and shall continue for a term of three (3) years. At its sole discretion, the Town shall have an option to renew this Agreement upon the same terms and conditions for up to three (3) additional one (1) year terms (the "Renewal Option"). This Renewal Option may be exercised at the sole discretion of the Town Manager. Such Renewal Option(s) shall be effective upon written notice from the Town Manager to the Contractor no later than thirty (30) days prior to the date of termination of the initial term or the applicable Renewal Option term. Contractor agrees that time is of the essence and Contractor shall perform and complete the Work within the time frames set forth in the RFP and as provided in this Agreement, unless extended by the Town Manager.
4. **PROTECTION OF PROPERTY AND THE PUBLIC; SAFETY** The Contractor shall continuously maintain adequate protection of all his Work from damage and shall protect public and private property from injury or loss arising in connection with this Agreement as follows:

- 4.1 The Contractor shall take all necessary precautions for the safety of employees in the performance of the Work on, about or adjacent to the Work sites, and shall comply with all applicable provisions of Federal, State, and local laws, including, but not limited to the requirements of the Occupational Safety and Health Act of 1970, and amendments thereto, and building codes to prevent accidents or injury to persons on, about or adjacent to the work site where the Work is being performed.
- 4.2 The Contractor shall erect and properly maintain at all times, all necessary safeguards, including sufficient lights and danger signals on or near the Work, from sunset to sunrise, suitable railings, barricades, or other hazards or other protective devices about unfinished work, open trenches, embankments, or other hazards and obstructions to traffic; provide all necessary security staff on the Work by day or by night for the safety of the public; and take all necessary precautions to prevent accidents and injuries to persons or property on or near the Work.
- 4.3 The Contractor shall be completely responsible for, and shall replace and make good all loss, injury, or damage to any property (including landscaping, walks, drives, or structures of the Town and of any land adjoining the work site), which may be caused by Contractor. The Contractor shall, at all times while the Work is in progress, use extraordinary care to see that adjacent property, whether real or personal, is not endangered in any way by reason of fire, water, or construction operations, and shall take all necessary or directed steps, to protect the property.
- 4.4 Buildings, sidewalks, fences, shade trees, lawns and all other improvements shall be duly protected from damage by Contractor. Property obstructions, such as sewers, drains, water or gas lines, conduits, railroads, poles, walls, posts, galleries, bridges, manholes, valve boxes, meter boxes, street monuments, etc., shall be carefully protected from injury and shall not be displaced. The Contractor shall give due notice to any department or public service corporation controlling such items as manholes, valve boxes, meter boxes, street monuments, etc., prior to adjusting them to grade and shall be held strictly liable to the affected utility if any such appliances are disturbed, damaged or covered up during the course of the Work.

5. **INDEMNIFICATION**

- 5.1 The parties agree that 1% of the total compensation paid to the Contractor for the performance of this agreement shall represent the specific consideration for the Contractor's indemnification of the Town as set forth in this Section 1.5 and in the Terms and Conditions.
- 5.2 To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless the Town and their consultants, agents and employees from and against any and all claims, damages, losses and expenses, direct, indirect or consequential (including but not limited to fees and charges of attorneys and other professionals and court costs) arising out of or resulting from the performance of the work, provided that any such claim, damage, loss or expense (a) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including the loss of use resulting therefrom and (b) is caused in whole or in part by any acts or omission of Contractor, any subcontractor, any person or organization directly or indirectly employed by any of them to perform or furnish any of the Work or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder or arises by or is imposed by Law and Regulations regardless of the negligence of any such party.

6. **AGREEMENT DOCUMENTS** - The following documents shall, by this reference, be incorporated and made a part of this Agreement:

Request for Proposals No. 15-02 for Emergency Debris Removal Services;
All Addendums issued to the RFP;
Agreement;
Proposal of Contractor;
Detailed Specifications;
Qualification Statement;
Public Entity Crime Form;
Insurance Certificates

7. **CONTRACTOR'S EMPLOYEES**

- 7.1 The Contractor shall at all times have a competent English speaking supervisor on site who thoroughly understands the Work, who shall, as the Contractor's agent, supervise, direct and otherwise conduct the Work. Contractor's employees shall serve the public in a courteous, helpful, and impartial manner.
- 7.2 Contractor's employees shall wear a clean uniform that provides identification of both the Contractor's company and the name of the employee.
- 7.3 Contractor shall, upon receipt of a written request from the Town, immediately exclude any employee of Contractor from providing Work under this Agreement.
- 7.4 The Work contemplated in this Agreement is on public property, accordingly no alcoholic beverages shall be allowed.
- 7.5 All references in this Agreement to the Contractor shall include Contractor's employees or subcontractors, wherever applicable.

