

TOWN OF CUTLER BAY

SECTION 3

CONTRACT BETWEEN OWNER AND CONTRACTOR

THIS CONTRACT is dated as of the ____ day of _____ in the year 2018 (which shall be the Effective Date of the Contract) by and between the Town of Cutler Bay (hereinafter called "Owner" or "Town") and _____ (hereinafter called "Contractor").

Owner and Contractor, in consideration of the mutual covenants hereinafter set forth, agree as follows:

Article 1. WORK. Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

Provide labor and equipment required to perform the proposed improvements along Manta Drive in the Town of Cutler Bay. The work shall include but not be limited to: storm drainage improvements (inlets, manholes, culverts, exfiltration trenches), the installation of 5 foot wide concrete sidewalks (with 4" and 6" thickness depending on the location), driveway approaches, ADA crosswalks, continuous valley gutter, milling and resurfacing of the existing asphalt in the locations noted, site restoration, back of sidewalk harmonization and street tree plantings to increase canopy and promote pedestrian activity. Utilization of these services will require close coordination with the Town and Engineer.

The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

TOWN OF CUTLER BAY

MANTA DRIVE ROADWAY IMPROVEMENT PROJECT

("THE PROJECT")

Article 2. ENGINEER. The Project's construction, engineering and inspection services will be provided by the following:

CEI:

R.J. Behar & Company, Inc.
6861 SW 196 Avenue
Suite 302
Pembroke Pines, FL 33332

Who is hereinafter called "Engineer" and who will assume all duties and responsibilities and will have the rights and authority assigned to Engineer in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

Article 3. CONTRACT TIME.

- 3.1** If awarded, the work will be substantially completed within one hundred and twenty (120) calendar days after the date when the Contract Time commences to run as provided in paragraph 2.03 of the General Conditions, and completed and ready for final payment in accordance with paragraph 14.07 of the General Conditions within one hundred and fifty-three (153) calendar

days after the date when the Contract Time commences to run. The Town will allow extended daily working hours and work on weekends with advance notice.

- 3.2 Liquidated Damages.** Owner and Contractor recognize that time is of the essence of this Contract and that Owner will suffer financial loss and other damages if the Work is not substantially or finally complete within the time specified in paragraph 3.1 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. They also recognize the expense and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not substantially or finally complete on time. Contractor acknowledges and agrees that the actual delay damages which Owner will suffer in the event of delay in achieving Substantial Completion or Final Completion of the Work are difficult, if not impossible, to determine and that the liquidated damages described herein are a fair and reasonable estimate of the delay damages which the Owner is expected to suffer in the event of such delay. Accordingly, instead of requiring any such proof, Owner and Contractor agree, that as liquidated damages for delay (but not as a penalty), Contractor shall pay Owner in accordance with FDOT Specifications Table below for each day that expires after the time specified in Paragraph 3.1 for Substantial Completion until the Work is substantially complete. Liquidated damages shall be deducted from the Contractor's Applications for Payment. However, if at the time of the Contractor's Final Application for Payment, Contractor is owed insufficient amounts to fully cover the deduction for liquidated damages, then Contractor shall pay any amount due within ten (10) days of written demand by Owner.

FDOT Specifications Table

Amount of Liquidated Damages: Applicable liquidated damages are the amounts established in the following schedule:

Original Contract Amount Daily Charge Per Calendar Day	
\$50,000 and under	\$763
Over \$50,000 but less than \$250,000.....	\$958
\$250,000 but less than \$500,000.....	\$1,099
\$500,000 but less than \$2,500,000.....	\$1,584
\$2,500,000 but less than \$5,000,000.....	\$2,811
\$5,000,000 but less than \$10,000,000.....	\$3,645
\$10,000,000 but less than \$15,000,000.....	\$4,217
\$15,000,000 but less than \$20,000,000.....	\$4,698

Article 4. CONTRACT PRICE.

