

RESOLUTION NO. 12-992

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF MIAMI LAKES, FLORIDA, AUTHORIZING ACCESS TO ANOTHER PUBLIC ENTITY'S CONTRACT UNDER SECTION 7 OF THE PROCUREMENT CODE; APPROVING AN AGREEMENT FOR STREET SWEEPER SERVICES WITH ENVIRONMENTAL PERFORMANCE SYSTEMS, INC. ("EPS"), IN AN AMOUNT NOT TO EXCEED \$70,700; AUTHORIZING TOWN OFFICIALS TO TAKE ALL NECESSARY STEPS TO IMPLEMENT THE TERMS OF THE AGREEMENT; AUTHORIZING THE TOWN MANAGER TO EXPEND BUDGETED FUNDS; AUTHORIZING THE TOWN MANAGER TO EXECUTE THE AGREEMENT; PROVIDING FOR INCORPORATION OF RECITAL; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the Town of Miami Lakes (the "Town") finds that it is both necessary and appropriate to retain a contractor to provide street sweeper services; and

WHEREAS, the most efficient and cost effective means to implement Street Sweeper Services is to access the Town of Cutler Bay ITB 09-05 for Street Sweeper Services; and

WHEREAS, Section 7 of the Town's Purchasing Procedures authorizes the Town Council, by majority vote, to access contracts awarded by other local, state or federal authorities as a result of a competitive process.

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

Section 1. Recitals. The above Recitals are true and correct and incorporated herein by this reference.

Section 2. Waiver of Procurement Procedures. The Town Council hereby utilizes Section 7 of the Town's Purchasing Procedures to access Town of Cutler Bay ITB 09-05 for Street Sweeper Services, attached hereto as Exhibit "A".

Section 3. Approval of the EPS Agreement. The Agreement between the Town of Miami Lakes and EPS, in an amount not to exceed \$70,700.00, (the "EPS Agreement"), in substantially the same form hereto attached as Exhibit "B," together with such changes as may be acceptable to the Town Manager and approved as to form and legality by the Town Attorney, is hereby approved.

Section 4. Authorization of Town Officials. The Town Manager and/or his designee and the Town Attorney are authorized to take all actions necessary to implement the terms and conditions of the EPS Agreement.

Section 5. Authorization of Fund Expenditure. The Town Manager is authorized to expend budgeted funds to implement the terms and conditions of the EPS Agreement.

Section 6. Execution of the Agreements. The Town Manager is authorized to execute the EPS Agreement on behalf of the Town, to execute any required agreements and/or documents to implement the terms and conditions of the EPS Agreement, and to execute any permissible extensions and/or amendments to the EPS Agreement, subject to the approval as to form and legality by the Town Attorney.


Section 7. Effective Date. This Resolution shall take effect immediately upon adoption.

PASSED AND ADOPTED this 12 day of June, 2012.

Motion to adopt by Mary Collins, second by Cesar Mestre

FINAL VOTE AT ADOPTION


Mayor Michael Pizzi	<u>yes</u>
Vice Mayor Ceasar Mestre	<u>yes</u>
Councilmember Mary Collins	<u>yes</u>
Councilmember Tim Daubert	<u>yes</u>
Councilmember Nelson Hernandez	<u>yes</u>
Councilmember Nick Perdomo	<u>absent</u>
Councilmember Richard Pulido	<u>yes</u>


Michael Pizzi
MAYOR

Attest:


Marjorie Tejada
TOWN CLERK

Approve as to Form and Legal Sufficiency


Joseph S. Geller
Greenspoon Marder, P.A.
TOWN ATTORNEY



Office of the Town Manager

Steven J. Alexander
Town Manager

April 12, 2012

Yvette Sanz
Controller
Environmental Performance Systems, Inc.
12650 NW South River Drive
Medley, FL 33178

**Re: Contract Renewal (ITB #09-05) between the Town of Cutler Bay
Environmental Performance Systems, Inc.**

Dear Ms. Sanz:

Reference is made to the above contract between the Town of Cutler Bay and Environmental Performance Systems, Inc. to provide Street Sweeper Services. As stated in ITB #09-05, "This Contract shall run for a period of three (3) years with an option to renew for two (2) additional one (1) year terms with both parties being in total and full Agreement".

This letter serves as confirmation of the Town's desire to exercise its renewal option of said contract adopted via Town Resolution #09-30. Thus upon your acceptance, this contract will remain in full force and effect until May 5, 2013.

We are very pleased with the level of services provided by Environmental Performance Systems, Inc., and look forward to working together in the upcoming years.

If you have any questions, please contact Mr. Rafael G. Casals, Public Works Director, or me at your earliest convenience.

Very truly yours,

Environmental Performance Systems, Inc.


Steven J. Alexander
Town Manager


Yvette Sanz
Controller



**TOWN OF CUTLER BAY
CONTRACT DOCUMENTS
ITB # 09-05**



STREET SWEEPER SERVICES

ENVIRONMENTAL PERFORMANCE SYSTEMS, INC.

TABLE OF CONTENTS

	<u>1</u> ADVERTISEMENTS FOR BIDS	9	<u>9</u> PUBLIC ENTITY CRIMES
2	<u>2</u> INSTRUCTION TO BIDDERS	10	<u>10</u> NOTICE OF AWARD
3	<u>3</u> BID FORM	11	<u>11</u> AGREEMENT
4	<u>4</u> CERTIFICATE OF AUTHORITY	12	<u>12</u> NOTICE TO PROCEED
5	<u>5</u> BID BOND	13	<u>13</u> PERFORMANCE BOND
6	<u>6</u> DRUG FREE WORKPLACE FORM	14	<u>14</u> OSHA ACKNOWLEDGMENT
7	<u>7</u> BIDDER QUALIFICATION STATEMENT	15	<u>15</u> GENERAL CONDITIONS
8	<u>8</u> NON-COLLUSION AFFIDAVIT	16	<u>16</u> 1) SUPPLEMENTARY CONDITIONS 2) SUMMARY OF WORK



**CONTRACT
DOCUMENTS**

**ENVIRONMENTAL
PERFORMANCE
SYSTEMS, INC.**

**SECTION 1
ADVERTISEMENTS FOR
BIDS**

INVITATION TO BID
09-05
STREET SWEEPER SERVICES
TOWN OF CUTLER BAY

The Town of Cutler Bay is requesting bids from qualified firms to provide Street Sweeper Services for the Town of Cutler Bay. **Interested firms should visit the Town's website at www.cutlerbay-fl.gov to obtain the Invitation to Bid package. Packages may also be picked up during normal business hours at the office of the Town Clerk, Erika Gonzalez-Santamaria, located at:**

Town of Cutler Bay
10720 Caribbean Blvd., Suite 105
Cutler Bay, FL 33189

Sealed submittals including one (1) original and four (4) copies of the submittals must be received no later than **10:00 a.m. on Thursday, February 26, 2009** and be clearly marked on the outside, **"ITB 09-05 Street Sweeper Services"**, by **Erika Gonzalez-Santamaria, Town Clerk, Town of Cutler Bay, 10720 Caribbean Blvd., Suite 105, Cutler Bay, Florida, 33189**. Late submittals and electronic submittals will **not** be accepted.

Pursuant to Town Code, public notice is hereby given that a "Cone of Silence" is imposed concerning the Town's competitive purchasing process, which generally prohibits communications concerning the ITB from the time of advertisement of the ITB until the Town Council meeting at which the Council considers the Town Manager's recommendation to the Town Council concerning the competitive purchase transaction. Please see the detailed specifications for the public solicitation for services for a statement fully disclosing the requirements of the "Cone of Silence".

Pursuant to Ordinance 06-11; Town Code Chapter 8A; Section 7.6 of the Town Charter, vendors of the Town are required to disclose any campaign contributions to the Town Clerk, and each vendor must do so prior to and as a condition of the award of any Town contract to the vendor. Please see the detailed specifications of this solicitation for further details.

The Town of Cutler Bay reserves the right to accept or reject any and/or all bids or parts of bids, to workshop or negotiate any and all bids, to waive irregularities, and to request re-bids on the required materials or services.

Steven J. Alexander
Town Manager



ITB 09-05



**CONTRACT
DOCUMENTS
ENVIRONMENTAL
PERFORMANCE
SYSTEMS, INC.**

**SECTION 2
INSTRUCTION TO
BIDDERS**

**TOWN OF CUTLER BAY
STREET SWEEPER SERVICES
ITB # 09 - 05
INSTRUCTIONS TO BIDDERS**

IT IS THE RESPONSIBILITY OF THE BIDDER TO ENSURE THAT THE BID REACHES THE OFFICE OF THE TOWN CLERK ON OR BEFORE THE CLOSING HOUR AND DATE STATED ON THE INVITATION TO BID FORM.

- 1.1 Taxes: BIDDER shall include all applicable taxes in Bid.
- 1.2 Purpose of Bid: The Town of Cutler Bay intends to secure a source of services/supply (s) at the lowest responsive and responsible price. The Town reserves the right to award the Bid considered the best to serve the Town's interests.
- 1.3 Any questions concerning the Bid Specifications or any required need for clarification must be made to the Town Clerk's Office in writing, at least five (5) business days prior to the date of the Bid opening. Interpretations or clarifications considered necessary by consultant in response to such questions will be issued by an addenda mailed or delivered to all parties listed on the official BIDDER's list as having received the bidding documents. Only questions answered by written addenda shall be binding. Oral interpretations or clarifications shall be without legal effect. No plea of ignorance or delay or required need of additional information shall exempt a BIDDER from submitting their Bid on the required date and time as publicly noted.
- 1.4 BIDDER warrants that the prices, terms, and conditions quoted in the Bid will be firm for a period of ninety (90) calendar days from the date of the Bid opening unless otherwise stated in the Bid Form. Incomplete, unresponsive, irresponsible, vague, or ambiguous responses to the invitations to Bid will be cause for rejection, as determined by the Town.
- 1.5 Pursuant to the provisions of paragraph (2) (a) of section 287.133, Florida statutes -"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 on a contract to provide any 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 be awarded to 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 section 287.107, for category two for a period of 36 months from the date of being placed on the convicted vendor list".

2.1: Submission of Bids

- 2.1.1: BIDDER's shall use the Bid Form(s) furnished by the Town. Failure to do so may cause the Bid to be rejected. Removal of any of the Bid may invalidate the Bid. BIDDER shall deliver to the Town, as Bid package:
 1. This entire project manual, with all sections executed. This shall include, when indicated on the bottom corner of the page the BIDDER's name and the company being represented
 2. A copy of all issued addendum
 3. One Original and four (4) Copies of the Bid Form completely executed
 4. Bid Security, (Bid Bond or cashiers check) attached to the front inside cover of the project manual in the amount of \$5,000
 5. Certificates of Competencies
 6. Certificate Of Insurance and or Letter of Insurability

The entire Bid Package shall be placed in an opaque envelope and clearly marked with the BIDDER's name and "STREET SWEEPER SERVICES"

2.1.2: Bids having an erasure or corrections must be initialed by the BIDDER in Blue ink. Bids shall be signed in Blue ink; all quotations shall be typewritten or printed and filled in with Blue ink.

2.1.3: Firms are specifically advised that the Town of Cutler Bay's purchasing ordinance (06-22) applies to this Invitation to Bid and to all Requests for Proposals and is incorporated herein by reference. Firms are advised to familiarize themselves with its requirements.

2.2 Guaranties: no guarantee or warranty is given or implied by the Town as to the total amount that may or may not be purchased from any resulting Contract or Award. These quantities are for bidding purposes only and will be used for tabulation and presentation of the Bid. The Town reserves the right to reasonably increase or decrease quantities as required. The prices offered herein and the percentage rate of discount applies to other representative items not listed in this Bid.

2.3: Delivery: all items shall be delivered f.o.b. destination (i.e. at a specific Town of Cutler Bay address), and delivery costs and charges (if any) will be included in the Bid Price. Exceptions shall be noted. When practical, the Town may make pick-ups at the vendor's place of business.

2.4: Mistake: if there is a discrepancy in the unit and extended prices, the unit prices(s) will prevail and the extensions adjusted to coincide. BIDDER's are responsible for checking their calculations. Failure to do so will be at the BIDDER's risk, and errors will not release the BIDDER from their responsibility as noted herein.

3.1: Brand Names: if a brand name, make, of any "or equal" manufacturer trade name, or vendor catalog is mentioned whether or not followed by the words "approved equal" it is for the purpose of establishing a grade or quality of material only. Vendor may offer equals with appropriate identification, samples, and/or specifications on such item(s). The Town shall be the sole judge concerning the merits of items Bid as equals.

3.2: Material: material(s) delivered to the Town under this bid shall remain the property of the seller until accepted to the satisfaction of the Town. In the event materials supplied to Town are found to be defective or do not conform to specifications, the Town reserves the right to return the product (s) to the seller at the sellers expense.

3.3: Pricing: prices should be stated in units of quantity specified in the Bid Form. In case of a discrepancy, the Town reserves the right to make the final determination at the lowest net cost to the Town.

3.4: Safety Standards: the BIDDER warrants that the product(s) supplied to the Town conforms in all respects to the standards set forth in the occupational safety and health act (OSHA) and its amendments. Bids must be accompanied by a materials data safety sheet (M.S.D.S.) when applicable.

3.5: Payments: payment will be made after commodities/services have been received, accepted, and properly invoiced as indicated in the contract and/or purchase order. Invoices must bear the purchase order number.

