

## **Townwide Roadway Resurfacing & Sidewalk Improvements**

### **CONTRACT FOR CONSTRUCTION**

THIS IS A CONTRACT FOR CONSTRUCTION ("Contract"), by and between TOWN OF CUTLER BAY, FLORIDA, a Florida municipal corporation, (hereinafter referred to as "Town"), and Envirowaste Services Group, Inc., a Florida corporation (hereinafter referred to as "Contractor".)

#### **WITNESSETH:**

**WHEREAS**, on December 2, 2013, the Town issued Invitation to Bid No. 13-09 for Townwide Roadway Resurfacing & Sidewalk Improvements ("ITB No. 13-09") for a project consisting of ongoing improvements for asphalt milling and resurfacing, sidewalk repairs and improvements, and pavement markings of Town property and public rights-of-way (collectively, the "Work"); and

**WHEREAS**, Contractor submitted its bid in response to the Invitation to Bid and was selected by the Town to perform the Work; and

**WHEREAS**, the Town and Contractor desire to enter into this Contract for the Work, as more particularly described herein and in the Contract Documents; and

**WHEREAS**, the Town will issue a Notice to Proceed for each phase or work order of the Work during the Term of this Contract, together with Contract Times and completion dates for each phase or work order; and

**WHEREAS**, Contractor shall perform all Work described in ITB No. 13-09, its bid or proposal, and as provided in each Notice to Proceed issued by the Town to the Contractor for each phase or work order of the Work.

**NOW THEREFORE**, in consideration of the mutual promises and covenants contained in this Contract, and for other good and valuable consideration, the receipt and legal sufficiency of which is acknowledged by both parties, the parties agree as follows:

#### **ARTICLE 1**

#### **SCOPE OF WORK**

- 1.1. Contractor hereby agrees to furnish all of the labor, materials, equipment, services and incidentals necessary to perform all of the Work described in the Contract Documents including Technical Specifications and Addenda thereto, and in accordance with the Drawings and Specifications prepared by the Town Engineer, for the following Project:

#### **TOWNWIDE ROADWAY RESURFACING & SIDEWALK IMPROVEMENTS**

## ARTICLE 2

### CONTRACT TIME

- 2.1. **Term.** The Term of this Contract shall be effective and commence upon full execution of this Contract by both parties, and shall continue for a term of three (3) years. At its sole discretion, the Town shall have the right and option to renew this Contract for up to two (2) additional one (1) year terms, upon the same terms and conditions, including unit pricing (the "Renewal Options"). The Renewal Option(s) may be exercised by the Town Manager, at his sole discretion. Such renewal shall be effective upon receipt of a written notice from the Town Manager to the Contractor received no later than thirty (30) days prior to the date of termination of the initial term or applicable Renewal Option term.
- 2.2. Contractor shall be instructed to commence each phase or work order of the Work, or any portion of the Work, by written instruction and as specified in the form of one or more Notices to Proceed issued by the Town Manager or his designee. Contractor acknowledges and agrees that the Town shall have no obligation to issue any Notice(s) to Proceed for the Work or any portion thereof. Each Notice to Proceed issued by the Town will provide for a commencement date for the Work, or portion thereof, and required completion dates for the Work or portion thereof, including Substantial Completion and Final Completion Dates. A Notice to Proceed will not be issued until Contractor's submission to Town of all required documents and after execution of this Contract.
- 2.3. Time is of the essence throughout this Contract. The Work, or any portion thereof, shall not commence until the date specified in the Notice(s) to Proceed. The Work or any portion thereof shall achieve Substantial Completion and Final Completion within the number of days specified in the relevant Notice(s) to Proceed. The Contractor shall prosecute all Work with faithfulness and diligence and the Work shall be completed and ready for final payment in accordance with the Contract Documents and as certified by Town's Engineer.
- 2.4. Upon failure of Contractor to substantially complete the Contract within the specified period of time, Contractor shall pay to Town the sum of One Thousand Dollars (\$1,000.00) for each calendar day after the time specified in the Notice(s) to Proceed for Substantial Completion. After Substantial Completion, should Contractor fail to complete the remaining Work within the time specified in the Notice to Proceed for final completion and readiness for final payment, Contractor shall pay to Town the sum of Five Hundred Dollars (\$500.00) for each calendar day after the time specified for completion and readiness for final payment. These amounts are not penalties but are liquidated damages to Town for its inability to obtain full beneficial occupancy and use of the Project.