8. **VEHICLES AND EQUIPMENT** Contractor shall have on hand at all times and in good working order such vehicles, machinery, tools, accessories, and other items necessary to perform the Work under this Agreement. All vehicles used by Contractor to provide Work or services under this Agreement shall be painted uniformly with the name of Contractor, business telephone number, and the number of the vehicle in letters legible by the public. The Town may require the repair or replacement of equipment as reasonably necessary. No other advertising shall be permitted on the vehicles. A magnetic sign displaying the Town of Cutler Bay Logo and a caption noting "Public Works" will be required on vehicles at all times.

9. **INSURANCE** The Contractor shall secure and maintain throughout the duration of this Agreement, insurance of such type and in such amounts necessary to protect its interest and the interest of the Town against hazards or risks of loss as specified below. The underwriter of such insurance shall be qualified to do business in Florida, be rated AB or better, and have agents upon whom service of process may be made in the State of Florida. The insurance coverage shall be primary insurance with respect to the Town, its officials, employees, agents and volunteers. Any insurance maintained by the Town shall be in excess of the Contractor's insurance and shall not contribute to the Contractor's insurance. The insurance coverage's shall include a minimum of:

- 9.1 **Worker's Compensation and Employer's Liability Insurance** Coverage to apply for all employees for statutory limits as required by applicable State and Federal laws. The policy (ies) must include Employer's Liability with minimum limits of \$500,000.00 each accident.
- 9.2 **Comprehensive Automobile and Vehicle Liability Insurance** This insurance shall be written in comprehensive form and shall protect the Contractor and the Town against claims for injuries to members of the public and/or damages to property of others arising from the Contractor's use of motor vehicles or any other equipment and shall cover operation with respect to onsite and offsite operations and insurance coverage shall extend to any motor vehicles or other equipment irrespective of whether the same is owned, non-owned, or hired. The limit of liability shall not be less than \$1,000,000.00 per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability Policy, without restrictive endorsement, as filed by the Insurance Services Office.
- 9.3 **Commercial General Liability** This insurance shall be written in comprehensive form and shall protect the Contractor and the Town against claims arising from injuries to members of the public or damage to property of others arising out of any act or omission to act of the Contractor or any of its agents, employees, or subcontractors. The limit of liability shall not be less than \$1,000,000.00 per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage must be afforded on a form no more restrictive than the latest edition of the Commercial General Liability Policy, without restrictive endorsements, as filed by the Insurance Services Office, and must include: (1) Premises and/or Operations; (2) Independent contractors and Products and/or completed Operations; (3) Broad Form Property Damage, Personal Injury and a Contractual Liability Endorsement, including any hold harmless and/or indemnification agreement.
- 9.4 **Certificate of Insurance** Contractor shall provide the Town Manager with Certificates of Insurance for all required policies. The Certificates of Insurance shall not only name the types of policy(ies) provided, but also shall refer specifically to this Agreement and shall state that such insurance is as required by this Agreement. The Town reserves the right to require the Contractor to provide a certified copy of such policies, upon written request by the Town. If a policy is due to expire prior to the completion of the services, renewal Certificates of Insurance or policies shall be furnished thirty (30) calendar days prior to the date of their policy expiration. Each policy certificate shall be endorsed with a provision that not less than thirty (30) calendar days' written notice shall be provided to the Town before any policy or coverage is cancelled or restricted. Acceptance of the Certificate(s) is subject to approval of the Town Manager.
- 9.5 **Additional Insured** The Town is to be specifically included as an Additional Insured for the liability of the Town resulting from operations performed by or on behalf of Contractor in performance of this Agreement. Contractor's insurance, including that applicable to the Town as an Additional Insured, shall apply on a primary basis and any other insurance maintained by the Town shall be in excess of and shall not contribute to Contractor's insurance. Contractor's insurance shall contain a severability of interest provision providing that, except with respect to the total limits of liability, the insurance shall apply to each Insured or Additional Insured in the same manner as if separate policies had been issued to each. All deductibles or self-insured retentions must be declared to and be approved by the Town Manager. The Contractor shall be responsible for the payment of any deductible or self-insured retention in the event of any claim.