- 4.1** Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents and the Schedule of Values provided for payment request purposes in current funds as follows:

Contract Price _____
 Contract Price (in words) _____

- 4.2** Included in the Agreement Sum is an allowance account of fifty thousand dollars (**\$50,000**) for the Base Bid Form for unforeseen conditions, potential construction changes and quantity adjustments, and additional work or materials that the Town may deem necessary if ordered and authorized by the Town Manager in accordance with the Contract Documents. Money may only be taken from this account at the prior approval of the Engineer and pursuant to any procedures outlined by the Town Manager.

Article 5. PAYMENT PROCEDURES.

Contractor shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

5.1 PROGRESS PAYMENTS. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment as recommended by Engineer, on or before the 28th day of each month during construction as provided below. The Application for Payment shall be in AIA format. All progress payments will be on the basis of the progress of the Work measured by the Schedule of Values provided in paragraph 14.01 of the General Conditions and the requirements of the Contract Documents.

5.1.1 Prior to Substantial Completion, progress payments will be in an amount equal to: ninety percent (90%) of the Work completed and ninety percent (90%) of materials and equipment not incorporated in the Work but delivered and suitably stored, less in each case the aggregate of payments previously made.

5.1.2 Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to ninety-five percent (95%) of the Contract Price, less such amounts as Engineer shall determine in accordance with paragraph 14.02.B.5 of the General Conditions.

5.2. FINAL PAYMENT. Upon Final Completion and acceptance of the Work in accordance with paragraph 14.07.B.1 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said paragraph 14.07.B.1.

Article 6. INTEREST. Not Applicable

Article 7. CONTRACTOR'S REPRESENTATIONS.

7.1. In order to induce Owner to enter into the Contract, Contractor makes the following representations:

Contractor has thoroughly and to its full satisfaction familiarized himself 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 in any manner may affect cost, progress or performance of the Work. Contractor has: (a) examined the Contract Documents, Project Specifications and Drawings thoroughly to its full satisfaction and has undertaken the responsibility to determine, within the scope of Contractor's competence as a licensed General Contractor, that the Project Specifications and Drawings are fit and proper for the performance of the Work and to the best of Contractor's knowledge are: (i) free from material errors, omissions, and/or inconsistencies; and (ii) are in compliance with applicable laws, statutes, building codes, ordinances, rules and regulations, recognizing however, that Contractor is not responsible for the design of the Project; (b) visited the site to familiarize himself with local conditions that may in any manner affect cost, progress or performance of the Work; (c) examined the Project Site to its full satisfaction, including any existing work or improvements in place, and has determined that the same are fit and proper to receive the Work in their present condition and Contractor waives all claims that same are not in accordance with all data and information with respect to the Project as specified in the Drawings and Project Specifications and/or as provided by Owner and Engineer; (d) familiarized himself with federal, state and local laws, ordinances, rules, policies, and regulations that may in any manner affect cost, progress or performance of the Work; (e)

studied and carefully correlated Contractor's observations with the Contract Documents; and (f) at Contractor's own expense, made or obtained any additional examinations, investigations, explorations, tests and studies, and obtained any additional information and data which pertain to the physical conditions (surface, sub-surface and underground facilities) at or contiguous to the Project or otherwise which may affect cost, progress, performance or furnishing of the Work and which Contractor deems necessary to determine its Contract Price for performing and furnishing the Work in accordance with the time, price and other terms and conditions of the Contract Documents.