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 Town as a consequence of such delay, and both parties desiring to obviate any question or dispute concerning the amount of said damages and the cost and effect of the failure of Contractor to complete the Work and the Contract on time. The above-stated liquidated damages shall apply separately to each phase of the Project for which a time for substantial and/or final completion is given pursuant to a Notice(s) To Proceed.

- 2.5. Town is authorized to deduct the liquidated damages from monies due to Contractor for the Work under this Contract. In the event that the amount of liquidated damages due the Town by Contractor exceed payment or monies due the Contractor from the Town, Contractor shall be liable and shall immediately upon demand by Town make payment to the Town in the amount of said excess.

### ARTICLE 3

#### CONTRACT PRICE

- 3.1. Town shall pay to Contractor for the performance of the Work or any portion thereof completed for the month based on the Unit Pricing set forth in Contractor's bid or proposal, which Unit Pricing is incorporated herein and attached hereto as Exhibit "A", subject to the conditions, limitations and restrictions of Sections 3.4 herein and in accordance with the "Standard General Conditions" included in ITB No. 13-09. The unit price shall be full compensation for all costs, including overhead and profit, associated with completion of the Work or any portion thereof as authorized by Notice(s) To Proceed and in full conformity with the requirements as stated or shown, or both, in the Plans and Specifications.
- 3.2. The sum set forth in Paragraph 3.1 shall constitute the Contract Price which shall not be modified except by a Change Order issued by Town or as otherwise specified herein.
- 3.3. The Contract Price may be adjusted by the Town pursuant to Article 12 of the General Conditions.
- 3.4. Town and Contractor agree that this Contract, and any Work authorized pursuant to this Contract, shall be subject to the condition precedents that Town funds and/or Miami-Dade County surtax transportation funds are available, appropriated annually and budgeted for the accomplishment of the Work or any portion thereof for this Project, and that the Town secures and obtains any necessary loans for the accomplishment of this Project pursuant to a borrowing enabling ordinance and any loan implementing resolution adopted by the Town Council and as described in the Town Council Resolution which awards and authorizes the execution of this Contract.

- 3.5. Town shall make progress payments on the basis of Work completed and Contractor's Applications for Payment on or before twenty (20) days after receipt of the Pay Application and in the manner set forth in Article 14 of the General Conditions of the Contract Documents. Rejection of a Pay Application by the Town shall be within twenty (20) days after receipt of the Pay Application. Any rejection shall specify the applicable deficiency and necessary corrective action. Any undisputed portion shall be paid as specified above. All such payments will be made in accordance with the Schedule of Values established in the Contract Documents or, in the event there is no Schedule of Values, for Work completed and as otherwise provided in the Contract Documents. In the event the Contract Documents do not provide a Schedule of Values or other payment schedule, Applications for Payment shall be submitted monthly by Contractor on or before the 10th of each month for the prior month. Progress payments shall be made in an amount equal to the percentage of Work completed, but, in each case, less the aggregate of payments previously made and less such amounts as Town shall determine or Town may withhold taking into account the aggregate of payments made and the percentage of Project completion in accordance with the Contract Documents and Schedule of Value, if any. The Contractor agrees that ten percent (10%) of the amount due for each progress payment or Pay Application (the "Retainage") shall be retained by Town until final completion and acceptance of the Work by Town. In the event there is a dispute between Contractor and Town concerning a Pay Application, dispute resolution procedures shall be conducted by Town commencing within 45 days of receipt of the disputed Payment Application. The Town shall reach a conclusion within 15 days thereafter and promptly notify Contractor of the outcome, including payment, if applicable.

Each Pay Application shall include an affidavit or partial release or waiver of lien by Contractor indicating that partial payments received from Town for the Work have been applied by Contractor to discharge in full all of Contractor's obligations, including payments to subcontractors and material suppliers.

The payment of any Application for Payment by Town, including the final request for payment, does not constitute approval or acceptance by Town of any item of the Work reflected in such Application for Payment, nor shall it be construed as a waiver of any of the Town's rights hereunder or at law or in equity.

