

Agreement between
City of Coral Gables and
for Commissioned Artwork for the
in Coral Gables, Florida

THIS AGREEMENT FOR COMMISSIONED ARTWORK (the “Agreement”), made and entered into this _____ day of _____, by and between: the CITY OF CORAL GABLES, a municipal corporation existing under the laws of the State of Florida (the “City”) and _____, with a principal address of _____ (the “Artist”).

WHEREAS, the City has implemented the Art in Public Places program pursuant to Coral Gables Zoning Code, Article 9, by allocating funding for the establishment and display of artwork in public places; and

WHEREAS, pursuant to Resolution No. _____, adopted by the City Commission on _____, the City wishes to engage Artist to design, fabricate, transport and install a unique and original work of art (the “Artwork”), as indicated in Artist’s conceptual design proposal which has previously been approved by the City (the “Site”), at the following location: _____, at the agreed upon fees, and subject to all other terms and conditions, as set forth in this Agreement; and

WHEREAS, Artist desires to contract with the City for performance of the aforesaid services relative to the Artwork, as hereinafter set forth.

NOW THEREFORE, City and Artist, in consideration of the mutual covenants and agreements herein contained, agree as follows:

ARTICLE 1
DEFINITIONS AND IDENTIFICATIONS

The definitions and identifications set forth below are assumed to be true and correct and are agreed upon by the parties.

- 1.1 **Agreement (or Contract).** This document, and other terms and conditions which may be included in the exhibits and documents that are expressly incorporated by reference, as well as any amendments thereto.
- 1.2 **Artist.** _____, the individual selected to create the Artwork contemplated pursuant to this Agreement.
- 1.3 **Artwork or Project.** That certain unique and original work of art to be created by Artist and installed on the Site, and to be known as _____, that has been approved

by the City Commission, and is further described in Exhibit “A” (entitled, “Artist’s Scope of Services”), attached hereto.

- 1.4 **City.** Shall mean the City of Coral Gables, Florida, a municipal corporation having its principal offices at 405 Biltmore Way, Coral Gables, Florida, 33134.
- 1.5 **City Commission.** Shall mean the governing and legislative body of the City.
- 1.6 **City Manager.** Shall mean the Chief Administrative Officer of the City.
- 1.7 **Contract Administrator (_____).** Shall mean the designee of the City Manager, who shall be the City’s authorized representative to coordinate, direct, and review, on behalf of the City, all matters related to the Work and the Project, except as otherwise provided herein.
- 1.8 **Contract (Agreement) Amendment.** Shall mean a written order to Artist, approved by the City and signed by the City’s duly authorized representative, authorizing a change in the Work, or the method and manner of performance thereof or an adjustment in the fees and/or the completion dates, as applicable.
- 1.9 **Exhibits.** Shall mean the various exhibits attached to and incorporated in this Agreement and referred to as follows:
 - Exhibit A: Artist’s Scope of Services
 - Exhibit A-1: Project Schedule
 - Exhibit B: Project Budget
 - Exhibit C: Compensation and Schedule of Payments
 - Exhibit D: Cataloging Form
 - Exhibit E: Maintenance and Conservation Worksheet
- 1.10 **Notice to Proceed.** A written notice issued by the Contract Administrator to Artist authorizing the commencement of the Work.
- 1.11 **Pre-Construction Meeting.** A meeting between the City staff and the design/construction team prior to the start of construction project.
- 1.12 **Project Budget.** Shall mean an amount budgeted by the City for the Project, as specified in Exhibit “B”, attached hereto.
- 1.13 **Project Cost.** Shall mean the total cost of the Project to the City including, design, fabrication, permitting, and installation costs, compensation to Artist, contingencies, and other miscellaneous costs.
- 1.14 **Project Scope.** Shall mean the description of the Project, as specified in Exhibit “A”, attached hereto.
- 1.15 **Work.** Any work and/or services required by Artist under this Agreement, as required to successfully complete the Project (including, without limitation, work and/or services described in Exhibit “A”).

ARTICLE 2
SCOPE OF SERVICES

- 2.1 Artist shall perform all Work and requirements identified in this Agreement and Exhibit “A” for the design, fabrication, permitting, transportation, inspection, and installation of the Project. Artist shall manage or perform, either directly or through subcontractors, all agreed upon services and furnish all supplies, materials and equipment as necessary for the design, execution and fabrication of the Artwork, including, but not limited to, processing and payment for all necessary permits, taxes, insurance, supplies, materials, tools, equipment, consultants, and all other items incidental to producing a complete and acceptable Artwork, and shall either directly or through qualified subcontractors, undertake the transportation, installation, and integration of the Artwork at the Site.

In addition, the Artist will present a lecture to the public in Coral Gables, Florida after the work is completed at a date and time mutually agreeable to the Artist and the City. Artist shall work with the City to coordinate related educational component(s) for the public that may include, but not be limited to, recorded narrative about the work, graphic materials, Augmented Reality (AR) or other virtual media, NFT(s), etc. for use throughout the life of the Artwork. If Artist wishes to pursue an NFT collection related to the Artwork, a separate agreement/contract will be entered into addressing ownership and distribution.

Artist agrees to the recording of any and all related activities, including personal appearances by Artist, for non-commercial archival, educational, and promotional purposes including, but not limited to, the work-in-progress, installation, artist talks or other public engagement, etc. City agrees that it will seek approval from the Artist for any significant or in-depth recording of the Artist prior to distribution or use.

- 2.2 Artist acknowledges and agrees that the Contract Administrator has no authority to make changes that would increase, decrease or otherwise modify the Scope of Services, and that any such change and/or modification with respect to the Scope of Services (including, without limitation, the time the Artist is obligated to commence and complete the Work, and the amount of compensation the City is obligated or committed to pay the Artist), must be approved (if at all) by the City Manager or the City Commission, in their respective sole discretion, prior to implementation of any change. Any such change or modification, if approved, shall be memorialized in writing as a Contract Amendment.
- 2.3 Artist shall schedule and attend a pre-construction meeting to establish communication and engage in problem solving between City staff and the design/construction team prior to the start of the Project. At this meeting, the approved drawings and documents will be reviewed, and major items will be discussed by the participants. Any proposed design changes must be discussed at this meeting, which may be held on site or via video

conference. Artist and design/construction team and subcontractors shall, virtually, attend subsequent meetings as needed.