- 7.2. Contractor has studied carefully all reports of investigations and tests of subsurface and latent physical conditions at the site or otherwise affecting cost, progress or performance of the Work which were relied upon by Engineer in the preparation of the Drawings and Specifications and which have been identified in the Supplementary Conditions.
- 7.3. Contractor has made or caused to be made examinations, investigations and tests and studies of such reports and related data in addition to those referred to in paragraph 7.2 as he deems necessary for the performance 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, tests, reports or similar data are or will be required by Contractor for such purposes.
- 7.4. Contractor has correlated and considered the results of all such observations, examinations, investigations, tests, reports and data with the terms and conditions of the Contract Documents and in reaching the Contract Price and Contract Time.
- 7.5. Contractor has given Engineer written notice of all conflicts, errors or discrepancies that he has discovered in the Contract Documents and the written resolution thereof by Engineer is acceptable to Contractor. Contractor shall not rely on any conflicts, errors or discrepancies that Contractor knew or should have known exist in the Contract Documents as a basis for a claim for an extra to the Contract Price or Contract Time.
- 7.6 **Subletting or Assigning of Contracts.** Do not, sell, transfer, assign or otherwise dispose of the Contract or Contracts or any portion thereof, or of the right, title, or interest therein, without written consent of the Department. If the Contractor chooses to sublet any portion of the Contract, the Contractor must provide a written request to sublet work on the Certification of Sublet Work form developed by the Department for this purpose. With the Engineer's acceptance of the request, the Contractor may sublet a portion of the work, but shall perform with its own organization work amounting to not less than 40% of the total Contract amount. The Certification of Sublet Work request will be deemed acceptable by the Department, for purposes of the Department's consent, unless the Engineer notifies the Contractor within 5 business days of receipt of the Certification of Sublet Work that the Department is not consenting to the requested subletting.

Include in the total Contract amount the cost of materials and manufactured component products, and their transportation to the project site. For the purpose of meeting this requirement the Department will not consider off-site commercial production of materials and manufactured component products that the Contractor purchases, or their transportation to the project, as subcontracted work.

If the Contractor sublets a part of a Contract item, the Department will use only the sublet proportional cost in determining the percentage of subcontracted normal work.

Execute all agreements to sublet work in writing and include all pertinent provisions and requirements of the Contract. All other agreements must be in writing and reference all applicable Contract provisions. Upon request, furnish the Department with a copy of the subcontract and agreement. The subletting of work does not relieve the Contractor or the surety of their respective liabilities under the Contract.

The Department recognizes a subcontractor only in the capacity of an employee or agent of the Contractor and the Engineer may require the Contractor to remove the subcontractor as in the case of an employee.

Article 8. CONTRACT DOCUMENTS.

The Contract Documents that comprise the entire Contract between Owner and Contractor are attached to this Contract, made a part hereof and consist of the items listed in the general conditions and the following:

- 8.1. This Contract
- 8.2. Invitation to Bid
- 8.3. Bid Form
- 8.4. Standard General Conditions
- 8.5. Supplementary Conditions
- 8.6. Detailed Specifications as included in this package and as referenced
- 8.7. Code of Silence/Campaign Contribution Ordinance/Lobbyist Registration Requirements
- 8.8. Addendum Acknowledgement
- 8.9. Anti-Kickback Affidavit
- 8.10. Non-Collusive Affidavit
- 8.11. Sworn Statement
- 8.12. Qualification Statement
- 8.13. Performance Bond
- 8.14. Payment Bond
- 8.15. Notice of Intent to Award
- 8.16. Notice to Proceed
- 8.17. Drug-Free Work Place Form
- 8.18. Construction Plans titled – “MANTA DRIVE ROADWAY IMPROVEMENT PROJECT”
- 8.19. Any Modifications, including Work Authorizations, duly delivered after execution of the Contract.
- 8.20. Local Agency Program (LAP) Attachments

There are no Contract Documents other than those listed above in this Article 8. The Contract Documents may only be altered, amended or repealed by a Modification (as defined in Section 1 of the General Conditions).

Article 9. MISCELLANEOUS

- 9.1. Terms used in this Contract which are defined in Article 1 of the General Conditions shall have the meanings indicated in the General Conditions.
- 9.2. No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an

assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

- 9.3. Owner and Contractor each binds himself, his partners, successors, assigns and legal representatives to the other party hereto, his partners, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.
- 9.4. This Contract may be executed in counterparts.
- 9.5. The Owner shall retain the ownership of all shop drawings and design drawings once payment therefore is made.
- 9.6. Owner and Contractor hereby knowingly, irrevocably, voluntarily and intentionally waive any right either may have to a trial by jury in respect to any action or proceeding based upon the contract documents or arising out of, under, or in connection with the work or the project.
- 9.7. The law of the State of Florida shall govern the contract between the Town of Cutler Bay and the Contractor 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.
- 9.8. **INDEMNIFICATION.** The parties agree that 1% of the total compensation paid to the Contractor for the performance of this agreement shall represent the specific consideration for the Contractor's indemnification of the Town as set forth in this Section and in the Terms and Conditions.