#### **ARTICLE 4**

#### **CONTRACT DOCUMENTS**

- 4.1. The Contract Documents which comprise the entire agreement between the Town and the Contractor concerning the Work consist of this Contract for Construction (including any Change Orders or Amendments hereto), the Drawings, Plans and Specifications approved by the Town, the Supplementary Technical Specifications, the Special Conditions, the General Conditions, the Invitation for Bids and bidding documents issued by the Town and any Addenda issued thereto, the Contractor's Bid or Proposal, the Performance Bond and Payment Bond, Insurance Certificates, the Notice of Award, the Notice(s) to Proceed, and any other Contract Documents, not specifically listed herein and included in the

ITB No. 13-09

Townwide Roadway Resurfacing & Sidewalk Improvements

Page 4 of 18



Project Manual which shall be considered incorporated into and made a part of this Contract by this reference and shall govern this Project. Contractor is reminded and hereby recognizes that all Work under this Contract must comply with all applicable federal, State, Miami-Dade County and Town laws and regulations. Any mandatory clauses which are required by such federal or other governmental regulations shall be deemed to be automatically incorporated herein. In the event of any conflict among the foregoing Contract Documents, the documents shall govern in the order listed and/or as determined by the Town Engineer.

- 4.2. This document incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements, or understandings concerning the subject matter of these Contract Documents that are not contained herein. Accordingly it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.
- 4.3. The Contract Documents shall remain the property of the Town. The Contractor shall have the right to keep one record set of the Contract Documents upon completion of the Project; provided; however, that in no event shall the Contractor use, or permit to be used, any or all of such Contract Documents on other Projects without the Town's prior written authorization.

## ARTICLE 5

### INDEMNIFICATION

- 5.1. The parties agree that 1% of the total compensation paid to the Contractor for the performance of this Contract shall represent the specific consideration for the Contractor's indemnification of the Town as set forth in this Section and in the Contract Documents.
- 5.2. To the fullest extent permitted by law, Contractor shall defend, indemnify and hold harmless the Town and its officials, consultants, agents and employees from and against all demands, claims, suits, liabilities, damages, losses and expenses, direct, indirect or consequential (including but not limited to fees and charges of attorneys and other professionals and court costs through appeal) arising out of, related to, or resulting from the performance or non-performance of the Work, or Contractor's obligations or the Work under this Contract, including but not limited to any such claim, damage, loss or expense that is attributable to bodily injury, sickness, disease or death sustained by any person, or to injury to or destruction of tangible property or any other property (other than the Work itself) including the loss of use resulting therefrom, caused in whole or in part by any willful and wanton or negligent or gross negligent 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 applicable law and regardless of the negligence of any such party.



- 5.3. In any and all claims against the Town or any of its officers, consultants, agents or employees by any employee 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, the indemnification obligation under the above paragraph shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Contractor or any such Subcontractor or other person or organization under workers or workman's compensation acts, disability benefit acts or other employee benefit acts.
- 5.4. It is the specific intent of the parties hereto that the foregoing indemnification shall comply with Section 725.06 (Chapter 725), Florida Statutes. It is further the specific intent and agreement of the parties that all of the Contract Documents for this Project are hereby amended to include the foregoing indemnification and the "Specific Consideration" therefore.
- 5.5. Notwithstanding any obligation which may be set forth or required in the Contract Documents, the Town shall not indemnify or hold harmless the Contractor or any Subcontractor, Engineer, or any officer, director, partner, employee, agents, consultant of each or any of them from any claims, costs, losses or damages arising out of any Work performed or this Contract, and any reference or inclusion of such indemnification by the Town or Owner in the Contract Documents is hereby deleted. The parties acknowledge and agree that the Town is a municipal corporation that enjoys sovereign immunity pursuant to applicable law, and shall not and does not waive any rights and protections pursuant to such sovereign immunity.

## ARTICLE 6

### INSURANCE AND BONDS

- 6.1. **Insurance.** Contractor shall secure and maintain throughout the duration of this Contract insurance of such types and in such amounts as listed in the Contract Documents, including and in no event less the policies, coverages and minimum limits specified below and as satisfactory to Town, naming the Town as an Additional Insured, underwritten by a firm rated A-X or better by Bests Rating and qualified to do business in the State of Florida. Certificates of Insurance shall be provided to the Town, reflecting the Town as an Additional Insured, no later than ten (10) days after award of this Contract and prior to the execution of this Contract by Town and prior to commencing any Work. Each certificate shall include no less than (30) thirty-day advance written notice to Town prior to cancellation, termination, or material alteration of said policies or insurance. The insurance coverage shall be primary insurance with respect to the Town, its officials, employees, agents and volunteers naming the Town as additional insured. 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 coverages shall include at a minimum the amounts set forth in this Section 6.1.

