

All exhibits may also be collectively referred to as the “Documents”. In the event of any conflict between the Documents or any ambiguity or missing specifications or instructions, the following priority is established:

A. This Agreement

B. Exhibit 1

C. Exhibit 2

Article 2 Scope of Work

A. Contractor agrees to provide the Design/Build (hereinafter inclusively referred to as the “Project”) as specifically described, and under the terms and conditions set forth in Exhibit 1 and Exhibit 2.

B. Contractor represents and warrants to the Village that: (i) it possesses all qualifications, licenses and expertise required for the performance of the Services; (ii) it is not delinquent in the payment of any sums due the Village; (iii) all personnel assigned to perform the Services are and shall be, at all times during the term hereof, fully qualified and trained to perform the tasks assigned to each; and (iv) the Services will be performed in the manner described in Exhibit 1.

Article 3 Qualifications

Contractor and the individual executing this Agreement on behalf of the Contractor warrant to the Village that the Contractor is a Florida corporation duly constituted and authorized to do business in the State of Florida, is in good standing and that Contractor possesses all of the required licenses and certificates of competency required by the State of Florida, Miami Dade County, and the Village to perform the work herein described. Contractor acknowledges that due to the nature of this contract, that Contractor must take all necessary precautions to avoid accidents and shall comply with all local, state and federal regulations that apply. Contractor shall be solely responsible for the payment of any fines or penalties incurred as a result of its actions.

Article 4 Payment and/or Fees

The Contractor shall submit invoices detailing the services provided, project, professional staff, and hours. Please note that failure to provide a detailed invoice could result in delay of payment and include termination of any agreement.

Invoices, unless otherwise indicated, must show purchase order numbers and shall be submitted in DUPLICATE to the Village of Palmetto Bay, Public Service Department, 9495 SW 180 Street, Palmetto Bay, FL 33157.

Article 5 Reports

A. Prior to commencement of operations under this Agreement, the Contractor shall secure in writing from the Village approval of all records to be used for the purpose of temporarily or permanently recording the operations of the Contractor under this Agreement.

B. For the purposes of the administration of this Agreement, the following shall apply: The Village Manager or his designee is hereby designated as the Contract Administrator for this Agreement. Reports and information as the Village may reasonably require regarding the administration of this Contract should be addressed to the Village Manager.

Article 6 Termination

A. Termination/Cancellation of Contract Without Cause

Either Party may terminate this Contract without cause upon thirty (30) days prior written notice to the other party. Termination or cancellation of the contract will not relieve the Contractor of any deliverables and work product due prior to the termination of the Contract (this will include but not be limited to reports, statements of accounts, payments due the Village and any other records requested by the Village prior to the termination of the Contract, or after termination in the Village's discretion if needed for a post contract audit of money due on Contractor's performance). Termination or cancellation of the contract will not relieve the Contractor of any obligations or liabilities resulting from any acts committed by the Contractor prior to the termination of the contract.

B. Termination Because of Default

Without waiving the right to terminate without cause on thirty (30) days' notice, a party may issue a written notice to the other claiming that the other party is in breach of contract and giving the other party ten (10) calendar days to cure the default. If the alleged breach of contract is not cured, then the party serving the notice may terminate the Contract and be excused from further performance following termination. However, termination of the Contract will not relieve the Contractor of any deliverables and work product due prior to the termination of the Contract (this will include but not be limited to reports, statements of accounts, payments due the Village and any other records requested by the Village prior to the termination of the Contract.)

Article 7 Hold Harmless and Indemnification of the Village

The Village shall not be liable for any damages or claims of any type including but not limited to lost profits, special damages, consequential damages or business interruption on account of the Village's decision to terminate this Contract. Additionally, the Contractor agrees that in the event this Contract is terminated for the Village's breach, the damages that Contractor may have against the Village shall be limited to actual damages for a period of thirty (30) days given the fact that this Contract may be terminated by the Village without cause on thirty (30) days' notice.

Article 7 Term

The term of this Agreement shall commence upon the date of execution hereof and shall remain in effect until final inspection by the Village.