4.1: Liability, Insurance, Licenses & Permits: where BIDDER's are required to enter onto Town of Cutler Bay property to deliver materials or to perform work or services as a result of a Bid award, the BIDDER will assume the full duty, obligation, and expense of obtaining all necessary licenses, permits, inspections, and insurance required. The BIDDER shall be liable for any damages or loss to the Town occasioned by negligence of the BIDDER (or their agent) or any person the BIDDER has designated in the completion of their contract as a result of the Bid. Contractor shall be required to furnish a certified copy of all licenses, certificates of competency or other licenser requirements necessary to practice their profession as required by Florida State Statute, Florida Building Code, Miami-Dade County, or Town of Cutler Bay Code. Contractors shall include current Dade County Certificates of Competency. These documents shall be furnished to the Town along with the Bid response. Failure to furnish these documents or to have required licenser will be grounds for rejecting the Bid and forfeiture of the Bid Bond.

4.1.1: BIDDER shall furnish to the Town Clerk, Town of Cutler Bay, 10720 Caribbean Blvd., Suite 105, Cutler Bay, Florida 33189, certificate(s) of insurance which indicate that insurance coverage has been obtained from an insurance company authorized to do business in the State of Florida or otherwise secured in a manner satisfactory to the Town, for those coverage types and amounts listed in Article 5 of the General Conditions, in an amount equal to 100% of the requirements and shall be presented to the Town prior to issuance of any Contract(s) or Award(s) Document(s). The Town of Cutler Bay shall be named as "additional insured" with respect to this coverage.

4.1.2: At the time of Bid submission the BIDDER must submit certificates of insurance, or evidence of insurability in the form of a letter from BIDDER's insurance carriers demonstrating the ability to obtain coverage outlined

in Article 5 of the General Conditions. All required insurances shall name the Town of Cutler Bay as additional insured

- 4.1.3: All insurance shall be issued by companies rated A: 7 or better per A.M. Best's Key Rating Guide, latest edition and authorized to issue insurance in the State of Florida. It shall be the responsibility of the BIDDER and insurer to notify the finance support services director of the Town of Cutler Bay of cancellation, lapse, or material modification of any insurance policies insuring the BIDDER, which relate to the activities of such vendor and the Town of Cutler Bay. Such notification shall be in writing, and shall be submitted to the Town Town Clerk thirty (30) calendar days prior to cancellation of such policies. This requirement shall be reflected on the certificate of insurance.
- 4.1.4: Failure to fully and satisfactorily comply with the Town's insurance and bonding requirements set forth herein will authorize the Town Manager to implement a rescission of the Bid award without further Town Council action. The BIDDER hereby holds the Town harmless and agrees to indemnify Town and covenants not to sue the Town by virtue of such rescission.
- 5.1: Warranty / Guaranty: successful BIDDER shall act as agent for the Town in the follow-up and compliance of all items under Warranty / Guarantee and complete all forms for Warranty / Guarantee coverage under this Contract. BIDDER warrants by signature on the Bid Form that prices quoted here are in conformity with the latest Federal Price Guidelines.
- 6.1: Governmental Restrictions: in the event any governmental restrictions may be imposed which would necessitate alteration of the material quality, workmanship, or performance of the items offered on this Bid prior to their delivery, it shall be the responsibility of the successful BIDDER to notify the Town at once, indicating in their letter the specific regulation which required an alteration. The Town of Cutler Bay reserves the right to accept any such alteration, including any price adjustments occasioned thereby, or to cancel at no further expense to the Town.
- 6.2: Assignment: the CONTRACTOR shall not transfer or assign the performance required by this Bid without prior written consent of the Town Manager. Any award issued pursuant to the Invitation to Bid and monies which may be due hereunder are not assignable except with prior written approval of the Town Manager. Further, in the event that the majority ownership or control of the CONTRACTOR changes hands subsequent to the award of this contract, CONTRACTOR shall promptly notify TOWN in writing of such change in ownership or control at least thirty (30) calendar days prior to such change and TOWN shall have the right to terminate the contract upon sixty (60) calendar days written notice, at TOWN's sole discretion.
- 6.3: Award of Bids: the Town of Cutler Bay reserves the right to accept or reject any and/or all bids or parts of bids, to waive any informality, irregularities, or technicalities, to re-advertise for bids, or take any other actions that may be deemed to be in the best interests of the Town. The Town also reserves the right to award the Contract on a split order basis, group by group, or item by item, or such combination as will best serve the interests of the Town, unless otherwise stated. The Town also reserves the right to waive minor variations to the specifications (interpretation of such to be made by the applicable department personnel). Final determination and award of Bid(s) shall be made by the Town Council. In addition, each bidder agrees to waive any claim it has or may have against the TOWN, the CONSULTANT, and the respective employees, arising out of or in connection with the administration, evaluation, or recommendation of any bid.
- 7.1: Evaluation of Bids: the Town, at its sole discretion, reserves the right to inspect any / all BIDDER's facilities to determine their capability of meeting the requirements for the Contract. Also, price, responsibility, and responsiveness of the BIDDER, including the financial position, experience, staffing, equipment, materials, references, and past history of service to the Town and / or with other units of state, and / or local governments in Florida, or comparable private entities, will be taken into consideration in the Award of the Contract.
- 7.1.1: Hold Harmless: all BIDDER's shall hold the Town, it's officials and employees harmless and covenant not to sue the Town, it's officials and employees in reference to their decisions to reject, award, or not award a Bid, as applicable.
- 7.1.2: Cancellation: failure on the part of the BIDDER to comply with the conditions, specifications, requirements, and terms as determined by the Town, shall be just cause for cancellation of the Award.
- 7.1.3: Disputes: if any dispute concerning a question of fact arises under the Contract, other than termination for default or convenience, the CONTRACTOR and the TOWN department responsible for the administration of

the Contract shall make a good faith effort to resolve the dispute. If the dispute cannot be resolved by agreement, then the department with the advice of the TOWN Attorney shall resolve the dispute and send a written copy of its decision to the CONTRACTOR, which shall be binding on both parties.

8.1: Non-conformance to Contract: the Town of Cutler Bay may withhold acceptance of, or reject items which are found upon examination, not to meet the specification requirements. Upon written notification of rejection, items shall be removed within five (5) calendar days by the vendor at their own expense and redelivered at their expense. Rejected goods left longer than thirty (30) calendar days will be regarded as abandoned and the Town shall have the right to dispose of them as its own property. Rejection for non-conformance or failure to meet delivery schedules may result in the Contractor being found in default.

8.1.1: Default Provision: in case of default by the BIDDER or CONTRACTOR, the Town of Cutler Bay may procure the articles or services from other sources and hold the BIDDER or CONTRACTOR responsible for any excess costs occasioned or incurred thereby.

8.1.2: Indemnification: the CONTRACTOR shall indemnify, save harmless, and defend the Town of Cutler Bay, its' officers, agents and employees from and against any claims, demands or causes of action of whatsoever kind or nature arising out of error, omission, negligent act, conduct, or misconduct of the CONTRACTOR, their agents, servants or employees in the provision of goods or the performance of services pursuant to this Bid and / or from any procurement decision of the Town including without limitation, awarding the Contract to the CONTRACTOR.

8.1.3: Secondary / Other Vendors: the Town reserves the right in the event the primary vendor cannot provide an item(s) or service(s) in a timely manner as requested, to seek other sources without violating the intent of the Contract.

8.1.4: Specifications: The successful BIDDER will be furnished four sets of Contract Specifications without charge. Any additional copies required will be furnished to the BIDDER at reproduction cost.

8.1.5. Cone of Silence Provisions: Notwithstanding any other provision of these specifications, the provisions of Town "Cone of Silence" are applicable to this transaction. The "Cone of Silence," as used herein, means a prohibition on any communication regarding a particular Request for Proposal ("RFP"), Request for Qualification ("RFQ") or bid, between:

A potential vendor, service provider, proposer, bidder, lobbyist, or consultant; and

The Town Council, Town's professional staff including, but not limited to, the Town Manager and his or her staff, any member of the Town's selection or evaluation committee.

The Cone of Silence shall be imposed upon each RFP, RFQ and bid after the advertisement of said RFP, RFQ, or bid. The Cone of Silence shall terminate at the beginning of the Town Council meeting at which time the Town Manager makes his or her written recommendation to the Town Council. However, if the Town Council refers the Manager's recommendation back to the Manager or staff for further review, the Cone of Silence shall be re-imposed until such time as the Manager makes a subsequent written recommendation.

The Cone of Silence shall not apply to:

- (1) oral communications at pre-bid conferences;
- (2) oral presentations before selection or evaluation committees;
- (3) public presentations made to the Town Council during any duly noticed public meeting;
- (4) communication in writing at any time with any Town employee, unless specifically prohibited by the applicable RFP, RFQ or bid documents. The bidder or proposer shall file a copy of any written communication with the Town Clerk. The Town Clerk shall make copies available to any person upon request;
- (5) communications regarding a particular RFP, RFQ or bid between a potential vendor, service provider, proposer, bidder, lobbyist or consultant and the Town's Purchasing Agent or Town employee designated responsible for administering the procurement process for such RFP, RFQ or bid, provided the communication is limited strictly to matters of process or procedure already contained in the corresponding solicitation document;

- (6) communications with the Town Attorney and his or her staff;
- (7) duly noticed site visits to determine the competency of bidders regarding a particular bid during the time period between the opening of bids and the time the Town Manager makes his or her written recommendation;
- (8) any emergency procurement of goods or services pursuant to Town Code;
- (9) responses to the Town's request for clarification or additional information;
- (10) contract negotiations during any duly noticed public meeting;
- (11) communications to enable Town staff to seek and obtain industry comment or perform market research, provided all communications related thereto between a potential vendor, service provider, proposer, bidder, lobbyist, or consultant and any member of the Town's professional staff including, but not limited to, the Town Manager and his or her staff are in writing or are made at a duly noticed public meeting.

Please contact the Town Attorney for any questions concerning Cone of Silence compliance. Violation of the Cone of Silence by a particular bidder or proposer shall render any RFP award, RFQ award or bid award to said bidder or proposer voidable by the Town Council and/or Town Manager.

8.1.6 Campaign Finance Restrictions on Vendors: Ordinance 06-11; Town Code Chapter 8A. Pursuant to Ordinance 06-11; Town Code Chapter 8A; Section 7.6 of the Town Charter, vendors of the Town are required to disclose any campaign contributions to the Town Clerk, and each vendor must do so prior to and as a condition of the award of any Town contract to the vendor.

8.1.6.1 Vendors' Campaign Contribution Disclosure:

1. General requirements:

(A) Any vendor required to disclose campaign contributions pursuant to the Charter of the Town of Cutler Bay, as may be amended, shall file a written disclosure with the Town Clerk, stating all contributions made that were accepted by an elected official, the official to whom they were made and the date they were made. The Town Clerk may develop a form to be used by vendors for such disclosure.

(B) The disclosure shall be filed prior to and as a condition of the award of any Town contract to the Vendor.

(C) The Town Clerk shall inform the Council of any disclosures which were made in relation to any items before the Council prior to the hearing on the item or prior to the award of the contract.

(D) If an existing vendor makes a contribution the vendor must report the same to the clerk within ten (10) days of its acceptance or prior to being awarded any additional contract or renewal, whichever occurs first.

(E) The Town Clerk shall file a quarterly report with the Council, which lists all the vendor disclosures in the quarter.

2. Disqualification

(A) As per Section 7.6 of the Town Charter, if a Vendor of products or services who directly or through a member of the person's immediate family or through a political action committee or through any other person makes a campaign contribution to a Town candidate and fails to disclose it then he/she/it shall be barred from selling any product or service to the town for a period of two years following the swearing in of the subject elected official.

8.1.7 Lobbyist Registration: Proposers must also comply with all Town Charter sections and Code provisions that pertain to lobbyists, including Section 7.6 of the Town Charter and implementing ordinance(s), including Sec. 2-11(s) of the Town Code and Ordinance 07-02. Please contact the Town Clerk at (305) 234-4262 for additional information.

9.1 Bonding Requirements:

9.1.1 Bid Bond/Bid Security

The BIDDER, in submitting this Bid, must include a \$5,000 Bid Bond. Such bond may be in the form of a cashier's check or approved Bid Bond in the amount of \$5,000. A company or personal check shall not be deemed a valid Bid Security.

9.1.2 Performance and Payment Bond:

The Town of Cutler Bay shall require the successful BIDDER to furnish a Performance Bond, each, in the amount of 100% of the total Bid Price, with the Town of Cutler Bay as the Obligee, as security for the faithful performance of the Contract. The bonds shall be with a surety company authorized to do business in the State of Florida.

9.1.3 Bid Guaranty:

The successful BIDDER shall execute the Contract (Agreement) and provide the required Performance Bond and Certificates of Insurance within ten (10) calendar days of notification of the award by the Town.

The BIDDER who has the Contract awarded to them and who fails to execute the Contract and furnish the Performance Bond and Insurance Certificates within the specified time shall forfeit the Bid Security that accompanied their Bid, and the Bid Security shall be retained as liquidated damages by the Town, and it is agreed that this sum is a fair estimate of the amount of damages the Town will sustain in case the BIDDER fails to enter into the Contract and furnish the Bonds as herein before provided. Bid Security deposited in the form of a cashier's check drawn on a local bank in good standing shall be subject to the same requirements as a Bid Bond.