- a. Commercial General Liability coverage with limits of liability of not less than a \$2,000,000 per Occurrence combined single limit for Bodily Injury and Property Damage.  
This Liability Insurance shall also include Completed Operations and Product Liability coverages and eliminate the exclusion with respect to property under the care, custody and control of Contractor. The General Aggregate Liability limit (except for Products/Completed Operations) shall be in the amount of \$2,000,000.
- b. Workers Compensation and Employer's Liability insurance, 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 \$1,000,000.00 each accident. No employee, subcontractor or agent of the Contractor shall be allowed to provide Work pursuant to this Contract who is not covered by Worker's Compensation insurance.
- c. Business Automobile Liability with minimum limits of \$1,000,000 per Occurrence combined single limit for Bodily Injury and Property Damage. Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability policy, without restrictive endorsements, as filed by the Insurance Services Office, and must include Owned, Hired, and Non-Owned Vehicles.
- d. Builder's Risk property insurance upon the entire Work to the full replacement cost value thereof. This insurance shall include the interest of Town and Contractor and shall provide All-Risk coverage against loss by physical damage including, but not limited to, Fire, Extended Coverage, Theft, Vandalism and Malicious Mischief.
- e. Contractor acknowledges that it shall bear the full risk of loss for any portion of the Work damaged, destroyed, lost or stolen until Final Completion has been achieved for the Project, and all such Work shall be fully restored by the Contractor, at its sole cost and expense, in accordance with the Contract Documents.
- f. **Certificate of Insurance.** On or before the Effective Date of this Contract, the Contractor shall provide the Town with Certificates of Insurance for all required policies. The Contractor shall be responsible for assuring that the insurance certificates required by this Section remain in full force and effect for the duration of this Contract, including any extensions or renewals that may be granted by the Town.

The Certificates of Insurance shall not only name the types of policy(ies) provided, but also shall refer specifically to this Contract and shall state that such insurance is as required by this Contract. The Town reserves the right to inspect and return 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 Work, renewal Certificates of Insurance 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.

- g. **Additional Insured.** The Town is to be specifically included as an Additional Insured for the liability of the Town resulting from Work performed by or on behalf of the Contractor in performance of this Contract. The 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 the Contractor's insurance.

The 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 (for applicable policies) in the same manner as if separate policies had been issued to each.

- h. **Deductibles.** All deductibles or self-insured retentions must be declared to and be reasonably approved by the Town. The Contractor shall be responsible for the payment of any deductible or self-insured retention in the event of any claim.

- i. The provisions of this section shall survive termination of this Contract.

- 6.2. **Bonds.** Prior to performing any portion of the Work and within three (3) days of the Effective Date hereof, the Contractor shall deliver to Town the Bonds required to be provided by Contractor hereunder. (The bonds referenced in this Section are collectively referred to herein as the "Bonds"). Pursuant to and in accordance with Section 255.05, Florida Statutes, the Contractor shall obtain and thereafter at all times during the performance of the Work maintain a separate performance bond and labor and material payment bond for the Work, each in an amount equal to one hundred percent (100%) of the Contract Price and each in the form provided in the Contract Documents or in other form satisfactory to and approved in writing by Town and executed by a surety of recognized standing with a rating of B plus or better for bonds up to Two Million Dollars. The surety providing such Bonds must be licensed, authorized and admitted to do business in the State of Florida and must be listed in the Federal Register (Dept. of Treasury, Circular 570). The cost of the premiums for such Bonds is included in the Contract Price. If notice of any change affecting the Scope of the Work, the Contract Price, Contract Time or any of 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 shall be Contractor's sole responsibility, and the amount of each applicable bond shall be adjusted accordingly. If the surety is declared bankrupt or becomes insolvent or its right to do business in Florida is terminated or it ceases to meet applicable law or regulations, the Contractor shall, within five (5) days of any such event, substitute another bond (or Bonds as applicable) and surety, all of which must be satisfactory to Town.