- 2.4 Artist shall provide Project progress reports and/or deliverables in a form and manner acceptable to the Contract Administrator along with the schedule set forth in Exhibit “A-1.”
- 2.5 Upon completion of the Project, Artist shall furnish the Contract Administrator with documentation showing the completed Artwork as follows:
- a. Images, to include photographs approved by the Artist of the Artwork for reproduction, for a total of no less than twelve (12) unique images that shall include the following:
 1. High resolution images (image size not smaller than 5” x 7” with a resolution of at least 300 dpi) and low-resolution digital photographs (4” x 6” size at 100 dpi) of the completed Work.
 2. Images shall be aken from at least three (3) different viewpoints.
 - b. Electronic files shall be of acceptable professional quality in the determination of the Contract Administrator and shall be properly marked to include the *Artist’s Name, Title of the Work, Location, Medium and Dimensions* of the Work.
 - c. Artist shall provide Contract Administrator with copies of electronic files, construction documents, and as-built plans showing and/or accurately depicting the competed Artwork and shall provide to the City any studies for the Artwork. Notwithstanding anything to the contrary herein, Artist may retain copies of all files, documents, plans and studies for reference, maintenance, and marketing purposes.
 - d. Artist shall provide Contract Administrator with a detailed written schedule and instructions for the routine care, maintenance, and preservation specific to the Project, which shall be attached as Exhibit “D” (Cataloging Form) and Exhibit “E” (Maintenance and Conservation Worksheet) hereto.
- 2.6 Artist shall be solely responsible for the quality and timely prosecution, completion and installation of the Work and the Project. Artist shall be responsible for designing the Project so that it can be fabricated and installed without exceeding the approved Project Budget. The Artist shall, without additional compensation, promptly correct or revise any errors, omissions, or other deficiencies in the Work upon the written request of the Contract Administrator.
- 2.7 Artist acknowledges and warrants to City that an essential element of this Agreement is the skill and creativity of Artist, and that Artist is solely responsible for the quality of the Project. Artist may not subcontract and/or assign portions of the Work to another party, without the prior written approval of the Contract Administrator. Notwithstanding the Contract Administrator’s approval of any such subcontract and/or assignment, Artist will still be held ultimately responsible for all portions of the Work. Artist warrants to City that it shall be solely responsible for supervision of (and any compensation to) any and all third

parties, and that the City shall have no liability whatsoever, whether financial or otherwise, with regard to same. The Artist shall indemnify, hold harmless, and defend the City and its employees, assigns, or transferees, from any and all acts and omissions of the Artist's subcontractors.

- 2.8 Artist agrees that all Work, and the completed Project, shall comply with all applicable Federal, State, Miami-Dade County, and City laws, ordinances, codes and regulations. Artist shall be solely responsible for providing required information and documentation for the City to obtain any and all required approvals from all governmental authorities that have jurisdiction over the Project with the City. The cost of obtaining all applicable permits and approvals related to the installation of the Project in the City shall be the sole responsibility of the Artist.
- 2.9 Artist shall not make any public information release in connection with the Project and/or the Work without the prior written consent of the Contract Administrator.
- 2.10 Artist shall perform the Work in such manner and at such times so as not to cause interference with any of the operations of the City.
- 2.11 Artist shall be solely responsible for conducting any and all inspections of the Site for purposes of ascertaining the condition of same for the proper execution of the Work, and for completion and installation of the Project. To the extent any such information is in the City's possession, Contract Administrator shall make available to Artist, without representation, any background materials and information on matters affecting the Site.
- 2.12 Artist warrants and represents to the City that it has visited the Site, examined the actual job conditions and that Artist is familiar with local conditions and all things required that will have a bearing on performance of Artist's Work and Artist's costs, including but not limited to traffic (vehicular and pedestrian), maintenance, disposal, handling and storage of the materials, access and restrictions to the units, access roads to the site, the conditions of the Work area, and the character of the Work. Artist, at its sole expense, shall be responsible to perform any reasonable inspections and conduct any reasonable tests as may be required to determine the suitability of the site conditions. Failure on the part of Artist to completely or properly evaluate any factors of costs prior to signing this Agreement shall not form a basis for additional compensation. Execution of this Agreement shall be conclusive evidence that Artist has investigated and is satisfied as to the site conditions to be encountered, as to the character, quality, and quantities of Work to be performed and materials to be furnished, and as to the requirements of the Contract Documents.
- 2.13 When working on the Site, Artist shall promptly perform such periodic clean up as may be required by the Contract Administrator, and shall also remove any of its equipment, excess materials, and waste promptly from the Site, as directed by Contract Administrator.
- 2.14 Artist shall bear any transportation and storage costs resulting from the fabrication, delivery, storage, and installation of the Work and the Project, except that in the event that the Artwork has already been transported to (and has arrived at) the City, the City will reimburse the Artist for the cost of storing the Artwork at a location within the City of

Coral Gables, only if such unforeseen storage costs are due to an unreasonable delay by the City in fulfilling its obligations under this Agreement.

- 2.15 Title to the Artwork shall pass to the City 1) following the Contract Administrator's inspection of the Work; and 2) if the Work is approved, upon Contract Administrator's issuance of written final acceptance of the complete installed Project. Upon demand from the City, Artist shall immediately execute a Bill of Sale, and such other additional document(s) requested by the City, memorializing the transfer of title to the Artwork from Artist to the City. In furtherance of the aforesaid, it is understood that any risk of loss or damage to the Work or the Project shall be the sole responsibility and liability of Artist until such time as the Contract Administrator has issued a final written acceptance of the Project, and Artist has executed the required Bill of Sale (and/or other conveyance document) to the City.
- 2.16 Upon Contract Administrator's written final acceptance of the Project, and transfer of title of the Artwork to the City, all documents related to the design, fabrication, and installation of the Project including, without limitation, "as built" documents, shall be turned over to the Contract Administrator and become the exclusive property of the City. The City shall be free to exhibit and/or reproduce these documents as it deems necessary, in its sole and absolute discretion.
- 2.17 The responsibility of the Artist after final acceptance of the Project by the City is limited to the warranties according to this Agreement; any terms pertaining to the Artist which are therein expressly intended to survive termination and/or expiration of this Agreement; and any acts of gross negligence and intentional wrong doing by the Artist.

ARTICLE 3
CHANGES IN SCOPE OF SERVICES

- 3.1 Minor changes in form, shape, materials and color may be made at the discretion of Artist for refinement of the design of the Artwork, provided that Artist notifies Contract Administrator, in writing, of proposed changes and obtains prior written agreement that the changes are minor.
- 3.2 Any significant changes in the scope of services, including, without limitation, a change in the design, color, size, material, utility and support requirements, and/or texture of the Work or of the Project; or location of the Site; or to Artist's compensation; or any other material changes in the terms and conditions of the Agreement, as determined by the City, in its sole and absolute discretion, must be approved in writing as an Amendment to this Agreement; must be executed by the parties; and is further subject to approval by the City Manager or City Commission, as applicable, prior to implementation of same.

ARTICLE 4
TERM and TIME OF PERFORMANCE

- 4.1 The term of this Agreement shall begin on the date it is fully executed by both parties. Thereafter, Artist shall diligently and continuously prosecute the Work in accordance with the Project Schedule set forth in Exhibit "A-1", attached hereto.