Article 8 Audit and Inspection Rights

The Village may, at reasonable times, and for a period of up to three (3) years following the date of final performance of Services by the Contractor under this Agreement, audit, or cause to be audited, those books and records of Contractor which are related to Contractor's performance under this Agreement. Contractor agrees to maintain all such books and records at its principal place of business for a period of three (3) years after final payment is made under this Agreement. The Village may, at reasonable times during the term hereof, inspect Contractor's facilities and perform such inspections, as the Village deems reasonably necessary, to determine whether the services required to be provided by Contractor under this Agreement conform to the terms hereof and/or the terms of the Solicitation Documents, if applicable. Contractor shall make available to the Village all reasonable facilities and assistance to facilitate the performance of inspections by the Village's representatives. All inspections shall be subject to, and made in accordance with, the provisions of the Village Code as same may be amended or supplemented, from time to time.

Article 9 Federal and State Tax

The Village is exempt from payment of Florida State Sales and Use Taxes. The Village will sign an exemption certificate submitted by the Contractor. The Contractor shall not be exempted from paying sales tax to its suppliers for materials used to fulfill contractual obligations with the Village, nor is the Contractor authorized to use the Village's Tax Exemption Number in securing such materials.

The Contractor shall be responsible for payment of its own and its share of its employee taxes and Social Security benefits.

Article 10 Indemnification

Contractor shall indemnify and hold harmless the Village and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the Village or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this Agreement by the Contractor or its employees, agents, servants, partners, principals or sub-Contractors. Contractor shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the Village, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. Contractor expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by Contractor shall in no way limit the responsibility to indemnify, keep and save harmless and defend the Village or its officers, employees, agents and instrumentalities as herein provided. 1% of the contract amount shall represent the consideration to be provided for this indemnification. Nothing contained herein shall be deemed a waiver of sovereign immunity.

Article 11 Insurance

Award of this Contract is contingent upon the receipt of the insurance documents, as required, within ten (10) calendar days after Village notification to Contractor. Certificates of Insurance must be submitted to the Procurement Division, Certificates of Insurance that indicate that insurance coverage has been obtained which meets the requirements as outlined below:

- Comprehensive General Liability - \$3,000,000 combined single limit for each occurrence for bodily injury and property damage – designating the Village as Additional Insured
- Workers Compensation - Statutory Limits
- Automobile Liability - \$1,000,000 per occurrence for all claims arising out of bodily injuries or death and property damages.
- errors and omissions or Contractor liability insurance - \$1,000,000

All insurance policies must be issued by companies authorized to do business under the laws of the State of Florida. The companies must be rated no less than "B+" as to management and no less than "Class V" as to strength by the latest edition of Best's Insurance guide, published by A.M. Best Company, Olwick, New Jersey, or its equivalent, or the companies must hold a valid Florida Certificate of Authority as shown in the latest "List of All Insurance Companies Authorized or Approved to do Business in Florida," issued by the State of Florida Department of Insurance and are members of the Florida Guaranty Fund.

Certificates of Insurance must indicate that for any cancellation of coverage before the expiration date, the issuing insurance carrier will endeavor to mail thirty (30) day written advance notice to the certificate holder. In addition, the Contractor hereby agrees not to modify the insurance coverage without thirty (30) days written advance notice to the Village.

Compliance with the foregoing requirements shall not relieve the Contractor of this liability and obligation under this section or under any other section in the Agreement.

If the insurance certificate is received within the specified time frame but not in the manner prescribed in the Agreement, the Contractor shall be verbally notified of such deficiency and shall have an additional five (5) calendar days to submit a corrected certificate to the Village. If the Contractor fails to submit the required insurance documents in the manner prescribed in the Agreement within fifteen (15) calendar days after Village notification to comply, the Contractor shall be in default of the contractual terms and conditions and award of the Contract will be rescinded, unless such time frame for submission has been extended by the Village.

The Contractor shall be responsible for assuring that the insurance certificates required in conjunction with this Section remain in force for the duration of the contractual period of the Contract, including any and all option years or extension periods that may be granted by the Village. If insurance certificates are scheduled to expire during the contractual period, the Contractor shall be responsible for submitting new or renewed insurance certificates to the Village at a minimum of thirty (30) calendar days in advance of such expiration. In the event that expired certificates are not replaced with new or renewed certificates which cover the contractual period, the Village shall suspend the Contract until such time as the new or renewed certificates are received by the Village in the manner prescribed herein; provided, however, that this suspended period does not exceed thirty (30) calendar days. Thereafter, the Village may, at its sole discretion, terminate this contract.