ITB No. 13-09

Townwide Roadway Resurfacing & Sidewalk Improvements

Page 8 of 18



- 6.3. Notwithstanding any obligation which may be set forth or required in the Contract Documents, the Town shall not be required to procure or maintain any insurance in connection with the Work or this Contract, including but not limited to Owner's Liability Insurance or Property Insurance.

## ARTICLE 7

### **CONTRACTOR'S REPRESENTATIONS AND WARRANTIES**

In order to induce the Town to enter into this Contract, the Contractor makes the following representations and warranties:

- 7.1. Contractor represents and warrants the following to the Town:
- 7.1.1. Contractor has examined and carefully studied the Contract Documents and the other data identified in the bidding documents, including, without limitation, the "technical specifications and data" and plans and specifications.
  - 7.1.2. Contractor has visited the Project site and become familiar with and is satisfied as to the general and local conditions and site conditions that may affect cost, progress, performance or furnishing of the Work.
  - 7.1.3. Contractor is familiar with and is satisfied as to all federal, state and local laws, regulations and permits that may affect cost, progress, performance and furnishing of the Work. Contractor agrees that it will at all times comply with all requirements of the foregoing laws, regulations and permits.
  - 7.1.4. Contractor has made, or caused to be made, examinations, investigations, tests and/or studies as necessary to determine surface and subsurface conditions at or on the Project site. Contractor acknowledges that the Town does not assume responsibility for the accuracy or completeness of information and data shown or indicated in the Contract Documents with respect to underground or ground facilities at, contiguous or near the Project sites or for existing improvements at or near the sites. Contractor has obtained and carefully studied (or assumes responsibility for having done so) all such additional supplementary examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface and underground facilities and improvements) at, contiguous or near to the site or otherwise which may affect cost, progress, performance or furnishing of the Work or which relate to any aspect of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor and safety precautions and programs incident thereto. Contractor does not consider that any additional examinations, investigations, explorations, tests, studies or data are necessary for the performance and furnishing of the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents.

- 7.1.5. Contractor is aware of the general nature of Work to be performed by the Town and others at the site that relates to the Work as indicated in the Contract Documents.
- 7.1.6. Contractor has correlated the information known to Contractor, information and observations obtained from visits to the Project site, reports and drawings identified in the Contract Documents and all additional examinations, investigations, explorations, tests, studies and data with the Contract Documents.
- 7.1.7. Contractor has given Town written notice of all conflicts, errors, ambiguities or discrepancies that Contractor has discovered in the Contract Documents and the written resolution thereof by Town is acceptable to Contractor, and the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
- 7.1.8. The Contractor agrees and represents that it possesses the requisite skills to perform the Work and that the Work shall be executed in a good and workmanlike manner, free from defects, and that all materials shall be new and approved by or acceptable to Town, except as otherwise expressly provided for in the Contract Documents. The Contractor shall cause all materials and other parts of the Work to be readily available as and when required or needed for or in connection with the construction, furnishing and equipping of the Project.
- 7.2 Contractor further warrants the following:
- 7.2.1. **Anti-Discrimination:** Contractor agrees that it will not discriminate against any employees or applicants for employment or against persons for any other benefit or service under this Contract because of race, color, religion, sex, national origin, or physical or mental handicap where the handicap does not affect the ability of an individual to perform in a position of employment, and agrees to abide by all federal and state laws regarding non-discrimination.
- 7.2.2. **Anti-Kickback:** Contractor warrants that no person has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, and that no employee or officer of the Town has any interest, financially or otherwise, in the Project.
- For breach or violation of this warranty, the Town shall have the right to annul this Contract without liability or, in its discretion, to deduct from the Contract Price or consideration, the full amount of such commission, percentage, brokerage or contingent fee.
- 7.2.3. **Licensing and Permits:** Contractor warrants that it shall have, prior to commencement of Work under this Contract and at all times during said Work, all required licenses and permits whether federal, state, County or Town.



Contractor acknowledges that it is the obligation of Contractor to obtain all licenses and permits required for this Project.