10.1 Time of completion:

The time of completion of the work to be performed under this contract is the essence of the contract. Delays and extensions of time may be allowed only in accordance with the provisions stated in the appropriate section of the general conditions. The time allowed for the completion of the work shall be stated in the Bid Form.

11.1 Protest Procedures:

With respect to a protest of the terms, conditions, and specifications contained in a solicitation (RFP, RFQ or Bid), including any provisions governing the methods for ranking bids, proposals, or replies, awarding contracts, reserving rights of further negotiation, or modifying or amending any contract, the notice of protest shall be filed in accordance with Town Ordinance 06-22.

END OF SECTION

[Space Left Intentionally Blank]



**CONTRACT
DOCUMENTS
ENVIRONMENTAL
PERFORMANCE
SYSTEMS, INC.**

**SECTION 3
BID FORM**

BID FORM

**THIS BID IS SUBMITTED TO:
TOWN OF CUTLER BAY
STREET SWEEPER SERVICES
ITB # 09 - 05
10720 CARIBBEAN BLVD., SUITE 105
CUTLER BAY, FLORIDA 33189**

1. The undersigned BIDDER proposes and agrees, if this Bid is accepted, to enter into an agreement with The Town of Cutler Bay in the form included in the Contract Documents to perform and furnish all Work as specified or indicated in the Contract Documents for the Contract Price and within the Contract Time indicated in this Bid and in accordance with the other terms and conditions of the Contract Documents.
2. BIDDER accepts all of the terms and conditions of the Advertisement or Invitation to Bid and Instructions to BIDDER'S, including without limitation those dealing with the disposition of Bid Security. This Bid will remain subject to acceptance for ninety (90) calendar days after the day of Bid opening. BIDDER agrees to sign and submit the Agreement with the Bonds and other documents required by the Bidding Requirements within ten (10) calendar days after the date of Town's Notice of Award.
3. In submitting this Bid, BIDDER represents, as more fully set forth in the Agreement, that:
 - (a) BIDDER has examined copies of all the Bidding Documents and of the following Addenda (receipt of all which is hereby acknowledged.)

Addendum No. <u> 1 </u>	Dated: <u>2/9/09</u>
Addendum No. <u> 2 </u>	Dated: <u>2/17/09</u>
Addendum No. _____	Dated: _____
Addendum No. _____	Dated: _____
 - (b) BIDDER has familiarized themselves with the nature and extent of the Contract Documents, Work, site, locality, and all local conditions and Law and Regulations that in any manner may affect cost, progress, performance, or furnishing of the Work.
 - (c) BIDDER has studied carefully all reports and drawings of subsurface conditions and drawings of physical conditions.
 - (d) BIDDER has obtained and carefully studied (or assumes responsibility for obtaining and carefully studying) all such examinations, investigations, explorations, tests and studies (in addition to or to supplement those referred to in (c) above) which pertain to the subsurface or physical conditions at the site or otherwise may affect the cost, progress, performance, or 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, and no additional examinations, investigations, explorations, tests,

reports or similar information or data are or will be required by BIDDER for such purposes.

- (e) BIDDER has correlated the results of all such observations, examinations, investigations, explorations, tests, reports, and studies with the terms and conditions of the Contract Documents.
 - (f) BIDDER has given the Town written notice of all conflicts, errors, discrepancies that it has discovered in the Contract Documents and the written resolution thereof by the Town is acceptable to BIDDER.
 - (g) 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 the Town.
4. BIDDER understands that the quantities provided are only provided for bid evaluation only. The actual quantities may be higher or lower than those in the bid form.
 5. BIDDER understands and agrees that the Contract Price is Unit Rate Contract to furnish and deliver all of the Work complete in place As such the Contractor shall furnish all labor, materials, equipment, tools superintendence, and services necessary to provide a complete Project for the Bid Price of:

Total Center Lane Miles	Miles		
Estimated Frequency	Bi-Weekly		
	Unit Price	Estimated Quantity Miles	Total Price
2 Lanes Curbed Mile Price	22. ⁰⁰	19	418. ⁰⁰
3 Lanes Curbed Mile Price	26. ⁰⁰	37	962. ⁰⁰
2 Lanes Non-Curbed Mile Price	18. ⁰⁰	65	1,170. ⁰⁰
As needed.			
Park Parking Lot			
Per Sq Ft	.05		

6. BIDDER agrees that the work will be completed as scheduled from the date stipulated in the Notice to Proceed.

7. Communications concerning this Bid shall be addressed to:

BIDDER: EPS, Inc. Yvette Sanz
Address: 12650 N.W.S. RIVER DR.
Medley, FL 33178
Telephone: 786.337.7000
Facsimile Number: 786.337.7001
Attention: Yvette Sanz

8. The terms used in this Bid which are defined in the General Conditions of the Contract included as part of the Contract documents have the meanings assigned to them in the General Conditions.

SUBMITTED THIS DAY Feb. 24, 2009.

If BIDDER is:



**CONTRACT
DOCUMENTS
ENVIRONMENTAL
PERFORMANCE
SYSTEMS, INC.**

**SECTION 4
CERTIFICATE OF
AUTHORITY**

A CORPORATION

By: Environmental Performance System
(Corporation Name)

Florida

(State of Incorporation)


By: Yvette Scanz
(Name of Person Authorized to Sign)

Controller

(Title)

(Corporate Seal)

Attest: _____



(President)

Business address: 12650 NW S. River Dr.
Medley, FL 33178

Phone No: 786-337-7000 Facsimile No: 786-337-7001

A JOINT VENTURE

ITB 09-05

15 of 55



**CONTRACT
DOCUMENTS
ENVIRONMENTAL
PERFORMANCE
SYSTEMS, INC.**

**SECTION 5
BID BOND**

BID BOND

STATE OF FLORIDA)

)

COUNTY OF MIAMI-DADE)

KNOW ALL MEN BY THESE PRESENTS, that we, ENVIRONMENTAL PERFORMANCE SYSTEMS, INC., as Principal, and FIRST SEAFORD SURETY, INC., as Surety, are held and firmly bound unto the Town of Cutler Bay, a municipal corporation of the State of Florida in the sum of FIVE THOUSAND AND 00/100 Dollars (\$ 5,000.00), lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators and successors jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that whereas the Principal has submitted the accompanying Bid dated, Feb 26, 2009 for: 09-05 - street sweeper services

WHEREAS, it was a condition precedent to the submission of said Bid that a cashier's check or Bid Bond in the amount of ten percent (10%) of the Base Bid be submitted with said Bid as a guarantee that the BIDDER would, if awarded the Contract, enter into a written Contract with the Town for the performance of said Contract, within ten (10) consecutive calendar days after written notice having been given of the Award of the Contract.

NOW, THEREFORE, the conditions of this obligation are such that if the Principal within ten (10) consecutive calendar days after written notice of such acceptance, enters into a written Contract with the Town of Cutler Bay and furnishes the Performance and Payment Bonds, satisfactory to the Town, each in an amount equal to one hundred percent (100%) of the Contract Price, and provides all required Certificates of Insurance, then this obligation shall be void; otherwise the sum herein stated shall be due and payable to the Town of Cutler Bay and the Surety herein agrees to pay said sum immediately, upon demand of the Town, in good and lawful money of the United States of America, as liquidated damages for failure thereof of said Principal.

IN WITNESS WHEREOF, the above bonded parties have executed this instrument under their several seals this 26th day of February, 2009, the name and the corporate seal of each corporate party being hereto affixed and these presents being duly signed by its undersigned representative.

IN PRESENCE OF:

(Individual or Partnership Principal)

(SEAL)

(Business Address)

(Town/State/Zip)

(Business Phone)

ATTEST:

[Signature]

FIRST SEALORD SURETY, INC.

(Corporate Surety)*

Secretary

*Impress Corporate Seal

By:

[Signature]

Ramon A Rodriguez, Atty-in-fact & Fla Res Agent

IMPORTANT

Surety companies executing bonds must appear on the Treasury Department's most current list (circular 570 as amended) and be authorized to transact business in the State of Florida.

Signed, sealed and delivered
in the presence of:

ENVIRONMENTAL PERFORMANCE SYSTEMS, INC.

By: [Signature]

(Printed Name)

12650 NW S River Drive, Medley, FL 33178

Gabriel Pou, President
(Title)

ACKNOWLEDGMENT

State of Florida
County of Miami Dade

On this the 26th day of February 2009, before me, the undersigned Notary
Public of the State of Florida, personally appeared

Gabriel Pou and

(Name(s) of individual(s) who appeared before notary)

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

WITNESS my hand
and official seal.

[Signature]
NOTARY PUBLIC, STATE OF FLORIDA

NOTARY PUBLIC:
SEAL OF OFFICE

[Signature]

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



- Personally known to me, or
- Personally identification:

(Type of Identification Produced)

DID take an oath,

or

DID NOT take an oath.

OPTIONAL INFORMATION:

Type Of Document:

Number of Pages:

Number of Signatures Notarized:

END OF SECTION

UNAUTHORIZED UNAUTHORIZED UNAUTHORIZED
First Sealord Surety, Inc.
Power of Attorney

Power No. MIA-0088-09-01103

KNOW ALL MEN BY THESE PRESENTS: That First Sealord Surety, Inc., a corporation of the Commonwealth of Pennsylvania (hereinafter the "Company") has made, constituted and appointed, and by these presents does make, constitute and appoint **Fausto Alvarez, Ramon A. Rodriguez, William E. Beckham and/or Ernesto Freyre all of Miami, Florida** its true and lawful Attorney-in-Fact, to make, execute and deliver on its behalf insurance policies, surety bonds, undertakings and other instruments of a similar nature as follows:

Not To Exceed Five Million Dollars (\$5,000,000.00)

Such insurance policies, surety bonds, undertakings and instruments for said purposes, when duly executed by the aforesaid Attorney-in-Fact, shall be binding upon the said Corporation as fully and to the same extent as if signed by the duly authorized officers of the Corporation and sealed with its corporate seal, and all the acts of said Attorney-in-Fact, pursuant to the authority hereby given, are hereby ratified and confirmed.

This appointment is made pursuant to the following By-Laws which were duly adopted by the Board of Directors of the said Corporation on April 7, 2003 and all amendments thereto and are still in full force and effect.

Article XII: Policies, Bonds, Recognitions, Stipulations, Consents of Surety, Underwriting Undertakings, and Instruments Relating Thereto.

Section 12-1. Insurance policies, bonds, recognitions, stipulations, consents of surety and underwriting undertakings of the Corporation, and releases, agreements and other writings relating in any way thereto or to any claim or loss thereunder, shall be signed in the name and on behalf of the Corporation, by the Chairman of the Board, the President or a Vice President, and by the Secretary or an Assistant Secretary or by an Attorney-in-Fact for the Corporation appointed and authorized by the Chairman of the Board, the President, or a Vice President to make such signature, or by such other officers or representatives as the Board may from time to time determine. The seal of the Corporation shall if appropriate be affixed thereto by any such officer, Attorney-in-Fact or representative. The authority of such Attorney-in-Fact and Agents shall be as prescribed in the instrument effecting their appointment. Any such appointment and all authority granted hereunder shall be revocable at any time by the Board of Directors or by any person empowered to make such appointment.

IN WITNESS WHEREOF, First Sealord Surety, Inc. has caused these presents to be duly signed and its corporate seal to be hereunto affixed and duly attested this 20th day of January, 2004.



(Seal)

Attest:

Gary L. Bragg

Gary L. Bragg, Secretary

Commonwealth of Pennsylvania
County of Montgomery

First Sealord Surety, Inc.

By:

Joel D. Cooperman

Joel D. Cooperman, Vice President

On this 20th day of January, 2004, before me personally appeared Joel D. Cooperman, Vice President of First Sealord Surety, Inc., with whom I am personally acquainted, who, being by me duly sworn, said that he resides in the Commonwealth of Pennsylvania, that he is Vice President of First Sealord Surety, Inc., the corporation described in and which executed the foregoing instrument, that he knows the corporate seal of the said Corporation and that the seal affixed to said instrument is said corporate seal, that it was so affixed by order of the Board of Directors of said Corporation and that the person who made the seal is a duly authorized officer of said Corporation by like authority.

COMMONWEALTH OF PENNSYLVANIA



(Seal)

Anthony T. Stewart

Notary Public

Notary Seal
Anthony T. Stewart, Notary Public
Lower Merion Twp., Montgomery County
Commission Expires Aug. 5, 2010

CERTIFICATE

I, the undersigned Secretary of First Sealord Surety, Inc., do hereby certify that the above Power of Attorney of which the foregoing is a full, true and correct copy, is in full force and effect on the date of this Certificate and I do further certify that the officer who executed the said Power of Attorney was one of the Officers authorized by the Board of Directors to appoint an Attorney-in-Fact as provided in Section 12-1 of the By-Laws of First Sealord Surety, Inc. This Certificate may be signed and sealed by facsimile under and by authority of the following provisions of the By-Laws of First Sealord Surety, Inc.

"Section 12-2. The use of a printed facsimile of the corporate seal of the Corporation and of the signature of the Secretary or an Assistant Secretary or any certification of the correctness of a copy of an instrument executed by an authorized person pursuant to Article XII, Section 12-1 of the By-Laws appointing and authorizing an Attorney-in-Fact to sign in the name and on behalf of the Corporation surety bonds, underwriting undertakings, or other instruments specified in said Section 12-1, with like effect as if such seal and such signature had been manually affixed and made."