Article 12 Modification/Amendment

This writing and exhibits contains the entire Agreement of the parties. No representations were made or relied upon by either party, other than those that are expressly set forth herein. No agent, employee, or other representative of either party is empowered to modify and amend the terms of this Agreement, unless executed in writing with the same formality as this Document. No waiver of any provision of this Agreement shall be valid or enforceable unless such waiver is in writing and signed by the party granting such waiver.

Article 13 Severability

If any term or provision of this Agreement shall to any extent be held invalid or illegal by a court of competent jurisdiction, the remainder of this Agreement shall not be affected thereby, and each term and provision of this agreement shall be valid and be enforced to the fullest extent permitted by law.

Article 14 Governing Law

This Agreement shall be construed in accordance with and governing by the laws of the State of Florida. Exclusive venue for any litigation shall be in Miami-Dade County, Florida.

Article 15 Waiver

The failure of either party to this Agreement to object to or to take affirmative action with respect to any conduct of the other which is in violation of the terms of this Agreement shall not be construed as a waiver of the violation or breach, or of any future violation, breach or wrongful conduct. No waiver by the Village of any provision of this Agreement shall be deemed to be a waiver of any other provisions hereof or of any subsequent breach by Contractor of the same, or any other provision or the enforcement thereof. The Village's consent to or approval of any act by Contractor requiring the Village's consent or approval shall not be deemed to render unnecessary the obtaining of the Village's consent to or approval of any subsequent consent or approval of Contractor, whether or not similar to the act so consented to or approved.

Article 16 Notices/Authorized Representatives

Any notices required or permitted by this Agreement shall be in writing and shall be deemed to have been properly given if transmitted by hand-delivery, by registered mail with postage prepaid return receipt delivery, by registered or certified mail with postage prepaid return receipt requested, or by Federal Express addressed to the parties at the following address:

Village:

Contractor:

Edward Silva, Village Manager
Village of Palmetto Bay
9705 E. Hibiscus Street
Palmetto Bay, FL 33157

Either party shall have the right to change its address for notice purposes by sending written notice of such change of address to the other party in accordance with the provisions herein.

Article 17 Independent Contractor

Contractor is and shall remain an independent Contractor and is not an employee or agent of the Village. Services provided by Contractor shall be by employees of Contractor and nothing in this Agreement shall in any way be interpreted or construed to deem said employees to be agents, employees, or representatives of the Village. Contractor shall be responsible for all compensation, tax responsibilities, insurance benefits, other employee benefits, and any other status or rights of its employees during the course of their employment with Contractor. The rights granted to Contractor hereunder are nonexclusive, and the Village reserves the right to enter into agreements with other persons or Contractors to perform services including those hereunder.

Article 18 Assignment

The Contractor shall not assign, transfer, convey, sublet or otherwise dispose of this Contract, including any or all of its right, title or interest therein, or his or its power to execute such Contract to any person, company or corporation without prior written consent of the Village. The Contractor shall not assign, transfer or pledge any interest in this contract without the prior written consent of the Village; provided, however, that claims for money by the Contractor from the Village under this Contract may be assigned, transferred or pledged to a bank, trust company, or other financial institution without the Village's approval. Written notice of any assignment, transfer or pledge of funds shall be furnished within 10 days by the Contractor to the Village. None of the work or services under this Contract shall be subcontracted unless the Contractor obtains prior written consent from the Village. Approved Sub-Contractor shall be subject to each

provision of this Contract and the Contractor shall be responsible and indemnify the Village for all Sub-Contractor's acts, errors or omissions.

Article 19 Prohibition Against Contingent Fees

Contractor warrants that it has no employees or retained any Contractor or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Agreement, and that it has not paid or agreed to pay any person(s), Contractor, corporation, individual or Contractor, other than a bond fide employee working solely for Contractor, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement.

Article 20 Attorneys Fees

Should any dispute arise hereunder, the Village shall be entitled to recover against the Contractor all costs, expenses and attorney's fees incurred by the Village in such dispute, whether or not suit be brought, and such right shall include all of such costs, expenses and attorney's fees through all appeals or other actions. Neither party shall be entitled to prejudgment interest.