"To the fullest extent permitted by law, the Agency's contractor shall indemnify and hold harmless the Agency, the State of Florida, Department of Transportation, and its officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness or intentional wrongful misconduct of the contractor and persons employed or utilized by the contractor in the performance of this Contract."

This indemnification shall survive the termination of this Contract. Nothing contained in this paragraph is intended to nor shall it constitute a waiver of the State of Florida and the Agency's sovereign immunity.

To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless the Town and their consultants, agents and employees from and against all claims, damages, losses and expenses, direct, indirect or consequential (including but not limited to fees and charges of attorneys and other professionals and court costs) arising out of or resulting from the performance of the work, provided that any such claim, damage, loss or expense (a) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the work itself) including the loss of use resulting there from and (b) is caused in whole or in part by any willful and wanton or negligent or gross negligent acts or omission of Contractor, any subcontractor, any person or organization directly or indirectly employed by any of them to perform or furnish any of the work or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party

indemnified hereunder or arises by or is imposed by Law and Regulations regardless of the negligence of any such party.

In any and all claims against the Town or any of their consultants, agents or employees by any employee of Contractor, any Subcontractor, any person or organization directly or indirectly employed by any of them to perform or furnish any of the work or anyone for whose acts any of them may be liable, the indemnification obligation under the above paragraph shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Contractor or any such Subcontractor or other person or organization under workers or workman's compensation acts, disability benefit acts or other employee benefit acts.

It is the specific intent of the parties hereto that the foregoing indemnification complies with Florida Statute 725.06 (Chapter 725). It is further the specific intent and agreement of the parties that all of the Contract Documents on this project are hereby amended to include the foregoing indemnification and the "Specific Consideration" therefore.

The official title of the Town is "Town of Cutler Bay". This official title shall be used in all insurance, or other legal documentation. Town of Cutler Bay is to be included as "Additional Insured" with respect to liability arising out of operations performed for Town of Cutler Bay by or on behalf of Contractor or acts or omissions of Contractor in connection with such operation.

9.9 WARRANTIES OF CONTRACTOR. The Contractor hereby warrants and represents that at all times during the term of this Agreement it shall maintain in good standing all required licenses, certifications and permits required under Federal, State and local laws necessary to perform the Specified Services.

9.10 DEFAULT/FAILURE TO PERFORM. The Town shall be the sole judge of nonperformance, which shall include any failure on the part of the Contractor to accept the award, to furnish required documents, and/or to fulfill any portion of this Contract within the time stipulated.

Upon default by the Contractor to meet any terms of this Agreement, the Town will notify the Contractor three (3) days (weekends and holidays excluded) to remedy the default. Failure on the Contractor's part to correct the default within the required three (3) days shall result in the Contract being terminated and upon the Town notifying in writing the Contractor of its intentions and the effective date of the termination. The following shall constitute default:

- a. Failure to perform the work required under the contract and/or within the time required or failing to use the subcontractors, entities and personnel as identified and set forth, and to the degree specified in the contract.
- b. Failure to begin the work under this Contract within the time specified.
- c. Failure to perform the work with sufficient workers and equipment or with sufficient materials to ensure timely completion.
- d. Neglecting or refusing to remove materials or perform new work where prior work has been rejected as nonconforming with the terms of the contract.
- e. Becoming insolvent, being declared bankrupt, or committing act of bankruptcy or insolvency, or making an assignment renders the Contractor incapable of performing the work in accordance with and as required by the Contract.
- f. Failure to comply with any of the terms of the contract in any material respect.

