

RESOLUTION NO. 14- 1168

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF MIAMI LAKES, FLORIDA RETROACTIVELY AUTHORIZING THE USE OF A CONTINGENCY ALLOWANCE ACCOUNT FOR THE NW 154<sup>TH</sup> STREET ROADWAY & DRAINAGE IMPROVEMENTS CONTRACT NO. 2013-39, NOT TO EXCEED \$308,367.96; AUTHORIZING THE TOWN MANAGER TO EXPEND BUDGETED FUNDS; AUTHORIZING THE TOWN MANAGER TO EXECUTE CONTRACT AMENDMENTS TO UTILIZE THE CONTINGENCY ALLOWANCE ACCOUNT; PROVIDING FOR INCORPORATION OF RECITALS; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, on July 9, 2013 the Town Council of the Town of Miami Lakes (“the Town”) approved, under Resolution 13-115B (“Resolution”), the award of contract 2013-39 for the NW 154<sup>th</sup> Street Roadway and Drainage improvements project to Acosta Tractors, Inc. (“Acosta”); and

**WHEREAS**, the Town Council took this action after approving Resolution 13-115A, rejecting all bids received in response to Invitation to Bid (“ITB”) 2013-39; and

**WHEREAS**, the Town Council took this action based on several factors, which included the fact that Acosta was already mobilized in the area on a Miami-Dade County project and was thus very familiar with the work and that Acosta agreed to perform the work at the same price as the lowest responsive and responsible bidder, Southeastern Engineering Contractors, Inc. (“Southeastern”), for ITB 2013-39; and

**WHEREAS**, the original resolution submitted for award, which recommended that Southeastern be awarded the contract, requested an award in the amount of \$1,336,261.16, which included a contingency allowance account in an amount not to exceed thirty (30) percent of the bid amount; and

**WHEREAS**, in the memorandum accompanying the original resolution dated July 9, 2013 recommending the award of the contract to Southeastern, the Town Manager recommended that the award include a contingency allowance account in an amount not to exceed thirty (30) percent, to wit: \$308,367.96, in addition to the value of the bid amount; and

**WHEREAS**, the contingency was primarily for two factors, to wit: the potential to encounter muck during the construction work and the inclusion of the design and construction of irrigation and landscaping, which were not included within the project's original scope; and

**WHEREAS**, the Town Council's action approving the award to Acosta was not clear on the issue of the contingency allowance and appears to have been based solely on Southeastern's base bid price of \$1,027,893.20; and

**WHEREAS**, the Town proceeded with the work under the contract based on the contingency allowance account being included in the award; and

**WHEREAS**, upon review of the minutes to finalize the Resolution, the former Town Attorney, Greenspoon Marder, determined that, when the Town Council rejected all bids and awarded the contract to Acosta for the same amount as the lowest bidder, it was not clear that the contingency amount incorporated in the memorandum and resolution for award to the lowest bidder had also been incorporated into the Acosta contract; and

**WHEREAS**, as of December 21, 2013 a total of \$177,370 in additional work has been authorized with most of the work resulting from finding additional muck and installing irrigation; and

**WHEREAS**, the Town Manager recommends that the Town Council retroactively authorize the use of a contract contingency allowance account for the NW 154<sup>th</sup> Street Roadway and Drainage Improvements contract awarded to Acosta; and

**WHEREAS**, this will increase Acosta's contract value from \$1,027,893.20 to a maximum value of \$1,333,261.16;

**NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL FOR THE TOWN OF MIAMI LAKES, FLORIDA, AS FOLLOWS:**

**Section 1. Recitals.** The foregoing recitals are true and correct and are incorporated herein by reference.

**Section 2. Approval of a Contract Contingency Allowance.** The Town Council hereby retroactively approves a contract contingency allowance account, in an amount not to exceed \$308,367.96 for unforeseen/hidden conditions and additional work, specifically due to the potential to encounter muck during the construction work and the inclusion of the design and construction of irrigation and landscaping, which was not included within the project's original

scope. The Acosta contract, including the contract contingency allowance, shall have a maximum value of \$1,333,261.16.

**Section 3. Authorization of Town Officials.** The Town Manager and/or his designee and the Town Attorney are authorized to take all steps necessary to increase the value of the contract through the use of the contract contingency allowance account.

**Section 4. Authorization of Fund Expenditure.** The Town Manager is authorized to expend the budgeted funds to implement the use of the contract contingency allowance account.

**Section 5. Execution of Contract Amendments.** The Town Manager is authorized to execute the contract amendments with Acosta Tractors, Inc. resulting from the use of the contract contingency allowance account in an amount not to exceed \$308,367.96.

**Section 6. Effective Date.** This Resolution shall take effect immediately upon adoption.

Passed and adopted this 14<sup>th</sup> day of January, 2014.

A motion to adopt the foregoing resolution was offered by N. Rodriguez. The motion was seconded by Tony Lama and upon being put to a vote, the vote was as follows:

Mayor Wayne Slaton	<u>YES</u>
Vice Mayor Manny Cid	<u>YES</u>
Councilmember Tim Daubert	<u>YES</u>
Councilmember Tony Lama	<u>YES</u>
Councilmember Ceasar Mestre	<u>YES</u>
Councilmember Frank Mingo	<u>YES</u>
Councilmember Nelson Rodriguez	<u>YES</u>

Wayne Slaton  
Wayne Slaton  
MAYOR

Attest:  
M. Tejada  
Marjorie Tejada  
TOWN CLERK

Approved as to form and legal sufficiency:  
Raul Gastesi  
Raul Gastesi  
Gastesi & Associates, P.A.  
TOWN ATTORNEY