Article 21 Conflict of Interest

Contractor agrees to adhere to and be governed by the Village's Conflict of Interest Ordinance 2-121, et seq, which is incorporated by reference herein as if fully set forth herein, in connection with the Agreement conditions hereunder.

Article 22 Binding Effect

All of the terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective assigns, successors, legal representatives, heirs and beneficiaries, as applicable.

Article 23 Entire Agreement

No statements, representations, warranties, either written or oral, from whatever source arising, except as expressly stated in this Agreement, shall have any legal validity between the parties or be binding upon any of them. The parties acknowledge that this Agreement contains the entire understanding and agreement of the parties. No modifications hereof shall be effective unless made in writing and executed by the parties hereto with the same formalities as this Agreement is executed.

Article 24 Captions and Paragraph Headings

Captions and paragraph headings contained in this Agreement are for convenience and reference only and in no way define, describe, extend or limit the scope and intent of this Agreement, nor the intent of any provisions hereof.

Article 25 Joint Preparation

The preparation of this Agreement has been a joint effort of the parties, and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other. It is the parties' further intention that this Agreement be construed liberally to achieve its intent.

Article 26 Counterparts

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same agreement.

Article 27 Exhibits are Inclusionary

All exhibits attached hereto or mentioned herein which contain additional terms shall be deemed incorporated herein by reference. Typewritten or handwritten provisions inserted in this form or attached hereto shall control all printed provisions in conflict therewith.

Article 28 Jurisdiction And Venue

For the purposes of this contract, Florida law shall govern the terms of this contract. Venue shall be in Miami-Dade County, Florida.

Article 29 Sovereign Immunity And Attorney's Fees.

The Village does not waive sovereign immunity under 768.28, Florida Statutes, for any claim for breach of contract or for an award of prejudgment interest; provided, however, that in any action arising out of or to enforce this contract, the prevailing party shall be entitled to its reasonable attorney's fees and costs in any state or federal administrative, circuit court and appellate court proceedings. In the event of any litigation arising out of this agreement or project agreement, each party hereby knowingly, irrevocably, voluntarily, and intentionally waives its right to trial by jury.

Article 30 Permits, Licenses and Filing Fees

The Contractor shall procure all permits and licenses, pay all charges and fees, and file all notices as they pertain to the completion of the Contractor's work.

Article 31 Safety Provisions

The Contractor shall conform to the rules and regulations pertaining to safety established by OSHA and the California Division of Industrial Safety.

Article 32 Public and Employee Safety

Whenever the Contractor's operations create a condition hazardous to the public or Village employees, it shall, at its expense and without cost to the Village, furnish, erect and maintain such fences, temporary railings, barricades, lights, signs and other devices and take such other protective measures as are necessary to prevent accidents or damage or injury to the public and employees.

Article 33 Preservation of Village Property

The Contractor shall provide and install suitable safeguards, approved by the Village, to protect Village property from injury or damage. If Village property is injured or damaged resulting from the Contractor's operations, it shall be replaced or restored at the Contractor's expense. The facilities shall be replaced or restored to a condition as good as when the Contractor began work.

Article 34 Immigration Act of 1986

The Contractor warrants on behalf of itself and all sub-Contractors engaged for the performance of this work that only persons authorized to work in the United States pursuant to the Immigration Reform and Control Act of 1986 and other applicable laws shall be employed in the performance of the work hereunder.

Article 35 Contractor Non-Discrimination

In the award of subcontracts or in performance of this work, the Contractor agrees that it will not engage in, nor permit such sub-contractors as it may employ, to engage in discrimination in employment of persons on any basis prohibited by State or Federal law.

Article 36 Accuracy of Specifications

The specifications for this project are believed by the Village to be accurate and to contain no affirmative misrepresentation or any concealment of fact. Contractors are cautioned to undertake an independent analysis of any test results in the specifications, as Village does not guaranty the accuracy of its interpretation of test results contained in the specifications package. In preparing its proposal, the Contractor and all sub-contractors named in its proposal shall bear sole responsibility for proposal preparation errors resulting from any misstatements or omissions in the specifications that could easily have been ascertained by examining either the project site or accurate test data in the Village's possession. Although the effect of ambiguities or defects in the specifications will be as determined by law, any patent ambiguity or defect shall give rise to a duty of

Contractor to inquire prior to proposal submittal. Failure to so inquire shall cause any such ambiguity or defect to be construed against the Contractor. An ambiguity or defect shall be considered patent if it is of such a nature that the Contractor, assuming reasonable skill, ability and diligence on its part, knew or should have known of the existence of the ambiguity or defect. Furthermore, failure of the Contractor or sub-contractors to notify Village in writing of specification defects or ambiguities prior to proposal submittal shall waive any right to assert said defects or ambiguities subsequent to submittal of the proposal.