## ARTICLE 8

### DEFAULT AND TERMINATION

- 8.1. If Contractor fails to timely begin the Work, or fails to perform the Work with sufficient workers and equipment or with sufficient materials to insure the prompt completion of the Work within the Contract Time as specified in Article 2 and the Notice(s) to Proceed, or shall perform the Work unsuitably, or cause it to be rejected as defective and unsuitable, or shall discontinue the prosecution of the Work pursuant to the accepted schedule, or if the Contractor shall fail to perform any material term set forth in the Contract Documents, or if Contractor shall become insolvent or be declared bankrupt, or commit any act of bankruptcy or insolvency, or shall make an assignment for the benefit of creditors, or from any other cause whatsoever shall not carry on the Work in an acceptable manner, Town may, upon seven (7) days written Notice of Termination, terminate the services of Contractor, exclude Contractor from the Project site, provide for alternate prosecution of the Work, appropriate or use any or all materials and equipment on the Project site as may be suitable and acceptable, and may finish the Work by whatever methods it may deem expedient. In such case, Contractor shall not be entitled to receive any further payment until the Project is completed. All damages, costs and charges incurred by Town, together with the costs of completing the Project, shall be deducted from any monies due or which may become due to Contractor. In case the damages and expenses so incurred by Town shall exceed monies due Contractor from Town, Contractor shall be liable and shall pay to Town the amount of said excess promptly upon demand therefore by Town. In the event it is adjudicated that Town was not entitled to terminate the Contract as described hereunder for default, the Contract shall automatically be deemed terminated by Town for convenience as described below.
- 8.2. This Contract may be terminated by the Town for convenience upon seven (7) calendar days' written notice to the Contractor, including but not limited to if the Town has determined that such cancellation will be in the best interest of the Town for its own convenience or funding is not available, appropriated or budgeted.

In the event the Contract is terminated for the Town's convenience, the Contractor shall incur no further obligations in connection with the Project and shall, to the extent possible, terminate any outstanding subcontractor obligations, and will be paid for Work performed to the satisfaction of the Town and provided as of the termination date. No consideration will be given for anticipated lost revenue, overhead, mobilization or demobilization or the canceled portions of the Contract. In such event, the Contractor shall promptly submit to the Town its Application for Payment for final payment which shall comply with the provisions of the Contract Documents.

- 8.3. In the event of a default by the Contractor, the Contractor shall also be liable for all damages caused by its default which damages may include, but not be limited to, any and all costs incurred by the Town in completing the Project, and damages arising out of the Contractor's failure to adhere to the Contract requirements and all attorney's fees and costs incurred by the Town in seeking legal relief for the default.

## ARTICLE 9

### ASSIGNMENT

Neither party shall assign the Contract, any portion of the Work, or any sub-contract, in whole or in part, without the written consent of the other, nor shall Contractor assign any monies due or to become due to it hereunder, without the previous written consent of the Town Manager.

## ARTICLE 10

### MISCELLANEOUS

#### 10.1. Contractor to Check Plans, Specifications and Data:

Contractor shall verify all dimensions, quantities and details shown on the Plans, Specifications or other data received from Town's Engineer, and shall notify Town's Project Engineer in writing of all errors, omissions and discrepancies found therein within three (3) calendar days of discovery and Town's Project Engineer will promptly review the same. Any Work done after such discovery, but prior to written authorization of the Town's Project Engineer, will be done at the Contractor's sole risk.

#### 10.2. Contractor's Responsibility for Damages and Accidents:

10.2.1. Contractor shall accept full responsibility for the Work against all loss or damage of any nature sustained until final acceptance by Town, and shall promptly repair any damage done from any cause.

10.2.2. Contractor shall be responsible for all materials, equipment and supplies pertaining to the Project.

In the event any such materials, equipment and supplies are lost, stolen, damaged or destroyed prior to final acceptance by Town, Contractor shall replace same without cost to Town.

#### 10.3. Defective Work/Guarantee:

10.3.1. Town shall have the authority to reject or disapprove Work which the Town finds to be defective. If required by the Town, Contractor shall promptly either correct all defective Work or remove such defective Work and replace it with non-defective Work.



Contractor shall bear all direct, indirect and consequential costs of such removal or corrections including cost of testing laboratories and personnel.