In Witness Whereof, I have hereunto set my hand and affixed the corporate seal of the Corporation, on these presents

this 20th day of February, 2009

This power of attorney is void unless the Bond number is inserted in this paragraph (insert Bond # here 09-1224), the bond number is the same number as on the original bond and the bond number has been inserted by an officer or employee of the Company or by the agent.

(Seal)

Gary L. Bragg

Gary L. Bragg, Secretary



**CONTRACT
DOCUMENTS**

**ENVIRONMENTAL
PERFORMANCE
SYSTEMS, INC.**

**SECTION 6
DRUG FREE
WORKPLACE FORM**

DRUG-FREE WORKPLACE FORM

The undersigned vendor in accordance with Section 287.087, Florida Statutes, hereby certifies that
Environmental Performance System does:
(Name of Business)

- 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 the 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 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 so convicted.
- 6) Make a good faith effort to continue to maintain a drug-free workplace through implementation of this section.

As the person authorized to sign the statement, I certify that this firm complies fully with the above requirements.

Bidder's Signature

Quetta Samy

Date

2/24/09

END OF SECTION



**CONTRACT
DOCUMENTS
ENVIRONMENTAL
PERFORMANCE
SYSTEMS, INC.**

**SECTION 7
BIDDER
QUALIFICATION
STATEMENT**

**TOWN OF CUTLER BAY
STREET SWEEPER SERVICES
ITB # 09 - 05
BIDDER QUALIFICATION STATEMENT**

The BIDDER's response to this questionnaire will be utilized as part of the Town's overall Bid Evaluation and Contractor selection.

The following minimum experience is required for this project:

- A) successful completion , verifiable with reference, of at least three street sweeping jobs with a municipality or government agency within the last 5 years in South Florida; Miami-Dade, Broward, Monroe, Collier and Palm Beach **OR**
- B) successful completion, verifiable with reference, of at least three street sweeping jobs of more than \$50,000.00 for a commercial agency within the last 5 years in South Florida; Miami-Dade, Broward, Monroe, Collier and Palm Beach

1. Project Name/Location Street Sweeping South E6076
 Owner Name Dept. of Transportation
 Contact Person Torey Henry
 Contact Telephone No. 305-256-6359
 Yearly Budget/Cost \$106,179.82
 Dates of contract From: March 06 To: March 10
2. Project Name/Location Street Sweeping South E6077
 Owner Name Dept. of Transportation
 Contact Person Torey Henry
 Contact Telephone No. 305-256-6359
 Yearly Budget/Cost \$99,680.87
 Dates of contract From: March 06 To: March 10
3. Project Name/Location Sweeping E6E61
 Owner Name Dept. of Transportation
 Contact Person Julio Hurtado
 Contact Telephone No. 305-650-0074
 Yearly Budget/Cost \$34,585.82
 Dates of Contract From: April 08 To: April 12



**CONTRACT
DOCUMENTS**

**ENVIRONMENTAL
PERFORMANCE
SYSTEMS, INC.**

**SECTION 8
NON-COLLUSION
AFFIDAVIT**

NON-COLLUSION AFFIDAVIT

State of Florida)
County of Miami-Dade) SS

Yvette Samz being first duly sworn deposes and says that:

- (1) He/She/They is/are the Representative
(Owner, Partner, Officer, Representative or Agent) of
Environmental Perf. Systems the BIDDER that has submitted the attached Bid;
- (2) He/She/They is/are fully informed respecting the preparation and contents of the attached Bid and of all pertinent circumstances respecting such Bid;
- (3) Such Bid is genuine and is not a collusive or sham Bid;
- (4) Neither the said BIDDER 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 BIDDER, firm, or person to submit a collusive or sham Bid in connection with the Work for which the attached Bid 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 BIDDER, firm, or person to fix any overhead, profit, or cost elements of the Bid or of any other BIDDER, or to fix any overhead, profit, or cost elements of the Bid Price or the Bid Price of any other BIDDER, or to secure through any collusion, conspiracy, connivance, or unlawful agreement any advantage against (Recipient), or any person interested in the proposed Work;
- (5) The price or prices quoted in the attached Bid are fair and proper and are not tainted by any collusion, conspiracy, connivance, or unlawful agreement on the part of the BIDDER or any other of its agents, representatives, owners, employees or parties in interest, including this affiant.

Signed, sealed and delivered
in the presence of:

Marling Morales
Marling Morales
(Printed Name)

By: Yvette Samz
Yvette Samz
Controller
(Title)



MARLING MORALES
Notary Public, State of Florida
Commission #DD828501
My Commission Expires Oct. 06, 2012

ACKNOWLEDGMENT

State of Florida

County of Miami Dade

On this the 25 day of February, 2009, before me, the undersigned Notary Public of The State of Florida, personally appeared

Yvette Sam and
(Name(s) of individual(s) who appeared before notary)

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

WITNESS my hand
and official seal.

NOTARY PUBLIC, STATE OF FLORIDA

NOTARY PUBLIC:

SEAL OF OFFICE:

Marling Morales
(Name of Notary Public: Print, Stamp, or Type as Commissioned.)



MARLING MORALES
Notary Public, State of Florida
Commission #DOB28501
My Commission Expires Oct. 06, 2012

- Personally known to me, or
 Personally identification:

(Type of Identification Produced)

DID take an oath,

or

DID NOT take an oath.

OPTIONAL INFORMATION:

Type Of Document:

Number of Pages:

Number of Signatures Notarized:

END OF SECTION



**CONTRACT
DOCUMENTS**

**ENVIRONMENTAL
PERFORMANCE
SYSTEMS, INC.**

SECTION 9
**PUBLIC ENTITY
CRIMES**

SWORN STATEMENT PURSUANT TO SECTION 287.133(3)(a)
FLORIDA STATUTES, ON PUBLIC ENTITY CRIMES

THIS FORM MUST BE SIGNED AND SWORN TO IN THE PRESENCE OF A NOTARY PUBLIC OR OTHER OFFICIAL AUTHORIZED TO ADMINISTER OATHS.

1. This sworn statement is submitted to Cotler Bay
by Yvette Sanz
for Environmental Performance Systems
is 12600 NW S. River Dr. Medley, FL 33178 whose business address

Federal Employer Identification number (FEIN) is 05-0964250 and (if applicable) its Social Security Number of the individual signing this sworn statement: 262-91-0069

2. I understand that a "public entity crime" as defined in Paragraph 287.133(1)(g), Florida Statutes, means a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or with the United States, including, but not limited to, any Bid or Contract for goods or services to be provided to any public entity or an agency or political subdivision of any other state of the United States and involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation.

3. I understand that "convicted" or "conviction" as defined in Para. 287.133(1)(b), Florida Statutes, means a finding of guilt or a conviction of a public entity crime, with or without an adjudication of guilt, in any federal or state trial court of record relating to charges brought by indictment or information after July 1, 1989, as a result of a jury verdict, non-jury trial, or entry of a plea of guilty or nolo contendere.

4. I understand that an "affiliate" as defined in Para. 287.133(1)(a), Florida Statutes, means:

1. A predecessor or successor of a person convicted of a public entity crime; or
2. Any entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime. The term "affiliate" includes those officers, directors, executors, partners, shareholders, employees, members, and agents who are active in the management of an affiliate. The ownership by one person of shares constituting a controlling interest in another person, or a pooling of equipment or income among persons when not for fair market value under an arm's length agreement, shall be a prime facie case that one person controls another person. A person who knowingly enters into a joint venture with a person who has been convicted of a public entity crime in Florida during the preceding 36 months shall be considered an affiliate.

5. I understand that a "person" as defined in Para. 287.133(1)(c), Florida Statutes, means any natural person or entity organized under the laws of any state or of the United States with the legal power to enter into a binding Contract and which Bids or applies to Bid on Contracts for the provision of goods or services let by a public entity, or which otherwise transacts or applies to transact business with a public entity. The term "persons" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in management of any entity.

6. Based on information and belief, the statement which I have marked below is true in relation to the entity submitting this sworn statement. (Indicate which statement applies.)

Neither the entity submitting this sworn statement, nor any of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, nor any affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989.

_____ The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989.

_____ The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989. However, there has been a subsequent proceeding before a Hearing Officer of the State of Florida, Division of Administrative Hearings and the Final Order entered by the Hearing Officer of the State of Florida, Division of Administrative Hearings and the Final Order entered by the Hearing Officer determined that it was not in the public interest to place the entity submitting this sworn statement on the convicted vendor list. (Attach a copy of the final order.)

I UNDERSTAND THAT THE SUBMISSION OF THIS FORM TO THE CONTRACTING OFFICER FOR THE PUBLIC ENTITY IDENTIFIED IN PARAGRAPH 1 (ONE) ABOVE IS FOR THAT PUBLIC ENTITY ONLY AND, THAT THIS FORM IS VALID THROUGH DECEMBER 31 OF THE CALENDAR YEAR IN WHICH IT IS FILED. I ALSO UNDERSTAND THAT I AM REQUIRED TO INFORM THE PUBLIC ENTITY PRIOR TO ENTERING INTO A CONTRACT IN EXCESS OF THE THRESHOLD AMOUNT PROVIDED IN SECTION 287.017, FLORIDA STATUTES, FOR CATEGORY TWO OF ANY, CHANGE IN THE INFORMATION CONTAINED IN THIS FORM.

By: Gvette Sam
(Printed Name) Gvette Sam
Controller
(Title)

Sworn to and subscribed before me this 25 day of February, 2009
Personally known _____
Identification _____ Notary Public - State of Florida
My Commission Expires _____

Or Produced

(Type of Identification)

Marling Morales



MARLING MORALES
Notary Public, State of Florida
Commission #DD828501
My Commission Expires Oct. 06, 2012

(Printed, typed, or stamped commission name of notary public)

END OF SECTION



**CONTRACT
DOCUMENTS**

**ENVIRONMENTAL
PERFORMANCE
SYSTEMS, INC.**

**SECTION 10
NOTICE OF AWARD**

TOWN OF CUTLER BAY
10720 CARIBBEAN BLVD., SUITE 105
CUTLER BAY, FLORIDA 33189
NOTICE OF AWARD

TO: Environmental Performance Systems
12650 NW S. River Dr.
Medley, FL 33188

PROJECT DESCRIPTION: Town of Cutler Bay **STREET SWEEPER SERVICES**, Project in accordance with Contract Documents as prepared by the Town

and

The TOWN has considered the Bid submitted by you for the above described WORK in response to its Advertisement for Bid and Instruction to BIDDERS.

You are hereby notified that your Bid has been accepted for the **STREET SWEEPER SERVICES**, Contract Bid in the not to exceed amount of \$ 66,300.00

You are required by the Instruction to BIDDER's to execute the Agreement and furnish the required CONTRACTOR'S Performance Bond, Payment Bond and Certificates of Insurance within ten (10) calendar days from the date of this Notice to you.

If you fail to execute said Agreement and to furnish said Bonds and Insurance within ten (10) calendar days from the date of this Notice, said TOWN will be entitled to, revoke the award and retain the Bid Security.

BY: 

TITLE: TOWN MANAGER

Dated this _____ day of _____, 2009.



**CONTRACT
DOCUMENTS
ENVIRONMENTAL
PERFORMANCE
SYSTEMS, INC.**

**SECTION 11
AGREEMENT**

**TOWN OF CUTLER BAY
STREET SWEEPER SERVICES
ITB # 09 - 05
AGREEMENT**

THIS AGREEMENT, made and entered into on this 5th day of May, 2009, by and between ENVIROMENTAL PERFORMANCE SYSTEMS, INC. Party of the First Part, and The Town of Cutler Bay, Party of the Second Part:

WITNESETH:

That, the First Party, for the consideration hereinafter fully set out, hereby agrees with the Second Party as follows:

1. That the First Party shall furnish all the materials, and perform all of the Work in manner and form as provided by the following enumerated Specifications and Documents, which are attached hereto and made a part hereof, as if fully contained here:

Advertisements for Bids

Instruction to BIDDERS

Bid Form

Certificate of Authority

Bid Bond

Drug Free Workplace Form

Bidder Qualification Statement

Non-Collusion Affidavit

Public Entity Crimes

Notice of Award

Agreement

Notice to Proceed

Performance Bond

OSHA Acknowledgment

General Conditions

Supplementary Conditions

Summary of Work

2. That the First Party shall commence the Work to be performed under this Agreement on a date to be specified in a written order of the Second Party and shall complete all Work hereunder within the length of time stipulated in the Bid.
3. That the Second Party hereby agrees to pay to the First Party for the faithful performance of this Agreement, subject to additions and deductions as provided in the Bid Form, in lawful money of the United States, the amount of:

Sixty six thousand three hundred and 00/100 dollars
(Written Dollar Amount)

Dollars (\$ 66,300.00).

4. That the Second Party shall make monthly partial payments to the First Party on the basis of a duly certified and approved estimate of Work performed during each calendar month by the First Party, Less the retainage provided in the General Conditions, which is to be withheld by the Second Party until Work within a particular part has been performed in accordance with this Agreement and until such Work has been accepted by the Second Party.
5. That upon submission by the First Party of evidence satisfactory to the Second Party that all payrolls, material bills, and other costs incurred by the First Party in connection with the construction of the Work have been paid in full, final payment on account of this Agreement shall be made within sixty (60) calendar days after the completion by the First Party of all Work covered by this Agreement and the acceptance of such Work by the Second Party.
6. It is further mutually agreed between the parties hereto that if, at any time after the execution of this Agreement and the Surety Bond hereto attached for its faithful performance and payment, the Second Party shall deem the Surety or Sureties upon such bond to be unsatisfactory, or if, for any reason such bond ceases to be adequate to cover the performance of the Work, the First Party shall, at its expense within five (5) calendar days after the receipt of notice from the Second Party so to do, furnish an additional bond or bonds in such form and amount and with such Surety or Sureties as shall be satisfactory to the Second Party. In such event, no further payment to the First Party shall be deemed to be due under this Agreement until such new or additional security for the faithful performance of the Work shall be furnished in manner and form satisfactory to the Second Party.
7. No additional Work or extras shall be done unless the same shall be duly authorized by appropriate action (in writing) by the Party of the Second Part.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and date first above written, in five (5) counterparts, each of which shall, without proof or accounting for the other counterpart be deemed an original Contract.