- 4.2 Time shall be deemed to be of the essence in Artist's performance of its duties, obligations and responsibilities, as required by this Agreement.
- 4.3 The Contract Administrator may grant a reasonable extension of time to Artist in the event that there is an unreasonable delay on the part of the City in performing its obligations hereunder; or in making the Site available to Artist for proceeding with the Work; or if conditions beyond Artist's control render timely performance of the Work impossible or unexpectedly burdensome. All requests for extensions of time must be submitted in writing to the Contract Administrator (as soon as the delay or conditions become known and their impact is evaluated), and shall not be effective unless approved in writing by the Contract Administrator.
- 4.4 Either party is excused from performance and shall not be liable for any delay in delivery or for non-delivery, in whole or in part, due to Force Majeure, the effect of which, by exercise of reasonable diligence, the nonperforming party could not avoid. The term "Force Majeure" shall mean any event which results in the prevention or delay of performance by a party of its obligations under this Agreement and which is beyond the reasonable control of the nonperforming party. It includes, but is not limited to an occurrence of a major force event such as hurricane, fire, civil disobedience, riots, rebellions, terrorism, explosion, flood, storm, Acts of God, and similar occurrences, but shall not include financial conditions. Failure to fulfill contractual obligations due to major forces set forth in the preceding sentence will not be considered a breach of contract, provided that such obligations shall be suspended only for the duration of such condition.

ARTICLE 5
COMPENSATION

- 5.1 City agrees to pay Artist, in the manner specified in this Article and Exhibit "C" (Compensation and Schedule of Payments) here to, the amount of _____ (\$ _____), which amount shall be the total compensation to Artist for the Project, and includes any and all contingencies, which shall be at the risk of the Artist.
- 5.2 The proposed budget includes a contingency fee in the amount of _____ (\$ _____) (the "Contingency Fee") to provide for unforeseen costs; provided, however, any and all contingencies shall be at the risk of the Artist, who will retain any savings or losses on the Contingency Fee.
- 5.3 Artist may submit invoices for compensation no more often than on a monthly basis, but only after the portion of the Work for which the invoice is submitted has been satisfactorily completed and accepted by the Contract Administrator.

An original invoice shall be submitted to the Contract Administrator within fifteen (15) days of the end of the month, except the final invoice, which must be received no later than thirty (30) days after completion of all Work. Invoices shall designate the nature and portion of the Work performed (percentage of completion). All invoices must be signed off and approved by the Contract Administrator as a condition of approval for payment by

City. A written Project progress report shall accompany each invoice, describing the Work completed during that period. Photographic documentation demonstrating progress of the Work shall also be included with each invoice.

- 5.4 City shall pay Artist (but only for Work satisfactorily performed and accepted by the Contract Administrator), within thirty (30) calendar days of receipt by the City of Artist's proper invoice. Invoices shall be submitted by Artist to the City as follows:

Catherine Cathers, Arts & Culture Specialist
City of Coral Gables
2327 Salzedo Street
Coral Gables, FL 33134
CCathers@coralgables.com

- 5.5 Notwithstanding any provision of this Agreement to the contrary, City may, at the sole discretion of the Contract Administrator, withhold a portion of any or all payments due under the Agreement, to the extent necessary to protect itself from loss on account of inadequate or defective Work which has not been accepted by Contract Administrator, or which has not been remedied or resolved in a manner satisfactory to Contract Administrator.
- 5.6 Payment shall be made to Artist via City's payment system as coordinated with the Artist through:

ARTICLE 6
ARTIST'S WARRANTIES

- 6.1 Artist warrants to the City that (a) the Project being commissioned is the original product of Artist's own creative efforts; and (b) the Project is original, or in other words, an edition

of one (1), and shall in no way be duplicated, copied, and/or otherwise replicated by Artist with respect to any future commissioned public or private projects.

- 6.2 Any Artwork maintenance required prior to final acceptance of the Project, and transfer of title of the Artwork to the City, is the sole responsibility of the Artist and to be completed at the Artist's cost and expense.
- 6.3 Artist warrants to the City that reasonable maintenance of the Project will not require any extraordinary procedures.
- 6.4 Artist warrants to the City that it shall deliver the Project to the City free and clear of any liens from any source whatsoever.
- 6.5 Artist warrants to the City that the Work shall be free from defective or inferior materials and workmanship, including any defects or qualities causing or accelerating deterioration. If within two (2) years from the date of final written acceptance by the City, the City finds the Work in need of repair, such repairs will be made promptly and satisfactorily by the Artist, at its sole cost and expense, and at no expense to the City.
- 6.6 If Artist fails to remedy any defect or damage, within a reasonable time after receipt of notice from City, the City shall have the right to replace, repair, or otherwise remedy such defect or damage at the Artist's expense. Artist shall promptly reimburse the City upon demand for any and all costs to replace and repair the Artwork.
- 6.7 Artist with respect to all warranties, express or implied, shall:
 - a. Obtain all warranties that would be given in normal commercial practice;
 - b. Require all warranties to be executed, in writing, for the benefit of the City, if directed by the Contract Administrator; and
 - c. Enforce all warranties for the benefit of the City, if directed by the Contract Administrator.

ARTICLE 7
OBLIGATIONS OF CITY

- 7.1 City shall:
 - a. Provide Artist, upon reasonable request, but without warranty or representation by City of any kind, any background materials and information on matters affecting the Site;
 - b. Provide Artist with the Project Budget;
 - c. Arrange for access so that Artist, and their subcontractors, may enter upon the Site, during customary business hours, for Artist to perform the Work;

- d. Arrange public meetings and consultations as deemed necessary by the Contract Administrator or City Manager;
- e. Prepare and install, at its expense, a plaque or sign identifying Artist, the title of the Project, materials used, year of completion, and reasonably maintain same in good repair;
- f. Reasonably assure that the Project is properly maintained, taking into account the recommendations of Artist, as set forth in Exhibit “D”;
- g. All references to the Artwork and all reproductions of the Artwork by City shall credit the Artist.

ARTICLE 8
ARTIST’S RIGHTS

- 8.1 The City agrees to make all reasonable efforts to maintain the integrity of the Artwork and will not knowingly make any use of the Artwork in a manner that would reflect unfavorably on Artist’s name or reputation.
- 8.2 The provisions of this Agreement shall control over the provisions of 17 U.S.C. § 106A and shall constitute a waiver by Artist of any rights in the Artwork set out in or otherwise granted by the Visual Artists Rights Act of 1990, 17 U.S.C. §§ 106A and 113(d) and any other local, state, federal or international laws that convey rights of the same nature as those conveyed under 17 U.S.C. § 106A or any other type of moral right protecting the integrity of works of art. If there is a conflict or inconsistency between any provision contained in this Agreement and any provision contained in any provision of domestic or international law, including without limitation the European Union law, Artist understands and agrees that the provisions of this Agreement shall control and shall constitute a waiver by Artist of any rights in the Artwork set out in or otherwise granted by laws of other jurisdictions addressing Artist’s rights in the Artwork.