To the extent that these specifications constitute performance specifications, the Village shall not be liable for costs incurred by the successful Contractor to achieve the project's objective or standard beyond the amounts provided therefore in the proposal.

In the event that, after awarding the contract, any dispute arises as a result of any actual or alleged ambiguity or defect in the specifications, or any other matter whatsoever, Contractor shall immediately notify the Village in writing, and the Contractor and all sub-Contractors shall continue to perform, irrespective of whether or not the ambiguity or defect is major, material, minor or trivial, and irrespective of whether or not a change order, time extension, or additional compensation has been granted by Village. Failure to provide the hereinbefore described written notice within one (1) working day of Contractor's becoming aware of the facts giving rise to the dispute shall constitute a waiver of the right to assert the causative role of the defect or ambiguity in the plans or specifications concerning the dispute.

Article 37 Warranty Of Authority

The signatories to this contract warrant that they are duly authorized by action of their respective Village commission, board of directors or other Village to execute this contract and to bind the parties to the promises, terms, conditions and warranties contained in this contract.

Article 38 Miscellaneous Provision

In the event a court must interpret any word or provision of this agreement, the word or provision shall not be construed against either party by reason of drafting or negotiating this agreement.

Continued on next page.

IN WITNESS WHEREOF the undersigned parties have executed this Agreement on the date indicated above.

OWNER

CONTRACTOR

Village of Palmetto Bay _____

ADDRESS

ADDRESS

9705 E. Hibiscus Street _____
Palmetto Bay, FL 33157 _____

BY _____

BY _____

Edward Silva _____
Print Name

Print Name

Village Manager _____
Title

Title

ATTEST

Meighan J. Alexander
Village Clerk

Witness

APPROVED AS TO FORM BY

Print Name

Village Attorney

APPENDIX “A”

REFERENCE INFORMATION DOCUMENTS

**** Available as a separate .pdf file – will be included in our website under BID’s & RFP’s or you can request it by emailing LPittser@Palmettobay-fl.gov.**

PRICE SHEET FOR PROJECT - *Roadway and
Complete Infrastructure Improvements (Franjo Road)*