WITNESSES:

Guinnessonell
Rafael Casal

CONTRACTOR: Environmental Performance Systems, Inc.

BY: Yvette Seem
NAME: Yvette Seem
TITLE: Controller

OWNER: Town of Cutler Bay

BY: [Signature]
NAME: Steven J. Alexander

TITLE: Town Manager

AUTHENTICATION:

BY: [Signature]
NAME: ERIKA SANABRIA
TITLE: TOWN CLERK



APPROVED AS TO FORM:

BY: Chad Friedman
NAME: Chad Friedman
TITLE: Asst. TOWN ATTORNEY

END OF SECTION

RESOLUTION NO. 09-30

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING THE AGREEMENT WITH ENVIROMENTAL PERFORMANCE SYSTEM (EPS) INC FOR STREET SWEEPER SERVICES; AUTHORIZING THE TOWN MANAGER TO ENTER INTO THIS AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town Council of the Town of Cutler Bay ("Town") finds that it is both necessary and appropriate to retain a contractor to provide street sweeper services; and

WHEREAS, the Town Council authorized the issuance of a Invitation to Bid (ITB) 09-05 for Street Sweeper Services; and

WHEREAS, the ITB resulted in four bids being received prior to the February 26, 2009 deadline; and

WHEREAS, in accordance with Section 3.10 of the Town Charter and the Town purchasing ordinance, the Town has evaluated the four bids and the Town Manager has made a written recommendation to the Council for its approval; and

WHEREAS, pursuant to the ITB competitive selection process utilized by the Town and the recommendation of the Town Manager, the Town Council desires to utilize the services of Environmental Performance Services (EPS) Inc. (the "Contractor") to provide street sweeper services; and

WHEREAS, the Town Attorney's Office has reviewed the terms of the agreement with Contractor, attached as Exhibit "A", and has determined that it is legally sufficient; and

WHEREAS, the Town finds that this Resolution will promote the health, safety and welfare of the Town.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, THAT:

Section 1. Recitals. The above recitals are true and correct and are incorporated herein by this reference.

Section 2. Approval of the Agreement. The Town Council hereby approves the agreement with Environmental Performance Services (EPS) Inc. for street sweeper services, which incorporates Invitation to Bid 09-05 and associated documents, in substantially the form attached hereto as Exhibit "A" (the "Agreement").

Section 3. Town Manager Authorized. The Town Manager is authorized, on behalf of the Town, to execute the Agreement for street sweeper services with Environmental Performance Services (EPS) Inc. for street sweeper services, in substantially the form attached hereto as Exhibit "A". The Town Manager is authorized to execute, without further Town Council action and once approved by the Town Attorney as to form and legal sufficiency.

Section 4. Effective Date. This Resolution shall be effective immediately upon adoption.

PASSED and ADOPTED this 15th day of April, 2009



PAUL S. VROOMAN, Mayor

Attest:


ERIKA GONZALEZ-SANTAMARIA, CMC
Town Clerk



APPROVED AS TO FORM AND
LEGAL SUFFICIENCY FOR THE
SOLE USE OF THE TOWN OF CUTLER BAY:


WEISS SEROTA HELFMAN PASTORIZA
COLE & BONISKE, P.L.
Town Attorney

Moved By: Councilmember Meerbott
Seconded By: Councilmember Bell

FINAL VOTE AT ADOPTION:

Mayor Paul S. Vrooman	<u>YES</u>
Vice Mayor Edward P. MacDougall	<u>YES</u>
Councilmember Peggy R. Bell	<u>YES</u>
Councilmember Timothy J. Meerbott	<u>YES</u>
Councilmember Ernest N. Sochin	<u>YES</u>



**CONTRACT
DOCUMENTS**

**ENVIRONMENTAL
PERFORMANCE
SYSTEMS, INC.**

**SECTION 12
NOTICE TO PROCEED**

TOWN OF CUTLER BAY
10720 CARIBBEAN BLVD., SUITE 105
CUTLER BAY, FLORIDA 33189
NOTICE TO PROCEED

TO: Environmental Performance Systems DATE: _____
12680 NW S. River Dr.
Medley, FL 33178

PROJECT DESCRIPTION: **STREET SWEEPER SERVICES**, in accordance with Contract Documents as prepared by The Town of Cutler Bay.

You are hereby notified to commence Work in accordance with the Agreement dated _____, on or before _____, and work is to be performed for a period of one year at the frequency in the bid form.

This contract shall run for a period of three (3) years with an option to renew for two (2) additional two one (1) year terms with both parties being in total and full agreement.

Town of Cutler Bay

BY: _____

TITLE: TOWN MANAGER



**CONTRACT
DOCUMENTS**

**ENVIRONMENTAL
PERFORMANCE
SYSTEMS, INC.**

**SECTION 13
PERFORMANCE BOND**

Bond Number: 09-3447

This is the first page of Performance and Payment Bond. All other pages are subsequent regardless of preprinted pages.

Surety in Which Bond is Written:

FIRST SEALORD SURETY, INC.
Local Address: 4901 NW 17th Way #304
Ft. Lauderdale, FL 33309 954-351-2030

CONTRACTOR'S NAME: ENVIRONMENTAL PERFORMANCE SYSTEMS, INC...
Address: 12650 N.W. SOUTH RIVER DRIVE
MEDLEY, FL 33178

Telephone No. (786) 337-7000

Owner/Obligee: TOWN OF CUTLER BAY
10720 CARIBBEAN BLVD SUITE 105
CUTLER BAY, FL 33189

Project Description: ITB 09-05 – STREET SWEEPER SERVICES

Contract Amount: \$ 66,300.00
Bond Amount: \$ 66,300.00

This bond has been furnished to comply with the requirements of F.S. 255.05. All provisions and limitations including conditions, notice and time limitations of F.S. 255.05 are incorporated herein by reference. This bond is a statutory bond not a common law bond.

For Bond Inquiries:
Agency: HBA INSURANCE GROUP, INC.
(305) 714-4400

TOWN OF CUTLER BAY
STREET SWEEPER SERVICES
ITB # 09-05
FORM OF PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS:

ENVIRONMENTAL PERFORMANCE

That, pursuant to the requirements of Florida Statute 255.05, we, SYSTEMS, INC., as Principal, hereinafter called Contractor, and FIRST SEALORD SURETY, INC. as Surety, are bound to the Town of Cutler Bay, Florida, as Obligee, hereinafter called Town, in the amount of ** Dollars (\$ **) for the payment whereof Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally.

** SIXTY SIX THOUSAND THREE HUNDRED AND NO/100 --- \$66,300.00

WHEREAS, Contractor has by written agreement entered into a Contract, Bid/Contract awarded the 21st day of April, 2009, with Town for STREET SWEEPER SERVICES in accordance with drawings (plans) and specifications - TIB09-05 which Contract is by reference made a part hereof, and is hereafter referred to as the Contract;

THE CONDITION OF THIS BOND is that if the Contractor:

1. Fully performs the Contract between the Contractor and the Town for **STREET SWEEPER SERVICES** as scheduled after the date of Contract commencement as specified in the Notice to Proceed and in the manner prescribed in the Contract; and bid specifications.
2. Indemnifies and pays Town all losses, damages (specifically including, but not limited to, damages for delay and other consequential damages caused by or arising out of the acts, omissions or negligence of Contractor), expenses, costs and attorney's fees including attorney's fees incurred in appellate proceedings, that Town sustains because of default by Contractor under the Contract; and
3. Upon notification by the Town, corrects any and all defective or faulty Work or materials which appear within **ONE (1) YEAR**.
4. Performs the guarantee of all Work and materials furnished under the Contract for the time specified in the Contract, then this Bond is void, otherwise it remains in full force.

Whenever Contractor shall be, and declared by Town to be, in default under the Contract, the Town having performed Town's obligations thereunder, the Surety may promptly remedy the default, or shall promptly:

- 4.1 Complete the Contract in accordance with its terms and conditions; or
- 4.2 Obtain a Bid or Bids for completing the Contract in accordance with its terms and conditions, and upon determination by Surety of the best, lowest, qualified, responsible and responsive BIDDER, or, if the Town elects, upon determination by the Town, and Surety jointly of the best, lowest, qualified, responsible and responsive BIDDER, arrange for a Contract between such BIDDER and Town, and make available as Work progresses (even though there should be a default or a succession of defaults under the Contract or Contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the Contract Price; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term "balance of the Contract Price," as used in this paragraph, shall mean the total amount payable by Town to Contractor under the Contract and any amendments thereto, less the amount properly paid by Town to Contractor.

No right of action shall accrue on this Bond to or for the use of any person or Corporation other than the Town

named herein.

The Surety hereby waives notice of and agrees that any changes in or under the Contract Documents and compliance or noncompliance with any formalities connected with the Contract or the changes do not affect Surety's obligation under this Bond.

Signed and sealed this 29th day of April, 2009.

WITNESSES:

ENVIRONMENTAL PERFORMANCE SYSTEMS, INC.

By: Antonio Pou
Secretary

(CORPORATE SEAL)

Gabriel Pou
(Signature and Title) Gabriel Pou, President

IN THE PRESENCE OF:

By: Ramon A Rodriguez
*(Agent and Attorney-in-Fact) & Fla Res Agent
Ramon A Rodriguez

789 E Lancaster Ave #200, Villanova, PA 19085
Address:
(Street)

Telephone No.: (610) 664-2324

* (Power of Attorney must be attached)

State of Florida

County of Miami-Dade

On this, the 29th day of April, 2009, before me, the undersigned Notary Public of the State of Florida, the foregoing instrument was acknowledged by (name of Corporate officer), Gabriel Fou, President (title), of (name of Corporation), a Environmental Performance Systems, Inc. (state of corporation) corporation, on behalf of the corporation.

WITNESS my hand and official seal



Yvette Sanz
Yvette Sanz

Printed, typed or stamped name of Notary Public exactly as commissioned

- Personally known to me, or
- Produced identification:

- Did take an oath, or
- Did not take an oath

Bonded by _____

END OF SECTION

**First Sealord Surety, Inc.
Power of Attorney**

Power No: MIA-0088-09-03776

KNOW ALL MEN BY THESE PRESENTS: That First Sealord Surety, Inc., a corporation of the Commonwealth of Pennsylvania, (hereinafter the "Company") has made, constituted and appointed, and by these presents does make, constitute and appoint **Fausto Alvarez, Ramon A. Rodriguez, William E. Beckham and/or Ernesto Freyre all of Miami, Florida** its true and lawful Attorney-in-Fact, to make, execute and deliver on its behalf insurance policies, surety bonds, undertakings and other instruments of a similar nature as follows:

***** Not To Exceed Five Million Dollars-----(\$5,000,000.00) *****

Such insurance policies, surety bonds, undertakings and instruments for said purposes, when duly executed by the aforesaid Attorney-in-Fact, shall be binding upon the said Corporation as fully and to the same extent as if signed by the duly authorized officers of the Corporation and sealed with its corporate seal; and all the acts of said Attorney-in-Fact, pursuant to the authority hereby given, are hereby ratified and confirmed.

This appointment is made pursuant to the following By-Laws which were duly adopted by the Board of Directors of the said Corporation on April 7, 2003 with all Amendments thereto and are still in full force and effect:

"Article XII: Policies, Bonds, Recognitions, Stipulations, Consents of Surety, Underwriting Undertakings, and Instruments Relating Thereto.

Section 12-1. Insurance policies, bonds, recognitions, stipulations, consents of surety and underwriting undertakings of the Corporation, and releases, agreements and other writings relating in any way thereto or to any claim or loss thereunder, shall be signed in the name and on behalf of the Corporation: a) by the Chairman of the Board, the President or a Vice President, and by the Secretary or an Assistant Secretary; or b) by an Attorney-in-Fact for the Corporation appointed and authorized by the Chairman of the Board, the President, or a Vice President to make such signature; or c) by such other officers or representatives as the Board may from time to time determine. The seal of the Corporation shall if appropriate be affixed thereto by any such officer, Attorney-in-Fact or representative. The authority of such Attorney-in-Fact and Agents shall be as prescribed in the instrument evidencing their appointment. Any such appointment and all authority granted thereby may be revoked at any time by the Board of Directors or by any person empowered to make such appointment."

IN WITNESS WHEREOF, First Sealord Surety, Inc. has caused these presents to be duly signed and its corporate seal to be hereunto affixed and duly attested this 20th day of January, 2004.



(Seal)

Attest:

Gary L. Bragg

Gary L. Bragg, Secretary

First Sealord Surety, Inc.