The City shall have the right, upon proper written notice to the Artist, to move the Artwork to a different location within the City of Coral Gables. Any relocation to a location within the municipal boundaries of the City of Coral Gables where the City shall retain ownership of the work shall be at the City’s sole cost and expense. Notifications to the Artist should be in writing, by registered mail or overnight carrier to the address provided under the Notices section of this Agreement.

- 8.3 The City agrees to take such reasonable measures, as it deems necessary, in its sole and reasonable discretion, to maintain the Artwork. City shall have the right to determine, after consultation with a professional conservator, when (and if) repairs and restorations to the Artwork will be made. To the extent practical, the City may, in its sole discretion, consider Artist in making or personally supervising significant repairs or restorations. If City deems Artist’s participation is necessary, Artist shall be paid a reasonable fee for any such services, provided that City and Artist shall agree, in writing, prior to the commencement

of any significant repairs or restorations, upon said fee. All repairs and restorations shall be made in accordance with recognized principles of conservation.

ARTICLE 9
COPYRIGHTS

- 9.1 INTELLECTUAL PROPERTY. All copyrights, trademarks, service marks, logos and other images related to the Artwork (if any), and any right to commercially exploit the same (all of the foregoing, collectively and individually, the “Intellectual Property”) shall be the exclusive property of Artist. Artist may apply to register any mark or copyright which depicts, is derived from, represents, duplicates, or is related to Artist the Artwork. Artist shall use best efforts in public showing or resume use of reproductions to give acknowledgement to the City in substantially the following form: “Commissioned by the City of Coral Gables.”
- 9.2 Notwithstanding Section 9.1 or any other term or condition of this Agreement, Artist hereby grants to City a non-exclusive, perpetual, irrevocable, and royalty-free license to reproduce, make, print and/or publish photographic, filmed or videotaped reproductions, and other two-dimensional likenesses, of the Artwork (including, without limitation, any proposals for the Artwork) for such purposes as determined solely by the City, in its discretion, for the entire term of the copyright, patent, or trademark. In this connection, it is understood that the uses contemplated under this license include, without limitation, public promotional and advertising uses. It is also understood that either of the parties to this Agreement may permit photographic, filmed, videotaped or other reproductions of the Artwork to appear in newspapers, magazines, periodicals, books, motion picture films, videotaped films, and/or any other media. In connection with any such reproduction and publication by a third party, that party shall be solely responsible for arranging any consent and/or credit with Artist, and the City shall have no liability to Artist and/or to third parties as a result of any failure by third parties to obtain authorization by Artist, or give credit to Artist, for such third party uses.
- 9.3 Artist agrees that all Work shall comply with all applicable patent, trademark and copyright laws, rules, regulations and codes. Artist further agrees that it will not knowingly use any third party’s patent, trademark or copyright unless Artist has obtained proper permission and all releases, and other necessary documents. If Artist uses any protected material, process or procedure, Artist shall disclose such patent, trademark or copyright in the construction drawings and technical specifications and, in any event, prior to actual fabrication of the Artwork.
- 9.4 INFRINGEMENT. Either City or Artist may bring infringement actions against third parties. Any award received from such actions shall be split evenly between City and Artist after reimbursement to the appropriate party for expenses and costs, including without limitation reasonable attorneys’ fees, incurred in bringing such actions. In any event, City and Artist will reasonably cooperate with each other to prosecute any such action including,

without prejudice to the generality of this requirement, consenting to be a party to the proceedings.

ARTICLE 10
TERMINATION

- 10.1 This Agreement may be terminated for cause by the City Manager, upon thirty (30) days' prior written notice to Artist.
- 10.2 Termination of this Agreement for "cause" shall include failure to continuously and diligently prosecute the Work in a timely manner calculated to meet or accomplish the objectives of City as set forth in this Agreement; a breach of the provisions of this Agreement (notwithstanding whether any such breach was previously waived or cured); or for any other reason necessary to protect the health, safety, or welfare of the general public.
- 10.3 Notice of termination shall be provided in accordance with the Notices section of this Agreement except that notice of termination which the City deems necessary to protect the public health, safety, or welfare may be given by verbal notice, which shall be promptly confirmed in writing in accordance with the Notices section of this Agreement.
- 10.4 In the event of a termination under this Article, the City shall be fully discharged from any and all liabilities, duties and terms arising out of/or by virtue of this Agreement. Notwithstanding the above, Artist shall not be relieved of liability to the City for damages sustained by the City by any breach of the Agreement by Artist. The City, at its sole option and discretion, shall be additionally entitled to bring any and all legal/equitable actions as it may deem necessary to enforce the City's rights and remedies against Artist. The City shall be entitled to recover all costs of such actions, including reasonable attorney's fees.

ARTICLE 11
MISCELLANEOUS

11.1 AUDIT RIGHT AND RETENTION OF RECORDS

City shall have the right to audit the books, records, and accounts of Artist as they relate to the Project. Artist shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to the Project.

Artist shall preserve and make available, during customary business hours, for examination and audit by the City all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement and for the Project, for the required retention period of the Florida Public Records Act (Chapter 119, Fla. Stat.), or for a minimum period of three (3) years after termination of this Agreement, whichever is longer. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings.

11.2 PUBLIC RECORDS LAW, FLORIDA STATUTES CHAPTER 119

Records subject to the provisions of the Public Records Law, Florida Statute Chapter 119, shall be kept and maintained in accordance with such statute. Artist acknowledges that records and books, not subject to exemption under Chapter 119, may be disclosed and/or produced to third parties by the City in accordance with requests submitted under Chapter 119 or court orders without penalty or reprisal to the City for such disclosure and/or production. Artist also agrees to assert, in good faith, any relevant exemptions provided for under Chapter 119 for records in its possession on behalf of the City. Furthermore, Artist agrees to comply with the provisions outlined in Section 119.0701 of the Florida Statutes, the requirements of which are incorporated by reference herein.

IF THE ARTIST HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE ARTIST'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 305-460-5210, cityclerk@coralgables.com, 405 Biltmore Way, First Floor, Coral Gables, FL 33134.

11.3 NONDISCRIMINATION, EQUAL EMPLOYMENT OPPORTUNITY, AND AMERICANS WITH DISABILITIES ACT

Artist shall not unlawfully discriminate against any person in its operations and activities or in its use or expenditure of funds in fulfilling its obligations under this Agreement. Artist shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the course of providing any services funded by City, including Titles I and II of the ADA (regarding nondiscrimination on the basis of disability), and all applicable regulations, guidelines, and standards.

Artist's decisions regarding the delivery of services and work under this Agreement shall be made without regard to or consideration of race, age, religion, color, gender, sexual orientation, national origin, marital status, physical or mental disability, political affiliation, or any other factor which cannot be lawfully used as a basis for service delivery.