(1) LUMP SUM \$ _____

(2) Optional Items \$ _____

Total Project: \$ _____

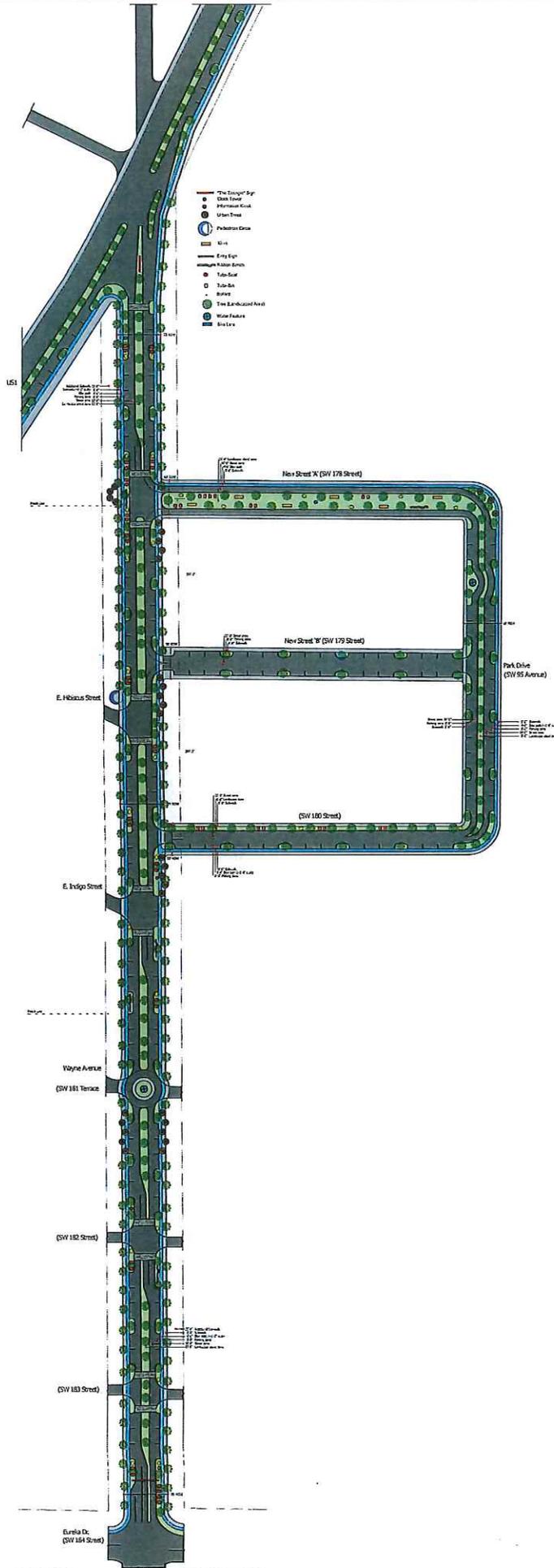
(3) Estimated weeks to Complete _____

FRANJO ROAD (US1- SW 184 Street)- Master plan

Section 1

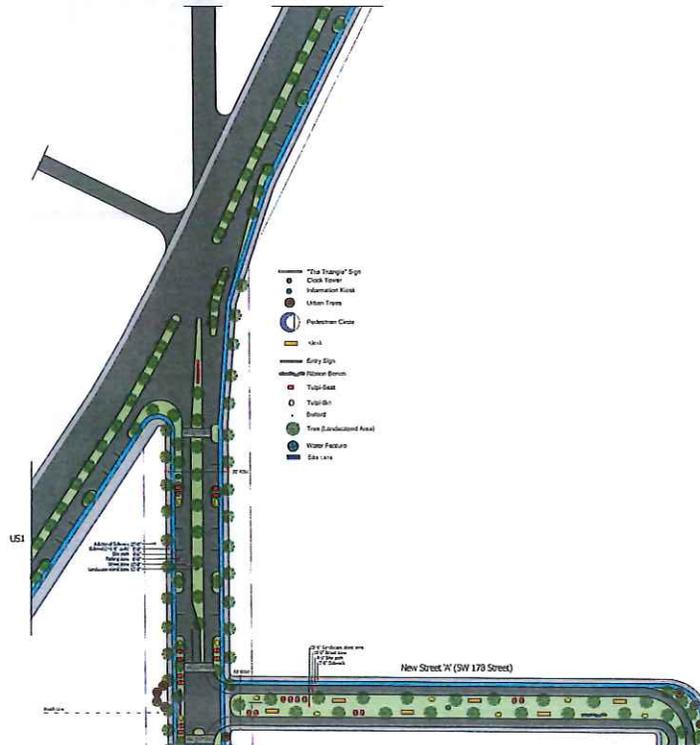
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Section 3