By:

Joel D. Cooperman

Joel D. Cooperman, Vice President

Commonwealth of Pennsylvania
County of Montgomery

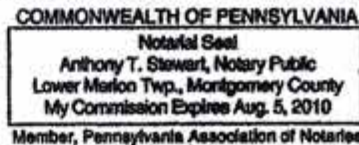
On this 20th day of January, 2004, before me personally appeared Joel D. Cooperman, Vice President of First Sealord Surety, Inc., with whom I am personally acquainted, who, being by me duly sworn, said that he resides in the Commonwealth of Pennsylvania, that he is Vice President of First Sealord Surety, Inc., the corporation described in and which executed the foregoing instrument; that he knows the corporate seal of the said Corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said Corporation; and that he signed his name thereto as Vice President of said Corporation by like authority.



(Seal)

Anthony T. Stewart

- Notary Public



CERTIFICATE

I, the undersigned Secretary of First Sealord Surety, Inc. do hereby certify that the original Power of Attorney of which the foregoing is a full, true and correct copy, is in full force and effect on the date of this Certificate and I do further certify that the Officer who executed the said Power of Attorney was one of the Officers authorized by the Board of Directors to appoint an Attorney-in-Fact as provided in Section 12-1 of the By-Laws of First Sealord Surety, Inc. This Certificate may be signed and sealed by facsimile under and by authority of the following provisions of the By-Laws of First Sealord Surety, Inc.:

"Section 12-2. The use of a printed facsimile of the corporate seal of the Corporation and of the signature of the Secretary or an Assistant Secretary on any certification of the correctness of a copy of an instrument executed by an authorized person pursuant to Article XII, Section 12-1 of the By-Laws appointing and authorizing an Attorney-in-Fact to sign in the name and on behalf of the Corporation surety bonds, underwriting undertakings, or other instruments described in said Section 12-1, with like effect as if such seal and such signature had been manually affixed and made."

In Witness Whereof, I have hereunto set my hand and affixed the corporate seal of the Corporation to these presents

this 29th day of April, 2009

This power of attorney is void unless the Bond number is inserted in this paragraph (insert Bond # here 09-3447), the bond number is the same number as on the original bond, and the bond number has been inserted by an officer or employee of the Company or by the agent.

(seal)

Gary L. Bragg

Gary L. Bragg, Secretary

**TOWN OF CUTLER BAY
STREET SWEEPER SERVICES
ITB # 09-05
FORM OF PERFORMANCE BOND**

KNOW ALL MEN BY THESE PRESENTS:

That, pursuant to the requirements of Florida Statute 255.05, we, _____, as Principal, hereinafter called Contractor, and _____, as Surety, are bound to the Town of Cutler Bay, Florida, as Obligee, hereinafter called Town, in the amount of _____ Dollars (\$ _____) for the payment whereof Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally.

WHEREAS, Contractor has by written agreement entered into a Contract, Bid/Contract awarded the day of _____, 2009, with Town for **STREET SWEEPER SERVICES** in accordance with drawings (plans) and specifications _____ which Contract is by reference made a part hereof, and is hereafter referred to as the Contract;

THE CONDITION OF THIS BOND is that if the Contractor:

1. Fully performs the Contract between the Contractor and the Town for **STREET SWEEPER SERVICES as scheduled** after the date of Contract commencement as specified in the Notice to Proceed and in the manner prescribed in the Contract; and bid specifications.
2. Indemnifies and pays Town all losses, damages (specifically including, but not limited to, damages for delay and other consequential damages caused by or arising out of the acts, omissions or negligence of Contractor), expenses, costs and attorney's fees including attorney's fees incurred in appellate proceedings, that Town sustains because of default by Contractor under the Contract; and
3. Upon notification by the Town, corrects any and all defective or faulty Work or materials which appear within **ONE (1) YEAR**.
4. Performs the guarantee of all Work and materials furnished under the Contract for the time specified in the Contract, then this Bond is void, otherwise it remains in full force.

Whenever Contractor shall be, and declared by Town to be, in default under the Contract, the Town having performed Town's obligations thereunder, the Surety may promptly remedy the default, or shall promptly:

- 4.1 Complete the Contract in accordance with its terms and conditions; or
- 4.2 Obtain a Bid or Bids for completing the Contract in accordance with its terms and conditions, and upon determination by Surety of the best, lowest, qualified, responsible and responsive BIDDER, or, if the Town elects, upon determination by the Town, and Surety jointly of the best, lowest, qualified, responsible and responsive BIDDER, arrange for a Contract between such BIDDER and Town, and make available as Work progresses (even though there should be a default or a succession of defaults under the Contract or Contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the Contract Price; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term "balance of the Contract Price." as used in this paragraph, shall mean the total amount payable by Town to Contractor under the Contract and any amendments thereto, less the amount properly paid by Town to Contractor.

No right of action shall accrue on this Bond to or for the use of any person or Corporation other than the Town

named herein.

The Surety hereby waives notice of and agrees that any changes in or under the Contract Documents and compliance or noncompliance with any formalities connected with the Contract or the changes do not affect Surety's obligation under this Bond.

Signed and sealed this _____ day of _____, 2009.

WITNESSES: _____

By:
Secretary

(Signature and Title)

(CORPORATE SEAL)

IN THE PRESENCE OF:

INSURANCE COMPANY:

By:
*(Agent and Attorney-in-Fact)

Address:
(Street)

Telephone No.: (____)

* (Power of Attorney must be attached)

State of _____

County of _____

On this, the _____ day of _____, 2009, before me, the undersigned Notary Public of the State of _____, the foregoing instrument was acknowledged by (name of Corporate officer), _____ (title), of (name of Corporation), a _____ (state of corporation) corporation, on behalf of the corporation.

WITNESS my hand
and official seal

Printed, typed or stamped name of Notary Public exactly as
commissioned

- Personally known to me, or
- Produced identification:

- _____
- Did take an oath, or
 - Did not take an oath

Bonded by:

END OF SECTION



**CONTRACT
DOCUMENTS**

**ENVIRONMENTAL
PERFORMANCE
SYSTEMS, INC.**

**SECTION 14
OSHA
ACKNOWLEDGMENT**

**ACKNOWLEDGMENT OF CONFORMANCE
WITH OSHA STANDARDS**

To the Town of Cutler Bay

We Environmental Performance System, hereby acknowledge and
Prime Contractor

agree that we, as the Prime Contractor for Town of Cutler Bay, **STREET SWEEPER SERVICES** as specified, have the sole responsibility for compliance with all the requirements of the Federal Occupational Safety and Health Act of 1970, and all State and local safety and health regulations, and agree to indemnify and hold harmless the Town of Cutler Bay, against any and all liability, claims, damages losses and expenses they may incur due to the failure of:

N/A

(Subcontractor's Names)

to comply with such act or regulation.

Environmental Performance System
CONTRACTOR

Yvette Sanz
ATTES

BY: Yvette Sanz

END OF SECTION



**CONTRACT
DOCUMENTS**

**ENVIRONMENTAL
PERFORMANCE
SYSTEMS, INC.**

**SECTION 15
GENERAL CONDITIONS**

GENERAL CONDITIONS

ARTICLE I - DEFINITION

Wherever used in these General Conditions or in the other Contract Documents, the following terms shall have the meaning indicated which shall be applicable to both the singular and plural thereof:

Acceptance: By the TOWN of the Work as being fully complete in accordance with the Contract Documents subject to waiver of claims.

Agreement: The written Agreement between the TOWN and the CONTRACTOR covering the Work to be performed, which includes the Contract Documents.

Addenda: Written or graphic instruments issued prior to the Bid Opening which modify or interpret the Contract Documents, Drawings and Specifications, by addition, deletions, clarifications or corrections.

Application for Payment: The form furnished by the TOWN which is to be used by the CONTRACTOR in requesting progress payments.

Approved: Means approved by the TOWN.

Bid: The offer or proposal of the BIDDER submitted on the prescribed form setting forth the prices for the Work to be performed.

BIDDER: Any person, firm or corporation submitting a Bid for Work.

Bonds: Bid, performance and payment bonds and other instruments of security, furnished by the CONTRACTOR and their surety in accordance with the Contract Documents and in accordance with the law of the State of Florida.

TOWN: Town of Cutler Bay, 10720 Caribbean Blvd., Suite 105 Cutler Bay, Florida 33189.

Contract Documents: Contract Documents shall include, Instructions to BIDDERS, CONTRACTOR'S Bid, the Bonds, the Notice of Award, these General Conditions, Special Conditions, the Technical Specifications, Drawings and Modifications, Notice to Proceed, Invitation to Bid, Insurance Certificates, Change Orders and Acknowledgment of Conformance with the Town of Cutler Bay.

Contract Price: The total monies payable to the CONTRACTOR under the Contract Documents.

Contract Time: The number of calendar days stated in the Agreement for the completion of the Work.

Contracting Officer: The individual who is authorized to sign the contract documents on behalf of the TOWN'S Governing body.

CONTRACTOR: The person, firm or corporation with whom the TOWN has executed the Agreement.

Day: A calendar day of twenty-four hours measured from midnight to the next midnight.

Field Order: A written order issued by the TOWN which clarifies or interprets the Contract Documents in accordance with Paragraph 9.3 or orders minor changes in the Work in accordance with Paragraph 10.2.

Notice of Award: The written notice by TOWN to the apparent successful BIDDER stating that upon compliance

with the conditions precedent to be fulfilled by him within the time specified, TOWN will execute and deliver the Agreement to him.

Notice to Proceed: A written notice given by TOWN to CONTRACTOR fixing the date on which the Contract Time will commence to run and on which CONTRACTOR shall start to perform their obligations under the Contract Documents.

Project: The entire Project to be performed as provided in the Contract Documents.

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.

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.

Surety: The corporate body which is bound with the CONTRACTOR and which engages to be responsible for the CONTRACTOR and their acceptable performance of the Work.

Work: Any and all obligations, duties and responsibilities necessary to the successful completion of the Project assigned to or undertaken by CONTRACTOR under the Contract Documents, including all labor, materials, equipment and other incidentals, and the furnishing thereof.

Written Notice: The term "Notice" as used herein shall mean and include all written notices, demands, instructions, claims, approvals and disapproval's required to obtain compliance with Contract requirements. Written notice shall be deemed to have been duly served if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or to an authorized representative or such individual, firm, or corporation, or if delivered at or sent by registered mail to the last business address known to them who gives the notice. Unless otherwise stated in writing, any notice to or demand upon the TOWN under this Contract shall be delivered to the TOWN.

ARTICLE 2 - PRELIMINARY MATTERS

Award:

- 2.1 The TOWN reserves the right to reject any and all Bids at its sole discretion. The Town, at its sole discretion, reserves the right to inspect any / all BIDDER's facilities to determine their capability of meeting the requirements for the Contract. Also, price, responsibility, and responsiveness of the BIDDER, the financial position, experience, staffing, equipment, materials, references, and past history of service to the Town and / or with other units of state, and / or local governments in Florida, or comparable private entities, will be taken into consideration in the Award of the Contract. No Notice of Award will be given until the TOWN has concluded any investigation(s) as they deem necessary to establish the BIDDER'S capability to perform the services as described in this CONTRACT, as substantiated by the required professional experience, client references, technical knowledge and qualifications; and sufficient labor and equipment to comply with the TOWN'S established standards, as well as the financial capability of the BIDDER to perform the Work in accordance with the Contract Documents to the satisfaction of the TOWN within the time prescribed. The TOWN reserves the right to reject the Bid of any BIDDER on the basis of these queries and investigations and who does not meet the TOWN'S satisfaction, even though the firm may possibly be the apparent lowest bidder. In analyzing Bids, the TOWN will also take into consideration client references, past work experience and work product, proven ability to satisfactorily perform the manufacturing and installation of roadway directional signage to TOWN standards; and alternate and unit prices if requested by the Bid forms. If the Contract is awarded, the TOWN will issue the Notice of Award and give the successful BIDDER a Contract for

execution within ninety (90) calendar days after opening of Bids. The Town specifically reserves the right to award the contract to a bidder who is not necessarily the lowest bidder on the basis of the results of these queries and investigation(s).

Execution of Agreement:

2.2 At least four counterparts of the Agreement, the Performance Bond, the Certificates of Insurance and such other Documents as required by the Contract Documents shall be executed and delivered by CONTRACTOR to the TOWN within ten (10) calendar days of receipt of the Notice of Award.

Forfeiture of Bid Security/Performance Bond:

2.3. Within ten (10) calendar days of being notified of the Award, CONTRACTOR shall furnish a Performance Bond containing all the provisions of the Performance Bond attached.

2.3.1 Bond shall be in the amount of one hundred percent (100%) of the Contract Price guaranteeing to TOWN the completion and performance of the Work covered in such Contract as well as full payment of all suppliers, material man, laborers, or Subcontractors employed pursuant to this Project. Bond shall be with a Surety company meeting the qualifications of Sections 2.3.4, 2.3.5 and 2.3.6.

2.3.2 Bond shall continue in effect for one and one half (1 1/2) years after final completion and acceptance of the Work with the liability equal to one hundred percent (100%) of the Contract Sum. The Performance Bond shall be conditioned that CONTRACTOR will, upon notification by TOWN, correct any defective or faulty Work or materials which appear within one and one half (1 1/2) years after final completion of the Contract.

2.3.3 Pursuant to the requirements of Section 255.05(1), Florida Statutes, CONTRACTOR shall ensure that the Bond referenced above shall be recorded in the public records of Dade County and Provide TOWN with evidence of such recording.

2.3.4 Bond must be executed by a surety company authorized to do business in the State of Florida as a 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.