11.4 PUBLIC ENTITY CRIMES ACT

Artist represents that the execution of this Agreement will not violate the Public Entity Crimes Act (Fla. Stat. §287.133), which essentially provides that a person or affiliate who is a contractor, consultant or other provider and 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 City, may not submit a bid on a contract with City for the construction or repair of a public building or public work, may not submit bids on leases of real property to City, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with City, and may not transact any business with City in excess of the threshold amount provided in Section 287.017, Florida Statutes, for category two purchases for a period of 36 months from the date of being placed on the convicted vendor list. Violation of this section shall result in termination of this

Agreement and recovery of all monies paid hereto, and may result in debarment from City's competitive procurement activities.

In addition to the foregoing, Artist further represents that there has been no determination, based on an audit, that it committed an act defined by Section 287.133, Florida Statutes, as a public entity crime and that it has not been formally charged with committing an act defined as a public entity crime regardless of the amount of money involved or whether Artist has been placed on the convicted vendor list.

11.5 INDEPENDENT CONTRACTOR

Artist is an independent contractor under this Agreement. In providing such services, neither Artist nor its agents shall act as officers, employees, or agents of the City. This Agreement shall not constitute or make the parties a partnership or joint venture, nor does this Agreement constitute a work for hire arrangement or agreement.

11.6 THIRD PARTY BENEFICIARIES

Neither Artist nor City intends to directly or indirectly benefit any third party(ies) by entering into this Agreement. Therefore, the parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against either of them based upon this Agreement. The parties expressly acknowledge that it is not their intent to create any rights or obligations in any third person or entity under this Agreement.

11.7 NOTICES

Whenever either party desires to give notice to the other, such notice must be in writing, sent by certified United States Mail, postage prepaid, return receipt requested, or by hand-delivery with a request for a written receipt of acknowledgment of delivery, addressed to the party for whom it is intended at the place last specified. The place for giving notice shall remain the same as set forth herein until changed in writing in the manner provided in this section. For the present, the parties designate the following:

For City:

City of Coral Gables
2327 Salzedo St.
Coral Gables, FL 33134
Attn: Catherine Cathers, Arts & Culture Specialist
305-460-5094
CCathers@coralgables.com

CC: City Attorney's Office

For Artist:

11.8 ASSIGNMENT

Artist shall not assign, transfer, or encumber all or any portion of this Agreement without the prior written consent of the City, which consent, if given at all, shall be at the City’s sole and absolute discretion.

11.9 STANDARD OF CARE

Artist shall perform its duties, obligations, services, and work under this Agreement in a skillful and respectable manner. The quality of the Work shall be comparable to the best national and international standards.

Artist represents that all persons providing any work or services required by this Agreement have the knowledge and skills, either by training, experience, education, or a combination thereof, to adequately and competently perform the duties related to the particular services and work contemplated in the Scope of Services.

11.10 CONFLICTS

The Artist and City shall avoid all conflicts of interest or appearance of conflicts of interest in the performance of this agreement.

11.11 CONTINGENCY FEE TO OTHERS

Artist warrants that it has not employed or retained any company or person, other than a bona fide employee and/or subcontractor working solely for Artist, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee and/or subcontractor working solely for Artist, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For a breach or violation of this provision, the City shall have the right to terminate this Agreement without liability, at its discretion, or to deduct from the Agreement price or otherwise recover the full amount of such fee, commission, percentage, gift or consideration.

11.12 WAIVER OF BREACH

A party’s failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A party’s waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

11.13 COMPLIANCE WITH LAWS

Artist shall comply with all Federal, State, and local (County and City) laws, codes, ordinances, rules, and regulations in performing his duties, responsibilities, and obligations related to this Agreement.

11.14 SEVERANCE

In the event this Agreement or a portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective unless City elects to terminate this Agreement.

11.15 JOINT PREPARATION

The parties hereto acknowledge that they have sought and received whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the language has been agreed to by parties to express their mutual intent 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.

11.16 WAIVER OF CONSEQUENTIAL DAMAGES

Artist waives claims against the City for consequential damages arising out of or related to this Agreement or its performance including, but not limited to, damages for lost income, profit, lost bonding capacity, financing, business and reputation, and for anticipated profit on any work not performed by Artist.

11.17 GOVERNING LAW AND EXCLUSIVE VENUE

This Agreement shall be governed, construed and interpreted in accordance with the laws of the State of Florida. Any and all legal action necessary to enforce the Agreement will be held in Miami Dade County. BY ENTERING INTO THIS AGREEMENT, CITY AND ARTIST EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO, OR ARISING OUT OF, THIS AGREEMENT.

11.18 AMENDMENTS

No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and approved and executed by the City and Artist.

11.19 ENTIRETY OF AGREEMENT

The City and Artist agree that this Agreement sets forth the entire agreement and incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements or understandings concerning the subject

matter of this Agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document in accordance with subsection 11.18 above.

11.20 INSURANCE

The Artist shall provide, maintain and pay for the following insurance which shall be placed with such insurance company or companies and in such form and in such coverages as are acceptable to City, which insurance includes but is not limited to the following minimum insurance coverages:

Commercial General Liability Insurance protecting the Artist, the City, and their respective servants, agents or employees against damages arising from bodily injury (including death) and from claims for property damage which may arise directly or indirectly out of the operations of the Artist, its subcontractors, servants, agents or employees under this Agreement. Such insurance shall be for an amount acceptable to the City and shall in any event be not less than One Million (\$1,000,000) Dollars inclusive of any one Occurrence and Two Million (\$2,000,000) Dollars in the Aggregate and also in the aggregate for Products & Completed Operations and shall include a standard form of cross liability clause. Should the Artist employ another contractor (the "Subcontractor"), the Subcontractor shall comply with the Commercial General Liability Insurance requirements including the endorsements stated in this agreement.

Automobile Liability Insurance on the Artist's owned, non-owned and hired vehicles, protecting the Artist against damages arising from bodily injury (including death) and from claims for property damage arising out of their use or the operations of the Artist, its Subcontractors or of agents under this Agreement. This insurance shall be for an amount acceptable to the City and shall in any event be not less than One Million (\$1,000,000) Dollars Combined Single Limit per accident. This requirement may be waived upon approval by the City's Risk Manager if the Artist does not own any company vehicles. However, should the Artist employ a Subcontractor, which includes but is not limited to a crane operator, the Subcontractor shall comply with the Automobile Liability Insurance requirements including the endorsements stated in this agreement.

Worker's Compensation Insurance covering all employees of Artist, in compliance with the requirements of Florida Statutes Section 440, and employer's liability insurance with limits not less than, One Million (\$1,000,000) Dollars. This requirement may be waived upon approval by the City's Risk Manager if the Artist has less than four (4) employees. However, should the Artist employ a Subcontractor, the Subcontractor shall comply with the Workers Compensation Insurance requirements including the endorsement stated in this agreement.