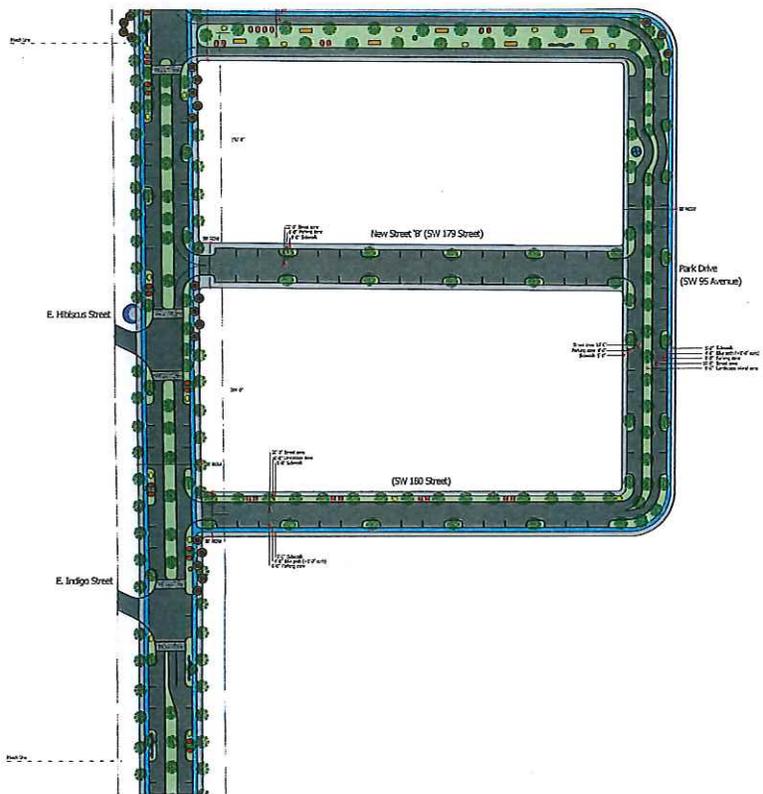


FRANJO ROAD (US1- SW 184 Street)- Master plan

Section 1

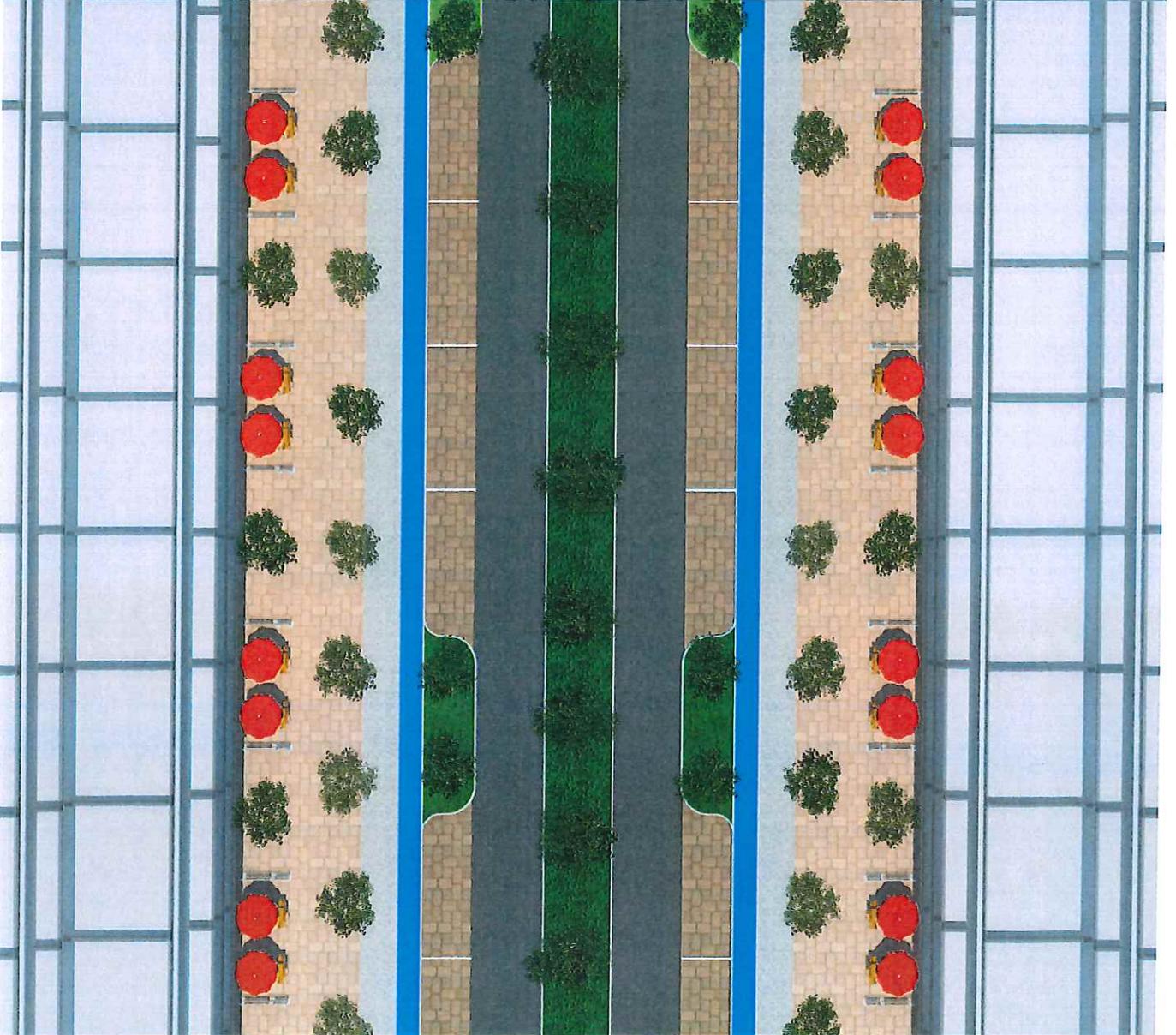
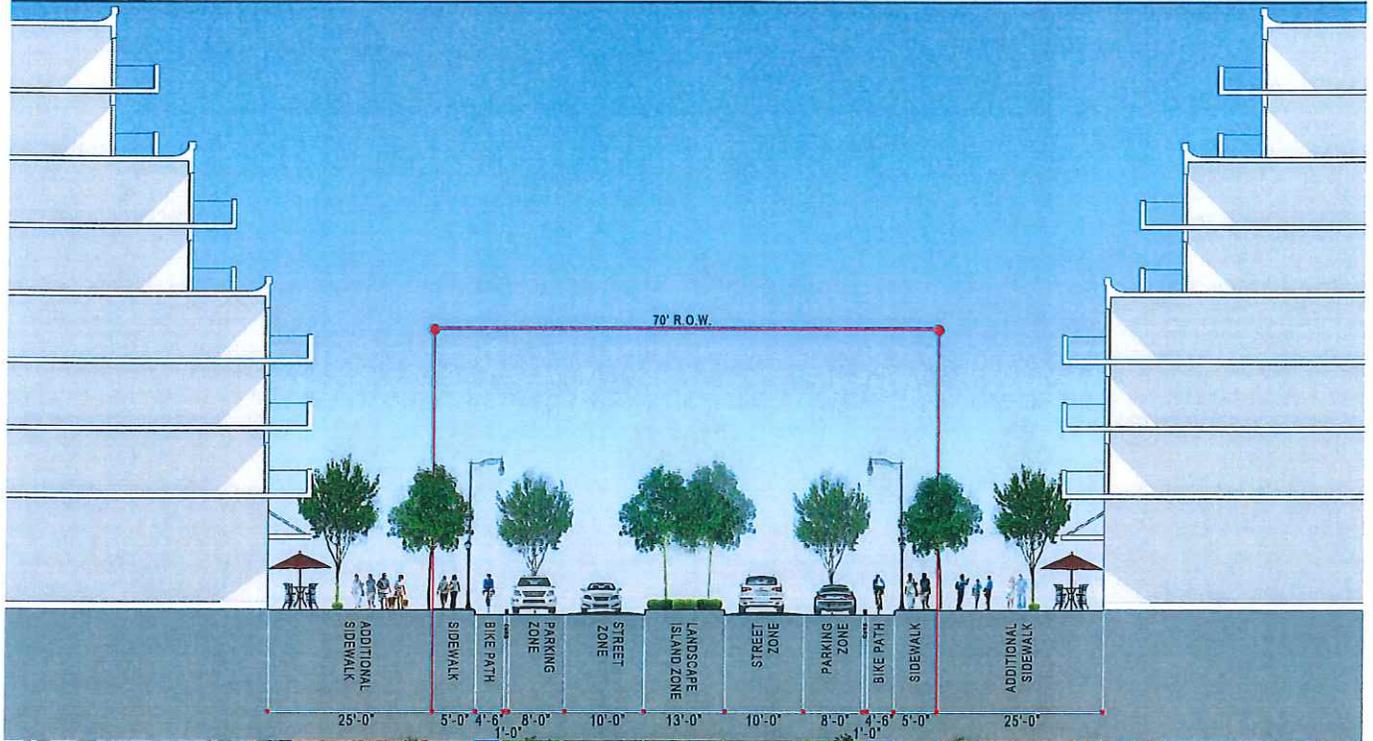


Section 2



FRANJO ROAD - Section/Plan

(SW 97 Avenue-- from US1 to SW 184 Street)



NEW STREET 'A' - Section/Plan

(SW 178 St.-- from Franjo Rd. to Park Dr.)