2.3.5 The surety company shall hold a current certificate of authority as acceptable surety on federal bonds in accordance with the United States Department of Treasury Circular 570, current Revisions.

2.3.6 The TOWN will accept a surety bond from a company with a rating B+ or better.

2.3.7 Failure of the successful BIDDER to execute and deliver the Agreement and deliver the required bond and Insurance Certificates as stipulated in paragraph 2.2 shall be cause for the TOWN to annul the Notice of Award and declare the Bid and any security therefore forfeited.

Contractor's Pre-Start Representation:

2.4 CONTRACTOR represents that they have familiarized themselves with, and assumes full responsibility for having familiarized themselves with the nature and extent of the Contract Documents, Work, locality, and with all local conditions and federal, State and local laws, ordinances, rules and regulations that may in any manner affect performance of the Work, and represents that they have correlated their study and observations with the requirements of the Contract Documents.

Commencement of Contract Time:

2.5 The Contract Time will commence to run on the date stated in the Notice to Proceed and continue to run consecutively for the period of **three (3) years**, with an option to extend for an additional two (2) one (1) year terms. No extension of time will be given unless stated in writing. Rain days will not be a reason for an extension of time.

Liquidated damages:

2.6 Upon failure of CONTRACTOR to complete the Work within the time specified for completion, (plus approved extensions if any) CONTRACTOR shall pay to the TOWN the sum of **FIVE HUNDRED AND 00/100 (\$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 the TOWN 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. The TOWN 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, the CONTRACTOR shall pay in full such liquidated damages.

ARTICLE 3 - CORRELATION, INTERPRETATION AND INTENT OF CONTRACT DOCUMENTS

3.1 It is the intent of the Specifications to describe a complete Project to be delivered in accordance with the Contract Documents. The Contract Documents comprise the entire Agreement between the TOWN and the CONTRACTOR. They may be altered only by a Modification.

3.2 The Contract Documents are complementary; what is called for by one is as binding as if called for by all. If CONTRACTOR finds a conflict, error or discrepancy in the Contract Documents, they shall call it to the Town's attention in writing at once and before proceeding with the Work affected thereby; however, they shall not be liable to TOWN or CONSULTANT for their failure to discover any conflict, error or discrepancy in the Specifications or Drawings. The various Contract Documents shall be given precedence in case of conflict, error or discrepancy, as follows: Change Orders, Supplemental General Conditions, Agreement Modifications, Addenda, Special Conditions, Instructions to BIDDERS, General Conditions, Specifications and Drawings. If the requirements of other Contract Documents are more stringent than those of the Supplemental General Conditions, the more stringent requirements shall apply.

ARTICLE 4 - INSURANCE

Contractor's Liability Insurance:

4.1 CONTRACTOR shall provide and maintain in force until all the Work to be performed under this Contract has been completed and accepted by Town (or for such duration as is otherwise specified hereinafter), the insurance coverage set forth:

4.1.1 Worker's Compensation insurance at the statutory amount to apply for all employees in compliance with the "Workers' Compensation Law" of the State of Florida and all applicable federal laws. In addition, the policy(ies) must include: Employers' Liability at the statutory coverage amount. The CONTRACTOR shall further insure that all of its Subcontractors maintain appropriate levels of worker's compensation Insurance

4.1.2 Comprehensive General Liability with minimum limits of One Million Dollars (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 Comprehensive General Liability policy, without restrictive endorsements, as filed by the Insurance Services Office, and must include:

Premises and/or Operations.

Independent CONTRACTORS.

4.1.2.1 Premises and Operation

4.1.2.2 Independent Contractors

4.1.2.3 Personal Injury Coverage with Employee and Contractual Exclusions

4.1.3 Business Automobile Liability with minimum limits of One Million Dollars (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 endorsements, as filed by the Insurance Services Office, and must include:

4.1.3.1 Owned Vehicles.

4.1.3.2 Hired and Non-Owned Vehicles.

4.1.3.3 Employers' Non-Ownership.

5.1 Before starting the Work, the CONTRACTOR will file with the TOWN certificates of such insurance, acceptable to the TOWN; these certificates shall contain a provision that the coverage afforded under the policies will not be canceled or materially changed until at least thirty (30) calendar days prior written notice has been given to the TOWN by certified mail. The TOWN shall be named as an additional insured on the above-referenced policies.

5.2 The CONTRACTOR agrees that if any part of the Work under the Contract is sublet, they will require the Subcontractor(s) to carry insurance as required, and that they will require the Subcontractor(s) to furnish to them insurance certificates similar to those required by the TOWN in 5.1 above.

Cancellation and Re-Insurance:

5.3 If any insurance should be canceled or changed by the insurance company or should any insurance expire during the period of this contract, the CONTRACTOR shall be responsible for securing other acceptable insurance to provide the coverage specified in this section to maintain coverage during the life of this Contract.

5.4 All deductibles must be declared by the CONTRACTOR and must be approved by the TOWN. At the option of the TOWN, either the CONTRACTOR shall eliminate or reduce such deductible or the CONTRACTOR shall procure a Bond, in a form satisfactory to the TOWN, covering the same.

ARTICLE 6 - CONTRACTOR'S RESPONSIBILITIES

Concerning Subcontractors :

6.1 No subcontracts are permitted under this contract.

Laws and Regulations:

6.2 The CONTRACTOR will give all notices and comply with all local, state, and federal laws, ordinances, rules and regulations applicable to the Work. If the CONTRACTOR observes that the Specifications or Drawings are at variance therewith, they will give the TOWN prompt written notice thereof, and any necessary changes shall be adjusted by an appropriate modification. If the CONTRACTOR performs any Work knowing it to be contrary to such laws, ordinances, rules and regulations, and without such notice to the TOWN, they will bear all costs arising wherefrom; however, it shall not be their primary responsibility to make certain that the Drawings and Specifications are in accordance with such laws, ordinances, rules and regulations.

Taxes :

6.3 Cost of all applicable sales consumer, use, and other taxes for which the CONTRACTOR is liable under the Contract shall be included in the Contract Price stated by the CONTRACTOR.

Safety and Protection :

6.4. The CONTRACTOR will be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the **ROADWAY AND TRAFFIC DESIGN STANDARDS SERIES 600 TRAFFIC CONTROL THROUGH WORK ZONES 2006** or latest addition. They will take all necessary precautions for the safety of, and will provide the necessary protection to prevent damage, injury or loss to:

6.4.1 All employees and other persons, whom may be affected thereby,

6.4.2 All the Work and all materials or equipment to be incorporated therein, whether in storage on or off the work area, and

6.4.3 Other property at the work area or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of the work.

6.5 The **CONTRACTOR will designate a responsible member** of their organization at the site whose duty shall be the prevention of accidents. This person shall be the CONTRACTOR'S Superintendent unless otherwise designated in writing by the CONTRACTOR to the TOWN.

Emergencies :

6.6 In emergencies affecting the safety of persons or the Work or property at the site or adjacent thereto, the CONTRACTOR, without special instruction or authorization from the TOWN, is obligated to act, at their discretion, to prevent threatened damage, injury or loss. They will give the TOWN prompt written notice of any significant changes in the Work or deviations from the Contract Documents caused thereby. If the CONTRACTOR believes that additional Work done by them in an emergency which arose from causes beyond their control entitles them to an increase in the Contract Price or an extension of the Contract Time, they may make a claim therefore as provided in articles 11 and 12.

Public Convenience and Safety:

6.7 The CONTRACTOR shall, at all times, conduct the Work in such a manner as to insure the least practicable obstruction to public travel. The convenience of the general public and of the residents along and adjacent to the area of Work shall be provided for in a satisfactory manner, consistent with the operation and local conditions. Proper Maintenance of Traffic (MOT) devices shall be placed immediately adjacent to the Work, in a conspicuous position, at such locations as traffic demands. The MOT shall be designed as outlined in the latest addition of **ROADWAY AND TRAFFIC DESIGN STANDARDS SERIES 600**. At any time that streets are required to be closed or blocked, the CONTRACTOR shall notify law enforcement agencies before the street is closed and again as soon as it is opened. Access to fire hydrants and other fire extinguishing equipment shall be provided and maintained at all times.

Indemnification:

6.8 In consideration of the separate sum of twenty-five dollars (\$25.00) and other valuable consideration, the CONTRACTOR shall indemnify and save harmless the TOWN, its officers, agents and employees, from or on account of any injuries or damages, received or sustained by any person or persons during or on account of any operations connected with the work, or by or in consequence of any negligence (excluding negligence of TOWN, in connection with the same; or by use of any improper materials or by or on account of any act or omission of the said CONTRACTOR or his Subcontractor, agents, servants or employees. The CONTRACTOR will indemnify and hold harmless the TOWN and their agents or employees from and against all claims, damages, losses and expenses including attorneys' fees 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 Work itself) including the loss of use resulting wherefrom and (b) is caused in whole or in part by any negligent act or omission of the CONTRACTOR, Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused by a party indemnified hereunder. In the event that a court of competent jurisdiction determines that Sec. 725.06 (2), F.S. is applicable to this Work, then in lieu of the above provisions of this section 6.18 the parties agree that CONTRACTOR shall indemnify and hold harmless TOWN, their officers and employees, to the fullest extent authorized by Sec. 725.06 (2) F.S., which statutory provisions shall be deemed to be incorporated herein by reference as if fully set forth herein.

6.9 In the event that any action or proceeding is brought against TOWN by reason of any such claim or demand, CONTRACTOR, upon written notice from TOWN shall defend such action or proceeding by counsel satisfactory to TOWN. The indemnification provided above shall obligate CONTRACTOR to defend at its own expense or to provide for such defense, at TOWN'S option, any and all claims of liability and all suits and actions of every name and description that may be brought against TOWN, excluding only those which allege that the injuries arose out of the sole negligence of TOWN, which may result from the operations and activities under this Contract whether the operations be performed by CONTRACTOR, its Subcontractors or by anyone directly or indirectly employed by either.

ARTICLE 7 - TOWN'S RESPONSIBILITIES

7.1 The TOWN will issue all communications to the CONTRACTOR.

7.3 The TOWN will furnish the data required of them under the Contract Documents promptly.

ARTICLE 8 - CONSULTANTS' STATUS DURING THE WORK

Measurement of Quantities:

8.1 All Work completed under the Contract will be measured by the TOWN according to the United States Standard Measures. All linear surface measurements will be made horizontally or vertically as required by the item measured.

Rejecting Defective Work:

8.2 The TOWN will have authority to disapprove or reject Work which is "defective" (which term is hereinafter used to describe Work that is unsatisfactory, faulty or defective, or does not conform to the requirements of the Contract Documents or does not meet the requirements of any inspection, test or approval referred to in Special Condition, or has been damaged prior to final acceptance). Work determined to be defective will be remedied by the contractor at no additional cost to the Town within a period of 24 hours.

Decisions on Disagreements:

8.3 The TOWN will be the initial interpreter of the Technical Specifications.

Limitations on Consultant's Responsibilities:

8.4 The TOWN will not be responsible for the acts or omissions of the CONTRACTOR, or any Subcontractors, or any of their or their agents or employees, or any other person performing any of the Work.

ARTICLE 9 - CHANGES IN THE WORK

9.1 Without invalidating the Agreement, the TOWN may, at any time or from time to time, order additions, deletions or revisions in the Work; these shall be authorized by Change Orders. Upon receipt of a Change Order, the CONTRACTOR will proceed with the Work involved. All such Work shall be executed under the applicable conditions of the Contract Documents. If any Change Order causes an increase or decrease in the Contract Price or an extension or shortening of the Contract Time, an equitable adjustment will be made as provided in Article 11 or Article 12. A Change Order signed by the CONTRACTOR indicates their agreement therewith.

9.2 The TOWN may authorize minor changes or alterations in the Work not involving extra cost and not inconsistent with the overall intent of the Contract Documents. These may be accomplished by a Field Order. If the CONTRACTOR believes that any minor change or alteration authorized by the TOWN entitles them to an increase in the Contract Price or extension of Contract Time, they may make a claim therefore as provided in Articles 11 and 12.

9.3 Additional Work performed by the CONTRACTOR without authorization of a Change Order will not entitle them to an increase in the Contract Price or an extension of the Contract Time, except in the case of an emergency as provided in paragraph 6.11 and except as provided in paragraph 10.2.

9.4 The TOWN will execute appropriate Change Orders prepared by the TOWN covering changes in the Work, to be performed and Work performed in an emergency as provided in paragraph 6.11 and any other claim of the CONTRACTOR for a change in the Contract Time or the Contract Price which is approved by the TOWN.

9.5 It is the CONTRACTOR'S responsibility to notify his Surety of any changes affecting the general scope of the Work or change in the Contract Price or Contract Time and the amount of the applicable bonds shall be adjusted accordingly. The CONTRACTOR will furnish proof of such an adjustment to the TOWN.

ARTICLE 10 - CHANGE OF CONTRACT PRICE

10.1 The Contract Price constitutes the total compensation payable to the CONTRACTOR for performing the Work. All duties, responsibilities and obligations assigned to or undertaken by the CONTRACTOR shall be at their expense without changing the Contract Price.

10.2 (a) The TOWN may, at any time, without written notice to the sureties, by written order designated or indicated to be a Change Order, make any change in the Work within the general scope of the Contract, including but not limited to changes:

- (1) in the specifications (including drawings and designs);
- (2) in the method or manner of performance of the Work.
- (3) in the TOWN-furnished facilities, equipment, materials, services, or site;
- or
- (4) directing acceleration in the performance of the Work.