The City (and such other parties designated by City) is to be evidenced as Additional Insured on the Commercial General Liability Policy and Excess/Umbrella Policy. The additional insured status shall be evidenced by the ISO form CG20101185 or via both of the following ISO forms: CG2010 and CG2037 (07/04 Editions), or broader. Artist is to provide forty five (45) days' notice of cancellation or non-renewal of coverage and/or changes in limits of coverage on any policy. All policies of Artist shall contain an endorsement whereby the insurance carriers agree that its insurance is primary and not contributory with or in excess of any coverage which the City has purchased. The Artist shall be responsible for all deductibles under the Artist's insurance policies. The Artist shall be responsible for all loss or damage to the Work, including the Artist's materials delivered to site for incorporation therein and all property issued to the Artist by the City for use or incorporation in the Work. The Artist shall waive all rights against the City for recovery of damages to the extent that these damages are covered by insurance maintained pursuant to the above requirements, and the Artist shall provide all waivers of subrogation in the endorsements and forms required by the City.

Additional Insured Endorsements. The Artist agrees to endorse the City as an Additional Insured on the Commercial General Liability coverage with the following, or similar endorsement providing equal or broader Additional Insured coverage, the CG 2010 10 01 Additional Insured - Owners, Lessees, or Contractors or the CG2010 07 04 Additional Insured Owners, Lessees, or Contractors - Scheduled Person or Organization endorsement, including the additional endorsement of GC2037 10 01 Additional Insured - Owners, Lessees, or Contractors - Completed Operations shall be required to provide back coverage for the Artist's "your work" as defined in the policy and liability arising out of the products-completed operations hazard. Additionally, the Artist agrees to endorse the City as an Additional Insured under the Commercial Umbrella/Excess Liability, and Builder's Risk Insurance when it is required coverage. The name of the organization endorsed as Additional Insured for all endorsement shall read "City of Coral Gables."

Notwithstanding the availability of any insurance listed hereunder, the Artist shall bear the risk of loss for its acts or omissions pursuant to this Agreement. The Artist bears all liability for losses and damages arising from any acts, errors, omissions, or negligence on the part of the Artist and its Subcontractor(s), including without limitation damages for defective and nonconforming work, and the Artist and all applicable Subcontractors shall bear the risk and pay for such losses regardless of whether the Artist should be covered for such losses by the Artist's general liability or other insurance policies stated in this Article 11. In the event Artist should fail to pay the insurance premiums, the City, at its option, may pay the premiums and deduct said amount from the Contract Sum. The Artist's failure to maintain the insurance required by this Article 11 shall be grounds for the termination of this Agreement, and Artist shall be liable for all losses, damages, costs and expenses of every nature and kind associated with the failure to maintain the required insurance.

Waiver of Subrogation. The Artist agrees by entering into this written Agreement to a Waiver of Subrogation in favor of the City, Artist, Subcontractor, or engineers for each required policy providing coverage during the life of this Agreement. When required by the insurer, or should a policy condition not permit the Artist to enter into a pre-loss agreement to waive subrogation without an endorsement, the Artist agrees to notify the

insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or an equivalent endorsement. This Waiver of Subrogation requirement shall not apply to any policy, which includes a condition that specifically prohibits such an endorsement, or voids coverage should the Artist enter into such an agreement on a pre-loss basis.

Right to Revise or Reject. The Artist agrees that the City reserves the right, but not the obligation, to review or revise any insurance requirement, not limited to limits, coverages and endorsements based on insurance market conditions affecting the availability or affordability of coverage; or changes in the scope of work / specifications affecting the applicability of coverage. Additionally, the City reserves the right, but not the obligation, to review and reject any insurance policies failing to meet the criteria stated herein, or any insurer(s) providing coverage due of its poor financial condition or failure to operating legally in the State of Florida. In such events, City shall provide Artist written notice of such revisions or rejections.

No Representation of Coverage Adequacy. The coverages, limits or endorsements required herein protect the primary interests of the City, and the Artist agrees in no way should these coverages, limits or endorsements that are required be entirely relied upon when assessing the extent or determining appropriate types and limits of coverage to protect the Artist against any loss exposures, whether as a result of the Project or otherwise.

Certificate of Insurance. The Artist agrees to provide City with Certificate(s) of Insurance that clearly evidence the Artist's insurance contains the minimum coverages, limits, and endorsements set forth herein. A minimum thirty (30) day notice of cancellation or non-renewal of coverage shall be identified on each Certificate(s) of Insurance.

In the event the City is notified that a required insurance coverage will cancel or expire during the period of this Agreement, the Artist agrees to furnish City prior to the expiration of such insurance, a new Certificate of Insurance evidencing replacement coverage. When notified by City, the Artist agrees not continue work pursuant to this Agreement, unless all required insurance remains in effect. The City shall have the right, but not the obligation, of prohibiting Artist from entering the Project site until a new Certificate of Insurance is provided to the City evidencing the replacement coverage. The Artist agrees that the City reserves the right to withhold payment to Artist until evidence of reinstated or replacement coverage is provided to the City. If the Artist fails to maintain the insurance as set forth herein, the Artist agrees that the City shall have the right, but not the obligation, to purchase replacement insurance, which the Artist agrees to reimburse any premiums or expenses incurred by the City. The Artist agrees the Certificate(s) of Insurance shall include but is not limited to:

1. Clearly indicate the City has been endorsed on the Commercial General Liability with a CG 2010 Additional Insured - Owners, Lessees, or Contractors, or similar endorsement providing equal or greater Additional Insured coverage. (Attach an actual copy of the endorsement, contact your insurance agent).

2. Clearly indicate the City is endorsed as an Additional Insured on the Auto Liability.
3. Clearly indicate the project name and project number.
4. Clearly identify each policy's limits, flat & percentage deductibles, sub-limits, or self-insured retentions, which exceed the amounts or percentages set forth herein.
5. Clearly indicate a minimum thirty (30) day endeavor to notify requirement in the event of cancellation or non-renewal of coverage.
6. Clearly indicated Certificate Holder(s) as follows:

Original to: City of Coral Gables Procurement Division Attn: Chief Procurement Officer 405 Biltmore Way Coral Gables, FL 33134	Copy to: City of Coral Gables Risk Management Division Attn: Risk Manager 405 Biltmore Way Coral Gables, FL 33134
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7. Clearly indicate a Waiver of Subrogation for Commercial General Liability, and Auto Liability.
8. Clearly indicate that the following coverages are Primary and Non-contributory: Commercial General Liability, and Auto Liability.

Failure on the part of Artist to obtain and maintain all required insurance coverage is a material breach upon which the City may, in its sole discretion, immediately suspend Artist's performance or terminate this Agreement.