10. **ASSIGNMENT AND AMENDMENT** No assignment by the Contractor of this Agreement or any part of it, or any monies due or to become due, shall be made, nor shall the Contractor hire a subcontractor to perform its duties under this Agreement without prior written approval of the Town. This Agreement may only be amended, by the parties, with the same formalities as this Agreement. Contractor represents that is an entity validly existing and in good standing under the laws of Florida. The execution, delivery and performance of this Agreement by Contractor has been duly authorized, and this Agreement is binding on Contractor and enforceable against Contractor in accordance with its terms. No consent of any other person or entity to such execution, delivery and performance is required.
11. **TERMINATION**
- 11.1 The Town Manager, without cause, may terminate this Agreement upon thirty (30) calendar days written notice to the Contractor, or immediately with cause if the Contractor defaults on any material term of this Agreement. Upon receipt of the Town's written notice of termination, Contractor shall immediately stop all Work as of the date specified in the notice of termination, unless directed otherwise by the Town Manager.
- 11.2 Upon notice of such termination, the Town shall determine the amounts due to the Contractor for services performed up to the date of termination. The Contractor shall not be entitled to payment of any lost profits or for Work performed after the date of termination.
12. **GOVERNING LAW** The law of the State of Florida shall govern this Agreement and venue for and any action shall be brought in Miami-Dade County, Florida. In the event of any litigation arising out of this Agreement or to settle issues arising hereunder, the prevailing party in such litigation shall be entitled to recover against the other party its costs and expenses, including reasonable attorneys' fees, which shall include any fees and costs attributable to appellate proceedings arising on and of such litigation.
13. **PUBLIC RECORDS LAW** Contractor acknowledges that the public shall have access, at all reasonable times, to certain documents and information pertaining to Town contracts, pursuant to the provisions of Chapter 119, Florida Statutes. Contractor agrees to maintain public records in Contractor's possession or control in connection with Contractor's performance under this Agreement and to provide the public with access to public records in accordance with the record maintenance, production and cost requirements set forth in Chapter 119, Florida Statutes, or as otherwise required by law. Contractor shall ensure that public records that are exempt or confidential from public records disclosure requirements are not disclosed except as authorized by law.

Unless otherwise provided by law, any and all reports, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of Town. In the event of termination of this Agreement by the Town, any reports, photographs, surveys and other data and documents and public records prepared by, or in the possession or control of, Contractor, whether finished or unfinished, shall become the property of Town and shall be delivered by Contractor to the Town Manager, at no cost to the Town, within seven (7) days of termination of this Agreement. All such records stored electronically by Contractor shall be delivered to the Town in a format that is compatible with the Town's information technology systems. Upon termination of this Agreement, Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure. Any compensation due to Contractor shall be withheld until all documents are received as provided herein. Contractor's failure or refusal to comply with the provisions of this section shall result in the immediate termination of this Agreement by the Town.

14. **INSPECTION AND AUDIT** During the term of this Agreement and for three (3) years from the date of termination the Contractor shall allow Town representatives access, during reasonable business hours, to Contractor's and, if applicable, subcontractor's records related to this Agreement for the purposes of inspection or audit of such records. If upon audit of such records, the Town determines the Contractor was paid for services not performed, upon receipt of written demand by the Town, the Contractor shall remit such payments to the Town.
15. **SEVERABILITY** If a term, provision, covenant, contract or condition of this contract is held to be void, invalid, or unenforceable, the same shall not affect any other portion of this Agreement and the remainder shall be effective as though every term, provision, covenant, contract or condition had not been contained herein.
16. **WAIVER OF JURY TRIAL** The parties irrevocably, knowingly agree to waive their rights to a trial by jury in any action to enforce the terms or conditions of this Agreement.
17. **COUNTERPARTS** This Agreement may be signed in one or more counterparts, each of which when executed shall be deemed an original and together shall constitute one and the same instrument.
18. **INDEPENDENT CONTRACTOR** It is expressly agreed and understood that the Contractor shall be in all respects an independent contractor as to Work, and that Contractor is in no respect an agent, servant or employee of the Town. Accordingly, Contractor shall not attain, nor be entitled to, any rights or benefits of the Town, nor any rights generally afforded classified or unclassified employees. Contractor further understands that Florida Worker's Compensation benefits available to employees of the Town are not available to Contractor, and agrees to provide worker's compensation insurance for any employee or agent of Contractor rendering services to the Town under this Agreement.

All employees and subcontractors of the Contractor shall be considered to be, at all times, the sole employees or contractors of Contractor, under its sole discretion and not an employee, contractor or agent of the Town.
19. **ACCIDENT PREVENTION AND REGULATIONS** Precautions shall be exercised at all times for the protection of persons and property. The Contractor and subcontractors shall conform to all OSHA, Federal, State, County and Town regulations while performing under the terms and conditions of this Agreement. Any fines levied by the above-mentioned authorities, because of inadequacies to comply with these requirements, shall be borne solely by Contractor responsible for same.
20. **BACKGROUND CHECKS** The Contractor will be responsible for maintaining current background checks on all employees and subcontractor employees involved in the performance of this Work. Background checks must be performed prior to the performance of any Work by the employee under this Agreement. Written verification of any background checks must be provided to the Town at the request of the Town Manager.
21. **LAWS, RULES & REGULATIONS** Contractor shall be held responsible for any violation of laws, rules, regulations or ordinances affecting in any way the Work and the conduct of all persons engaged in or the materials or methods used by him, on the Work. Contractor shall give all notices and comply with all laws, ordinances, rules, regulations and orders of any public authority bearing on the performance of the Work under this Agreement. At all times during the Term of this Agreement, the Contractor shall secure and maintain all permits, fees, licenses, and inspections necessary for the