10.3.2. Should Contractor fail or refuse to remove or correct any defective Work or to make any necessary repairs in accordance with the requirements of the Contract Documents within the time indicated in writing by Town's Project Engineer, Town shall have the authority to cause the defective Work to be removed or corrected, or make such repairs as may be necessary at Contractor's expense. Any expense incurred by Town in making such removals, corrections or repairs, shall be paid for out of any monies due or which may become due to Contractor. In the event of failure of Contractor to make all necessary repairs promptly and fully, Town may declare Contractor in default.

10.3.3. Contractor shall unconditionally guarantee all materials and equipment furnished and Work performed for a period of one (1) year from the date of Substantial Completion. If, within one (1) year after the date of Substantial Completion, any of the Work is found to be defective or not in accordance with the Contract Documents, Contractor, after receipt of written notice from Town, shall promptly correct such defective or nonconforming Work within the time specified by Town without cost to Town. Nothing contained herein shall be construed to establish a period of limitation with respect to any other obligation which Contractor might have under the Contract Documents including but not limited to any claim regarding latent defects.

10.3.4. Failure to reject any defective Work or material shall not in any way prevent later rejection when such defect is discovered.

10.4. **Legal Restrictions and Traffic Provisions:**

Contractor shall conform to and obey all applicable laws, regulations, or ordinances with regard to labor employed, hours of Work and Contractor's general operations. Contractor shall conduct its operations so as not to interfere with or close any thoroughfare, except as provided for in the Contract Documents, without the written consent of the Town or governing jurisdiction.

10.5. **Examination and Retention of Contractor's Records.**

10.5.1. Contractor shall comply with the applicable provisions of Chapter 119, Florida Statutes (Public Records Law).

Contractor shall retain all records associated with this Contract for a period of three (3) years from the date of final payment for all Work performed pursuant to this Contract. The Town or any of their duly authorized representatives shall, until three (3) years after final payment under this Contract, have access to and the right to examine any of the Contractor's books, ledgers, documents, papers, or other records involving transactions related to this Contract for the purpose of making audits, examinations, excerpts, and transcriptions.

ITB No. 13-09

Townwide Roadway Resurfacing & Sidewalk Improvements

Page 13 of 18

10.5.2. Contractor agrees to include in first-tier subcontracts under this Contract a clause substantially the same as subparagraph 10.5.1 above. "Subcontract," as used in this clause, excludes purchase orders not exceeding \$10,000.

10.5.3. The right to access and examination of records in subparagraph 10.5.1 shall continue until disposition of any mediation, claims, litigation or appeals.

**10.6. No Damages for Delay.**

No claim for damages or any claim, other than for an extension of time shall be made or asserted against Town 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 Town 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 or hindrance be reasonable or unreasonable, foreseeable or unforeseeable, or avoidable or unavoidable. Contractor shall be entitled only to extensions of the Contract Time as the sole and exclusive remedy for such resulting delay. Notwithstanding the above, and in accordance with the requirements of the Contract Documents, the Contractor shall be granted an extension of time and suspension of liquidated damages for any delay beyond the control of the Contractor. Should any delay, disruption, interference or hindrance be caused by the Town, for a continuous period or cumulative period of thirty (30) days, the Contractor may terminate the Contract upon ten (10) days written notice to the Town.

**10.7. Public Entity Crimes Affidavit.**

Contractor shall comply with Section 287.133, Florida Statutes, (Public Entity Crimes Statute) notification of which is hereby incorporated herein by reference, including execution of any required affidavit.

**10.8. Independent Contractor.**

The Contractor is an independent contractor under the Contract. This Contract does not create any partnership or joint venture between the Town and Contractor. Work performed or provided by the Contractor shall be by employees of the Contractor and subject to supervision by the Contractor, and not as officers, employees, or agents of the Town.

Personnel policies, tax responsibilities, social security and health insurance, employee benefits, purchasing policies and other similar administrative procedures, applicable to Work rendered under the Contract shall be those of the Contractor.

**10.9. Payment to Sub-Contractors.**

Certification of Payment to Subcontractors: The term "subcontractor", as used herein, includes persons or firms furnishing materials or equipment incorporated into the Work or stockpiled for which the Town made partial payment and firms working under equipment-rental agreements.



The Contractor is required to pay all subcontractors for satisfactory performance of their contracts before the Town will make a further progress (partial) payment. The Contractor shall also return all retainage withheld to the subcontractors within 30 days after the subcontractor's work is satisfactorily complete, as determined by the Town.