11.21 SOVEREIGN IMMUNITY

Artist acknowledges that the Florida Doctrine on Sovereign Immunity bars all claims by Artist against the City other than claims arising out of this Agreement. Specifically, the Artist acknowledges that it cannot and will not assert any claims against the City, unless the claim is based upon a breach by the City of this Agreement. The Artist acknowledges that it has no right and will not make a claim based upon the following:

- a. Claims based upon any alleged breach by the City of implied warranties or representations not specifically set forth in this Agreement, as the parties stipulate that there are no such implied warranties or representations of the City. All obligations of the City are only set forth in this Agreement;
- b. Claims based upon negligence or any tort arising out of this Agreement;
- c. Claims upon alleged acts or inaction by any City employee or agent of the City;
- d. Claims based upon an alleged waiver of any of the terms of this Agreement unless such waiver is in writing and signed by an authorized representative of the City and Artist.

11.22 INDEMNIFICATION

To the fullest extent permitted by laws and regulations, the Artist shall defend, indemnify, and hold harmless the City and its 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 and arbitration costs) arising out of or resulting from the performance of the work and caused in whole or in part by any willful, intentional, reckless, or negligent act or omission of Artist, any subconsultant, or 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 and regardless of the negligence of any such indemnified party, or (ii) any willful, intentional, reckless, or negligent act or omission of any individual or entity not a party to this agreement, or (iii) any negligent act or omission of the City or the City's officers, agents, or employees. The parties expressly agree that this provision shall be construed broadly, and Artist's obligations to pay for the City's legal defense hereunder shall arise and be fully enforceable when Artist (or any subconsultant or any person or organization directly or indirectly employed by Artist) is alleged to have acted willfully, intentionally, recklessly, or negligently in the performance of the work required under this Agreement. Any failure of Artist to comply with the terms of this provision shall be deemed a material breach of this Agreement and may subject Artist to debarment from consideration for future award of city contracts pursuant to Section 2-952(4) of the City of Coral Gables Code of Ordinances. Nothing in this Indemnification and Hold Harmless provision shall be considered to increase or otherwise waive any limits of liability, or to waive any immunity, established by Florida Statutes, case law, or any other source of law.

In any and all claims against the City or any of its consultants, agents, or employees by any employee of Artist, any subconsultant, 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 Artist or any such subconsultant or other person or organization under workers' or workman's compensation acts, disability benefit acts, or other employee benefit acts. Moreover, nothing in this Indemnification and Hold Harmless provision shall be considered to increase or otherwise waive any limits of liability, or to waive any immunity, established by Florida Statutes, case law, or any other source of law.

For any and all claims against the City or any of its consultants, agents, or employees by any employee of Artist, and subconsultant, 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 Artist or any such subconsultant 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 Section 725.06 (Chapter 725), Florida Statutes.

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FOLLOWS.]

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IN WITNESS WHEREOF, the parties have made and executed this Agreement on the respective dates, as executed below by their respective duly authorized officials.

CITY OF CORAL GABLES, a municipal organization existing under the laws of the state of Florida

TITLE OF CONTRACT ENTITY

Name: Amos Rojas Jr.
Title: City Manager

Name:
Title:

_____ day of _____, _____

_____ day of _____, _____

ATTEST:

Witnesses:

Billy Urquia
City Clerk

Signature
Print Name _____

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

Signature
Print Name _____

Cristina M. Suarez
City Attorney

APPROVED as to Insurance:

Marjorie Tapia, Risk Management Division

APPROVED by Department Director:

Anna Pernas, Historical Resources & Cultural Arts Director

APPROVED as to compliance with applicable Procurement Requirements:

Celeste St. Walker-Harmon, Chief Procurement Officer

APPROVED as to funds appropriation:

Diana M. Gomez, Finance Director

EXHIBIT A
ARTIST'S SCOPE OF SERVICES

ARTWORK/PROJECT: “ _____ ”

PURPOSE: Artist will design, oversee fabrication, permitting, transportation, inspection, and installation of the above original work of art (also referred to as Artwork or Project), except as otherwise agreed to in writing between the City and the Artist.

LOCATION OF SITE: _____

ADMINISTRATIVE COORDINATION: The Contract Administrator shall be the City's authorized representative to coordinate, direct, and review, on behalf of the City, all matters related to the Work. Artist shall maintain regular communication with the Contract Administrator via phone, letter or e-mail.

DESIGN COLLABORATION: During the design of the Artwork, Artist shall coordinate its progress with the Contract Administrator. The design of the Artwork shall be coordinated with the design process in the following areas: aesthetics, public presentations, construction documents, cost estimates and facility project schedules. Should the design of the Artwork require specialized professional services, Artist shall hire an appropriate sub-consultant and/or subcontractor, subject to the prior written approval of the Contract Administrator. Upon approval of the Artwork design, Artist shall prepare all necessary construction documents for fabrication of the Artwork and ancillary/support facilities needed to install and light the Artwork, as required by this Agreement except as otherwise agreed to in writing between the City and the Artist, and in compliance with all applicable laws and codes. Artist shall provide all necessary information on a timely basis to the Contract Administrator in the event that relevant components of the Artwork design must be incorporated into the final construction documents where appropriate.

CONSTRUCTION AND INSTALLATION COORDINATION: During the permitting, construction, and the installation of the Artwork, Artist shall collaborate and coordinate the Work with the Contract Administrator or his/her designated public art project coordinator, Consultant, General Contractor, or any other professional or individual designated by the City. The Artist shall coordinate the installation of the Artwork in accordance with the construction documents. The Artist shall be responsible for construction oversight during the fabrication and integration of all Artist-designed components, whether fabricated by Artist's subcontractors or included in construction documents to be fabricated and installed by others.

DELIVERABLES: The Artist shall provide the following deliverables:

I-A Conceptual Design. It is acknowledged that the Artist developed the conceptual design proposal, which was approved by the City Commission on _____, in accordance with the attached Resolution.

I-B Design Development. Artist shall complete the design development of the approved Artwork, develop construction documents (based on the approved concept and except as otherwise agreed to in writing between the City and the Artist) for fabrication of the Work, coordinate the Work with the Contract Administrator, and secure all applicable approvals

and permits. Approval by the Contract Administrator and Notice to Proceed (for fabrication) shall occur after submittal of all allocable Artwork deliverables.

1. Artist shall submit final design drawings for fabrication, Artist proofs, verified cost estimate, subcontractor list, permits and approvals, and a fabrication and installation schedule.
2. If the verified cost exceeds the Project Budget, Artist shall be obligated to redesign the Artwork to fit within the established budget, inclusive of all payments to Artist, **at no additional charge to City.**
3. Artist shall coordinate and participate in all product and material testing related to the Artwork and determine final product and material with the Contract Administrator subsequent to testing.

I-C Fabrication and Installation. Artist shall fabricate, deliver and install all Artwork and Artwork support components (except as otherwise agreed to in writing between the City and the Artist), as per the approved construction drawings. Artist shall be present at and provide construction administration services as required during the installation of the Artwork at the Site (including, but not limited to, the coordination of all applicable inspections by all governmental authorities having jurisdiction over the Project).