(b) Except as herein provided, no order, statement, or conduct of the TOWN shall be treated as a change under this clause or entitle the CONTRACTOR to an equitable adjustment hereunder.

(c) If any change order under this clause causes an increase or decrease in the CONTRACTOR'S cost of, or the time required for, the performance of any part of the Work, under this Contract, whether or not changed by any order, an equitable adjustment shall be made and the Contract modified in writing accordingly.

(d) If the CONTRACTOR intends to assert a claim for an equitable adjustment under this clause, he must, within ten (10) calendar days after receipt of a written Change Order, submit to the TOWN a written notice including a statement setting forth the general nature and monetary extent of such claim, and supporting data.

(e) No claim by the CONTRACTOR for an equitable adjustment hereunder shall be allowed if not submitted in accordance with this section or if asserted after final payment under this Contract.

10.3 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 the following way:

10.3.1 By negotiated lump sum.

ARTICLE 11 - PAYMENTS AND COMPLETION

Payments to Contractor

11.1 At least ten (10) calendar days before each progress payment falls due (but not more often than once a month), the CONTRACTOR will submit to the TOWN a partial payment estimate filled out and signed by the CONTRACTOR covering the Work performed during the period covered by the partial payment estimate and supported by such data as the TOWN may reasonably require.

If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and

suitably stored at or near site, the partial payment estimate shall also be accompanied by such supporting data, satisfactory to the TOWN, as will establish the TOWN'S title to the material and equipment and protect their interest therein, including applicable insurance. The TOWN will within ten (10) calendar days after receipt of each partial payment estimate, either indicate in writing their approval of payment and present the partial payment estimate to the TOWN, or return the partial payment estimate to the CONTRACTOR, indicating in writing their reasons for refusing to approve payment. In the latter case, the CONTRACTOR may make the necessary corrections and resubmit the partial payment estimate. The TOWN, will within thirty (30) calendar days of presentation to them of any approved partial payment estimate, pay the CONTRACTOR a progress payment on the basis of the approved partial payment estimate. The TOWN may retain ten (10) percent of the amount of each payment until final completion and acceptance of all Work covered by the Contract Documents. On completion and acceptance of a part of the Work on which the price is stated separately in the Contract Documents, payment may be made in full, including retained percentages, less authorized deductions. Any interest earned on the retainage shall accrue to the benefit of the TOWN.

11.2 The TOWN shall have the right to demand and receive from the CONTRACTOR, before he shall receive final payment, final releases of lien executed by all persons, firms or corporations who have performed or furnished labor, services or materials, directly or indirectly, used in the Work. Likewise, as a condition to receiving any progress payment, the TOWN may require the CONTRACTOR to furnish partial releases of lien executed by all persons, firms and corporations who have furnished labor, services or materials incorporated into the Work during the period of time for which the progress payment is due, releasing such lien rights as those persons, firms or corporations may have for that period.

ARTICLE 12 - SUSPENSION OF WORK AND TERMINATION

12.1 The TOWN may, at any time and without cause, suspend the Work or any portion thereof for a period of not more than ninety (90) calendar days by notice in writing to the CONTRACTOR which shall fix the date on which Work shall be resumed. For suspensions longer than ninety (90) calendar days, The CONTRACTOR will be allowed an increase in the Contract Price or an extension of the Contract Time, or both, directly attributable to any suspension if they make a claim therefore as provided in Articles 11 and 12.

Work During Inclement Weather

12.2 No Work shall be done under these specifications except by permission of the TOWN when the weather is unfit for good and careful Work to be performed. Should the severity of the weather continue, the CONTRACTOR upon the direction of the TOWN, shall suspend all Work until instructed to resume operations by the TOWN and the Contract Time pursuant to Section 12.7 shall be extended to cover the duration of the order

Town May Terminate

12.3 If the CONTRACTOR is adjudged bankrupt or insolvent, or if they make a general assignment for the benefit of their creditors, or if a trustee or receiver is appointed for the CONTRACTOR or for any of their property, or if they file a petition to take advantage of any debtor's act, or to reorganize under bankruptcy or similar laws, or if they repeatedly fails to supply sufficient skilled workmen or suitable materials or equipment, or if they repeatedly fail to make prompt payments to Subcontractors or for labor, materials or equipment or they disregards laws, ordinances, rules, regulations or orders of any public body having jurisdiction, or if they disregard the authority of the TOWN, or if they otherwise violate any provision of the Contract Documents, then the TOWN may, without prejudice to any other right or remedy and after giving the CONTRACTOR and their surety seven (7) calendar days written notice, terminate the services of the CONTRACTOR and take possession of the Project and of all materials, equipment, tools, equipment and machinery thereon owned by the CONTRACTOR, and finish the Work by whatever method they may deem expedient. In such case the CONTRACTOR shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Price exceeds the direct and indirect costs of completing the Project, including compensation for additional professional services, such excess shall be paid to the

CONTRACTOR. If such costs exceed such unpaid balance, the CONTRACTOR will pay the difference to the TOWN. Such costs incurred by the TOWN will be determined by the TOWN and incorporated in a Change Order.

If after termination of the CONTRACTOR under this Section, it is determined by a court of competent jurisdiction for any reason that the CONTRACTOR was not in default, the rights and obligations of the TOWN and the CONTRACTOR shall be the same as if the termination had been issued pursuant to Section 12.5.

12.4 Where the CONTRACTOR'S services have been so terminated by the TOWN said termination shall not affect any rights of the TOWN against the CONTRACTOR then existing or which may thereafter accrue. Any retention or payment of moneys by the TOWN due the CONTRACTOR will not release the CONTRACTOR from liability.

12.5 Upon seven (7) calendar days written notice to the CONTRACTOR, the TOWN may, without cause and without prejudice to any other right or remedy, elect to terminate the Agreement. In such case, the CONTRACTOR shall be paid for all Work executed and accepted by the TOWN as of the date of the termination. No payment shall be made for profit for Work which has not been performed.

ARTICLE 13 - MISCELLANEOUS

13.1 Whenever any provision of the Contract Documents requires the giving of written notice it shall be deemed to have been validly given if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or if delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to them who gives the notice.

13.2 The Contract Documents shall remain the property of the TOWN. The CONTRACTOR and the CONSULTANT shall have the right to keep one record set of the Contract Documents upon completion of the Project.

13.3 The duties and obligations imposed by these General Conditions, Special Conditions and Supplemental Conditions and the rights and remedies available hereunder, and, in particular but without limitation, the warranties, guarantees and obligations imposed upon CONTRACTOR and those in the Special Conditions and the rights and remedies available to the TOWN and thereunder, shall be in addition to, and shall not be construed in any way as a limitation of, any rights and remedies available by law, by special guarantee or by other provisions of the Contract Documents.

13.4 Should the TOWN or the CONTRACTOR suffer injury or damage to its person or property because of any error, omission, or act of the other or of any of their employees or agents or others for whose acts they are legally liable, claim shall be made in writing to the other party within a reasonable time of the first observance of such injury or damage.

13.5 Anti-discrimination: The bidder certifies compliance with the non-discrimination clause contained in Section 202, Executive Order 11246, as amended by Executive Order 11375, relative to equal employment opportunity for all persons without regard to race, color, religion, sex or national origin. Furthermore the bidder shall comply with all other State and local laws and policies that prohibit discrimination.

13.6 Contractor shall abide by the applicable provisions of Chapter 119, Florida Statutes (Public Records).

ARTICLE 14 - WAIVER OF JURY TRIAL

14.1 TOWN and CONTRACTOR knowingly, irrevocably voluntarily and intentionally waive any right either may have to a trial by jury in State or Federal Court proceedings in respect to any action, proceeding, lawsuit or counterclaim based upon the Contract Documents or the performance of the Work thereunder.

ARTICLE 15 - ATTORNEYS FEES/JURISDICTION/VENUE/GOVERNING LAW

15.1 The law of the State of Florida shall govern the contract between the Town of Cutler Bay and the successful bidder and any action shall be brought in Miami-Dade County, Florida. In the event of litigation 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 attorney fees, which shall include any fees and costs attributable to appellate proceedings arising on and of such litigation.

ARTICLE 16 - SEVERABILITY

16.1 If any provision of the Contract or the application thereof to any person or situation shall to any extent, be held invalid or unenforceable, the remainder of the Contract, and the application of such provisions to persons or situations other than those as to which it shall have been held invalid or unenforceable shall not be affected thereby, and shall continue in full force and effect, and be enforced to the fullest extent permitted by law.

ARTICLE 17 - INDEPENDENT CONTRACTOR

17.1 The CONTRACTOR is an independent CONTRACTOR under the Contract. Services 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 services rendered under the Contract shall be those of the CONTRACTOR.

END OF SECTION

[Space Left Intentionally Blank]



**CONTRACT
DOCUMENTS**

**ENVIRONMENTAL
PERFORMANCE
SYSTEMS, INC.**

**SECTION 16
SUPPLEMENTARY
CONDITIONS**

**TOWN OF CUTLER BAY
STREET SWEEPER SERVICES
ITB # 09-05
SUPPLEMENTARY CONDITIONS**

1. All Town controlled roads must be cleaned on a biweekly basis. All Town controlled roads include curb and/or gutter or swale roads. The entire cross section of the road must be swept, this to include any turning lane whether it is in the middle or side of the cross section.
2. Sweeping time shall be determined at the discretion of the CONTRACTOR. Prior to commencing work under this agreement, CONTRACTOR must submit a sweeping time schedule to the TOWN for review and approval. Town reserves the right to review such schedules and require modification to CONTRACTOR'S sweeping time schedule prior to beginning services if it is determined that certain times are disruptive to the public.
3. CONTRACTOR shall use only sweepers of industrial and municipal size with the capacity to transport debris. ALL sweeper(s) used must be equipped with a water spray system for dust control. The equipment shall have flashing amber lights visible for a minimum of one (1) mile and mounted for three hundred sixty (360) degree visibility and must otherwise comply with the requirements of chapter 316 State Uniform Traffic Control- Florida Statues. The Sweeper must also have an arrow board .
4. In the event of machine failure a replacement machine will finish the work within the allocated time period for that section. If a replacement machine can not be allocated the TOWN must be made aware.
5. The removal, hauling and dumping of debris shall be the sole responsibility of CONTRACTOR. All dumping tickets must be included with contractor's monthly invoice. All removal, hauling, and dumping of debris must be done in accordance with all applicable laws and regulations. All transportation cost and tipping/disposal fees must be the sole expense of the CONTRACTOR. In addition, the CONTRACTOR must report to the TOWN the tonnage that is swept and disposed from the Town on a monthly basis. Failure to submit monthly disposal reports will result in no payment for the work completed for that month.
6. CONTRACTOR must have a supervisor available at all times who may be contacted by TOWN regarding street sweeping services.

7. All work must be documented using the form provided on the Bid Form, failure to do so will result in failure of payment.
8. Contractor to provide a GPS that is able to record all the work conducted. (Example of GPS device: Trackstick® or Pro-Trackstick®) A digital file will be provided to the TOWN at no additional cost. Digital File will be used to evaluate all invoices. The following attributes will be standard in the file:
 - a. Date
 - b. Start Time
 - c. End Time
 - d. Driver's Name
 - e. Truck Number
9. Contractor's Vehicles: Contractor's vehicles shall be in good repair, free from leaking fluids, and properly registered. The Town may require the repair or replacement of equipment as reasonable necessary. All vehicles used by the Contractor to perform the Work under this Contract shall be painted uniformly with the name of the Contractor, business telephone number and the number of the vehicle in letter legible to the public. No other advertising shall be permitted on the vehicles. Additionally, the Town reserves the right to place a magnetic sign on each vehicle during the period which the vehicle is in service for the Town. These magnetic signs will be provided by the Contractor at the Contractor's expense, TWO (2) maximum signs per vehicle.
10. Sales Tax and Excise Tax: The Contractor shall pay all sales, consumer, use and other similar taxes required to be paid by the Contractor under the laws and regulations of the State of Florida, Miami-Dade County and the Town of Cutler Bay. The Town's State Tax exempt status shall not be for the use of the Contractor at any time.
11. No fuels, oils, solvents, or similar materials are to be disposed of in any Catch Basins. The Contractor must closely adhere to local, state, and Federal Environmental Protection Agency requirements and is responsible for all non-compliance penalties.

END OF DOCUMENT



**CONTRACT
DOCUMENTS**

**ENVIRONMENTAL
PERFORMANCE
SYSTEMS, INC.**

**SECTION 16
SUMMARY OF WORK**

**TOWN OF CUTLER BAY
STREET SWEEPER SERVICES
ITB # 09-05
SUMMARY OF WORK**

The Work covered by the Specifications and Contract Documents, consist of **STREET SWEEPER SERVICES** as described below and in the following chart listing Town Streets and Avenues.

The full scope of work will include **STREET SWEEPER SERVICES** of specified streets and avenues these services are conducted as follows:

- Sweeping services will consist of the collection and removal of paper, leaves and other visible debris that collect in the gutter and on the roadway.
- All work will be logged using the form provided.
- A digital file of the work done must be submitted on a biweekly basis.
- The work should be performed during off peak hours to minimize disruption of traffic.
- All debris to be disposed of in a legal manner.
- Copies of any tickets shall be included with monthly invoice.
- Inspection of the work will be performed within 48 hours and any length of road that has more than 25 pounds of debris in a distance of 1320 feet will be considered defective.

END OF SECTION