In the event of litigation or arbitration arising from a default by the Contractor, the Contractor shall also be liable for all damages caused by its default which damages may include but not be limited to any and all costs incurred by the Town in completing the project, and damages arising

out of the Contractor's failure to adhere to the Contract requirements and all attorney's fees and costs incurred by the Town in seeking legal relief for the default.

9.11 OTHER CAUSES FOR TERMINATION. The Town of Cutler Bay reserves the right to cancel this Contract for cause, convenience, and legal remedies by written notice to the Contractor effective the date specified in the notice should any of the following apply:

- a. The Town has determined that such cancellation will be in the best interest of the Town to cancel the contract for its own convenience. In the event the contract is terminated for the Town's convenience the contractor will be paid for all labor and materials provided as of the termination date. No consideration will be given for anticipated lost revenue, overhead, mobilization or demobilization or the canceled portions of the contract.
- b. Funds are not available to cover the cost of the services. The Town's obligation is contingent upon the availability of appropriate funds.

9.12 ANTI-DISCRIMINATION. The Contractor 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 Contractor shall comply with all other State and local laws and policies that prohibit discrimination.

9.13 If any provision of this Contract or any Authorization under this Contract or the application thereof to any person or situation shall to any extent, be held invalid or unenforceable, the remainder of the is 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.

9.14 Whenever either party desires to give notice to the other, it must be given by hand delivery or written notice, sent by certified United States mail, with return receipt requested or a nationally recognized private mail delivery service, addressed to the party for whom it is intended, at the place last specified.

9.15 PUBLIC RECORDS LAW.

- a. Contractor agrees to keep and maintain public records in Contractor's possession or control in connection with Contractor's performance under this Agreement. Contractor additionally agrees to comply specifically with the provisions of Section 119.0701, Florida Statutes. Contractor shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law, for the duration of the Agreement, and following completion of the Agreement until the records are transferred to the Town.
- b. Upon request from the Town's custodian of public records, Contractor shall provide the Town with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided by Chapter 119, Florida Statutes, or as otherwise provided by law.
- c. Unless otherwise provided by law, any and all records, including but not limited to reports, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of the Town.
- d. Upon completion of this Agreement or in the event of termination by either party, any and all public records relating to the Agreement in the possession of the Contractor shall be delivered by the Contractor to the Town Manager, at no cost to the Town, within seven (7) days. All such records stored electronically by Contractor shall be delivered to the Town in a format that is

compatible with the Town's information technology systems. Once the public records have been delivered upon completion or termination of this Agreement, the Contractor shall destroy any and all duplicate public records that are exempt or confidential and exempt from public records disclosure requirements.

- e. Any compensation due to Contractor shall be withheld until all records are received as provided herein.
- f. Contractor's failure or refusal to comply with the provisions of this section shall result in the immediate termination of this Agreement by the Town.

Section 119.0701(2)(a), Florida Statutes

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

Custodian of Records:	Debra E. Eastman, Town Clerk
Mailing address:	10720 Caribbean Boulevard Suite 105 Cutler Bay, FL 33189
Telephone number:	(305) 234-4262
Email:	deastman@cutlerbay-fl.gov

IN WITNESS WHEREOF, the parties hereto have signed 6 copies of this Contract. At least one counterpart each has been delivered to Owner, Contractor, and Engineer. All portions of the Contract Documents have been signed or identified by Owner and Contractor or by Engineer on Owner's behalf.

OWNER

Town of Cutler Bay

ADDRESS

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

BY: _____
Rafael G. Casals
Town Manager

WITNESS _____

[CORPORATE SEAL]

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

WEISS SEROTA HELFMAN
COLE & BIERMAN, P.L.
Town Attorney

CONTRACTOR
COMPANY

ADDRESS

STREET
CITY, STATE & ZIP CODE

BY: _____
NAME
TITLE - COMPANY

WITNESS _____

[CORPORATE SEAL]