I-D Final Conservation Documents. Upon completion and installation of the Artwork, Artist shall submit all photographic documentation and completed cataloging forms including shop drawings, manufacturer specifications, and product cut-sheets, as applicable. If Artist utilizes computer technology in the fabrication of the Artwork, Artist shall submit electronic copies of any computer files that will support on-going operations or future repairs and conservation of the Artwork. Artist shall also submit replacement material(s) and/or parts, as applicable, and as deemed necessary by Contract Administrator, to be used for future repairs of the Artwork (quantities to be determined by Artist and Contract Administrator). Artist to demonstrate any maintenance and replacement procedures of the Artwork, as deemed necessary by the Contract Administrator.

I-E Warranty Period. All Work furnished under this Agreement shall be guaranteed against defective materials and workmanship, improper performance and noncompliance with the approved construction drawings, for a period of seven (7) years after final acceptance of the Project by Contract Administrator.

COMPLETION AND INSPECTION: Upon completion and installation of all designed and fabricated components, Artist shall be responsible for obtaining written final approval from Contract Administrator. If Contract Administrator finds the Work acceptable, the requirements of the Agreement with regard to design, fabrication, and installation of the Work and the Project satisfied, and all conditions of the permits and regulatory agencies fulfilled, final acceptance shall be given by the Contract Administrator.

PHOTOGRAPHIC DOCUMENTATION: Professional photo-documentation suitable for publication shall include images of all major aspects of the Project. The Artist-supplied photo-documentation shall be reproducible, at no cost to the City, for any all applicable uses by the City.

COMMUNITY INVOLVEMENT and EDUCATIONAL OUTREACH: The Artist shall participate in at least one (1) educational public meeting as set forth above after completion of the work and shall also participate in a community meeting during installation if requested by the Contract Administrator.

TIMELINE FOR COMPLETION: Artist shall coordinate the progress of the Work with the Contract Administrator.

PERMITS AND APPROVALS: Artist shall prepare application information and such documents and design data as may be required to procure approvals from all such governmental authorities that have jurisdiction over the Project. Artist, her assistants or assigned subcontractors shall participate in meetings, submissions, resubmissions and negotiations with such authorities if necessary. Artist shall respond to comments by such authorities in a timely manner to adhere to Project Schedule. City shall be responsible for formally transmitting and receiving permits to and from the respective jurisdictional authorities. Artist shall coordinate permitting and approval related issues with the Contract Administrator. The receipt of all necessary permits is a condition precedent to the fabrication of the Work. As of the effective date of this Agreement, it is anticipated that the following governmental authorities may have jurisdiction over Project.

- City of Coral Gables Building Department
- City of Coral Gables Planning Department
- City of Coral Gables Public Works Department

Notwithstanding the above, the City's failure to identify governmental authorities that may have jurisdiction over the Project **shall not** relieve Artist from the responsibility to procure all requisite permits.

SITE PREPARATION: The City shall at all events be solely responsible for all expenses, labor and equipment, and other costs required to bring any utility and/or service required (e.g. electricity, water, drainage, etc.) to the Site for installation of the Project.

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EXHIBIT A-1

PROJECT SCHEDULE

On or about:

_____	Full Execution of Agreement
_____	Completion and Submission of Construction Documents (shop drawings and signed/stamped engineering drawings).
_____	Securing of permits; 50% fabrication of Artwork; 50% site Preparation.
_____	Completion of Artwork fabrication and site preparation.
_____	Complete installation of Artwork and physical inspection.
_____	Submittal of close-out documents and final acceptance.

The Contract Administrator will schedule and coordinate a substantial completion inspection after receiving notification from the Artist that all of the Artist's contractual obligations related to construction and installation of the Artwork have been satisfied and that the Artwork is substantially complete in accordance with the contract documents and that the Artwork is available for substantial completion inspection. The inspection will be conducted by the Contract Administrator or designee, the contractor (if applicable), and other relevant personnel, at least five (5) business days before the final completion inspection. If the Artwork is substantially complete, any known deficiencies shall be identified in a substantial completion inspection report and a punch list shall be prepared therefrom. Copies of the report and punch list shall be provided to the Artist within five (5) business days after the inspection. All conditions and requirements of permits and regulatory agencies must have been satisfied for substantial completion to be achieved; however, such satisfaction shall not be determinative of the achievement of substantial completion.

Any and all deficiencies noted on the substantial completion inspection report and punch list shall be promptly corrected and completed by the Artist. The Contract Administrator will schedule and coordinate a Final Completion inspection after receipt of notification from the Artist that all noted deficiencies have been corrected and completed and that construction and installation of the Artwork is complete in accordance with the contract documents and the substantial completion inspection report, and is available for final inspection by City. The final inspection will be conducted within five (5) business days after notification.

Delay in Achieving Final Completion. When the City reasonably believes that final completion will be inexcusably delayed, the City shall be entitled, but not required, to withhold from any amounts otherwise due the Artist an amount then believed by the City to be adequate to recover liquidated damages applicable to any and all delays. If and when the Artist overcomes the delay in achieving substantial or final completion, or any part thereof, for which the City has withheld

payment, the City shall promptly release to the Artist those funds withheld, but no longer applicable, as liquidated damages.

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EXHIBIT B
PROJECT BUDGET

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EXHIBIT C
COMPENSATION AND SCHEDULE OF PAYMENTS

As set forth in Article 5 above, City shall pay _____ the total sum of up to _____ (\$ _____) for the Work described in this Agreement, which sum shall represent the total compensation to _____. No other amount shall be paid to Artist (including for reimbursable expenses).

Artist will be paid in accordance with the following specified installments upon submission of satisfactory invoices and documentation substantiating satisfactory completion of the portion of the Work for which payment is requested, and upon Contract Administrator's acceptance of said portion of the Work (as applicable). Additionally, each invoice shall include a **written progress report**, with a narrative discussion of all activities in progress during the report period, photo documentation, based upon the stated Scope of Services and payment description.

Payments to Artist shall be made for Work satisfactorily completed in accordance with the following schedule:

1. Payment #1: _____ to be paid upon execution of this Agreement.
2. Payment #2: _____ to be paid upon completion and submission of construction drawings and securing of permits.
3. Payment #3: _____ to be paid upon 50% completion of fabrication.
4. Payment #4: _____ to be paid upon completion of fabrication and site preparataion.
5. Payment #5: _____ to be paid upon completion installation of artwork and physical inspection.
6. Payment #6: _____ to be paid upon completion ot educational components and acceptance of close-out material.
- 7.

The proposed budget includes a contingency fee (the "Contingency Fee"), in the amount of _____ (\$ _____) (the "Contingency") to provide for unforeseen costs. The Artist will retain any savings of the Contingency Fee, and will bear the risk of any cost overruns. The Contingency shall be included within Payment #6 upon completion and acceptance of all of Artist's deliverables under this Agreement.

EXHIBIT D
CATALOGING FORM

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EXHIBIT D

MAINTENANCE AND CONSERVATION WORKSHEET

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