Within 30 days of the Contractor's receipt of progress payments or any other payments thereafter, except the final payment, the Contractor shall pay all subcontractors and suppliers having an interest in the Contract for all Work completed and materials furnished. The Town will honor an exception to the above when the Contractor demonstrates good cause for not making any required payment within said 30-day period.

**10.10. DBE Contract Assurance.**

Contractor, or any subcontractor performing Work under this Contract, shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. Contractor shall carry out all applicable requirements of 49 CFE Part 26 in the award and administration of this Contract. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as the Town deems appropriate.

**10.11. Governing Law.**

This Contract shall be construed in accordance with and governed by the laws of the State of Florida. Venue for any litigation arising out of this Contract shall be proper exclusively in Miami-Dade County, Florida.

**10.12. Waiver of Jury Trial.**

Town and Contractor knowingly, irrevocably, voluntarily and intentionally waive any right either may have to a trial by jury in State and or Federal court proceedings in respect to any action, proceeding, lawsuit or counterclaim based upon this Contract, arising out of, under, or in connection with the Work, or any course of conduct, course of dealing, statements or actions or inactions of any party.

**10.13. 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 Contract 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 Contract are and shall remain the property of the Town. In the event of termination of this Contract by either party, 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 Contract. 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 may result in the immediate termination of this Contract by the Town.

#### 10.14. Notices.

Any notices required by this Contract shall be in writing and shall be deemed to have been properly given if transmitted by hand-delivery, by registered or certified mail with postage prepaid return receipt requested, or by a private postal service, addressed to the parties (or their successors) at the following addresses:

|                     |  |
|---------------------|--|
| For the Town:       | Town of Cutler Bay<br>Town Manager<br>10720 Caribbean Blvd., Suite 105<br>Cutler Bay, Florida 33189  |
| With a copy to:     | Town Attorney, Town of Cutler Bay<br>Weiss Serota Helfman<br>Pastoriza Cole & Boniske, P.L.<br>2525 Ponce de Leon Blvd.<br>Coral Gables, Florida 33134                                 |
| For The Contractor: | <u>Envirowaste Services Group, Inc.</u><br><u>4 Southeast 1<sup>st</sup> Street, 2<sup>nd</sup> Floor</u><br><u>Miami, Florida 33131</u><br><u>Attention: Eduardo Barba, President</u> |

#### 10.15. Prevailing Party; Attorneys' Fees.

In the event of any controversy, claim, dispute or litigation between the parties arising from or relating to this Contract (including, but not limited to, the enforcement of any indemnity provisions), the prevailing party shall be entitled to recover reasonable costs, expenses and attorneys' fees including, but not limited to, court costs and other expenses through all appellate levels.



10.16. **Severability.**

If any term or provision of this Contract or the Contract Documents shall be held or deemed invalid or unenforceable by the courts or otherwise, illegal or in conflict with any law of the State, the validity of the remaining terms or provisions of this Contract or the Contract Documents shall not be affected thereby, and shall continue in full force and effect, and be enforced to the fullest extent permitted by law.

**[SPACE LEFT INTENTIONALLY BLANK]**

IN WITNESS WHEREOF, the parties hereto have made and executed this Contract on the respective dates under each signature: TOWN OF CUTLER BAY, FLORIDA, signing by and through its Town Manager, and Envirowaste Services Group, Inc. (Contractor) signing by and through Eduardo Barba, President, duly authorized to execute same.

ATTEST:

TOWN OF CUTLER BAY, FLORIDA,  
A Florida municipal corporation

Debra E. Eastman  
Debra E. Eastman, Town Clerk

By: Rafael G. Casals  
Rafael G. Casals, Town Manager

Date Executed: April 16, 2014

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY:

Resolution No.: 13-77

By: [Signature]  
Town Attorney

CONTRACTOR MUST EXECUTE THIS CONTRACT AS INDICATED BELOW. USE CORPORATION FORMAT, AS APPLICABLE.

CONTRACTOR:  
Envirowaste Services Group, Inc.

ATTEST:

R. A. Bu  
(Secretary)

(Corporate Seal)

By: [Signature], President  
(Signature and Title)

Eduardo Barba, President  
(Type Name/Title signed above)

This 1st day of May, 2014.

**END OF DOCUMENT**