



April 20, 2017

City of Coral Gables
Cathy Swanson-Rivenbark, City Manager
405 Biltmore Way
Coral Gables, FL 33134

Re: Public Realm Planning/Design Concepts for Neighborhood North of SW 8th Street,
Coral Gables, Florida

Dear Ms. Swanson-Rivenbark:

This letter and the Terms and Conditions attached hereto as Attachments A, B & C (together, the "Agreement,") confirms the retention of Dover, Kohl & Partners ("DKP") by City of Coral Gables ("Client"), located at 405 Biltmore Way, Coral Gables, FL 33134 to provide independent professional planning services in connection with the above referenced matter.

I. SERVICES

1.1 Scope of Services

Please refer to Attachment A.

1.2 Procurement

Client understands and agrees that DKP is acting as a planning consulting firm and not providing architectural, landscape architectural, or professional engineering services, or services as other state-regulated professionals, as a part of this Project, and it is therefore agreed by the Client that this work is not subject to procurement under Florida's Consultants Competitive Negotiation Act (CCNA). In accordance with the exemption of the Procurement Code set forth in Section 2-678(24), and in consideration of the promises and the mutual covenants herein contained, Client agrees to retain DKP as specified herein.

1.3 Delivery of Services

To facilitate communications in relation to the Project, the Client's designated contacts regarding this work are Cathy Swanson-Rivenbark, City Manager, 405 Biltmore Way, Coral Gables, FL 33134 and Ramon Trias, Assistant Director for Development Services, 427 Biltmore Way, Coral Gables, FL 33134. Client agrees to provide DKP with timely access to information, technical assistance, base data, comments, locations and personnel reasonably necessary for the performance of the Services.

1.4 Conflicts of Interest

Based on the names of the parties the Client has provided, DKP is not aware of circumstances that constitute a conflict of interest or that would otherwise impair DKP's ability to provide objective assistance. DKP's determination of conflicts is based primarily on the substance of DKP's work and not the parties involved. During the course of this engagement, DKP may be requested to be retained by parties with interests that may not be consistent with those of the Client. DKP agrees that it will not accept retentions that would be averse to the Client without waiver of such conflict by all parties.

II. DOCUMENTS

2.1 Ownership and Use of Documents

Notwithstanding the completion, suspension, termination, or expiration of this Agreement, the following provisions shall apply to ownership and use of documents:

1. Final work products shall be delivered to and become the property of the Client. The Client shall have the right to retain, use, and reproduce final work products.
2. DKP will produce and use during the course of the Project certain proprietary documentation, including drawings, diagrams, maps, perspective renderings, other artworks, graphic aids, and various written materials. Subject to the Client's rights hereunder, DKP is deemed the sole owner of this documentation and reserves all rights of ownership and legal protections, including copyright that may be available under common law and statutory law. The Client may reproduce and distribute copies of this documentation without special authorization from DKP on a case-by-case basis, and without limitation, unless and until DKP revokes this authorization with reasonable notice.
3. Subject to the requirements of public records laws, written and graphic documents shall be protected by copyright and not reproduced for the sale or use by third parties without the written permission of DKP. Subject to such reasonable limitations as may be required by the Client's communications program, all reproductions of final work products and instruments of service shall clearly display the credit: "Dover Kohl & Partners, Town Planning." DKP reserves the right to require the removal of this credit from appearing on final work products or instruments of service that have been modified without DKP's prior written consent.
4. Records subject to the provisions of Public Record Law, Florida Statutes Chapter 119, shall be kept and maintained in accordance with such Statute. DKP 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. DKP 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, DKP 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 PROFESSIONAL HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE PROFESSIONAL'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.

2.2 Publication of Promotional Materials

1. DKP shall have the right to use either actual images or representations of the Project, including photographs, in its professional and promotional materials.
2. Subject to the reasonable requirements of the Client's communications program, Client shall clearly display the trademark of "Dover Kohl & Partners, Town Planning" in any promotional materials related to the tasks and work products of DKP.
3. In the event the Client or DKP publishes or causes to be published any photographs or representations of the Project, the parties agree to require publishers to include in any such publication an appropriate reference to the other parties, as the Client, town planner or attorney-planner respectively. The Client and DKP shall develop a mutually agreed format for submitting such information to publishers.

III. FEES AND EXPENSES

3.1 Generally.

The Project will be led by Victor Dover, FAICP, Principal, who will be assisted by others as appropriate. DKP will make every reasonable effort to perform the assignment in a cost-effective manner. DKP does not predict or warrant the outcome of any particular matter or issue, and DKP's fees are not dependent on such outcomes. DKP's hourly rates are based on the experience and skills of the personnel involved. DKP shall seek Client's authorization before incurring any extraordinary expenses, but the actual cost of all reasonable related expenses will be charged. The specific fees and expenses are outlined in Attachment B.

3.2 Billing and payment.

Professional services will be billed monthly based on hours incurred and the rates specified herein. Invoices for services shall be rendered to the Client, which will then forward such billing statements to Client for payment. DKP's invoices are due upon receipt, and payment of professional fees and expenses is expected within forty-five (45) days of the invoice date. Any objection to the invoice must be made within sixty (60) days after the date of the invoice; lack of timely objection to an invoice shall evidence Client's agreement to all invoiced amounts. A late charge of 1.5% per month will accrue on undisputed amounts not paid within forty-five (45) days of the date of the invoice.

3.3 Additional services.

Additional services that are preauthorized by the Client, and are not the subject of amendment to this Agreement, shall be considered outside the scope of this Agreement. Such services shall be billed to the Client at the hourly rates specified in Attachment B, shall be invoiced monthly, and shall in all respects be collected in the same manner as the services arising under this Agreement.

IV. SUSPENSION, TERMINATION OR WITHDRAWAL

4.1 Suspension

If payment on invoices is past due more than sixty (60) days, DKP reserves the right to suspend performance of services upon seven (7) days written notice, until payment is received. No further notice of the suspension shall be required, unless DKP receives full payment within seven (7) days of delivering to the Client such written notice. DKP shall have no liability to the Client for any delay or damage caused by a suspension of services due to untimely payment by the Client. The Client shall incur all fees and costs associated with any delay or suspension of services that is not the fault of DKP.

4.2 Termination

Client may terminate this Agreement upon seven (7) days written notice for any reason. If this Agreement is terminated, Client shall reasonably compensate DKP for services performed and reimburse expenses reasonably incurred up to the date of termination. All issues related to interpretation of this Agreement or any issues arising out of this engagement shall be governed by the law of Florida without application of its conflict of laws principles.

4.3 Withdrawal.

If DKP reasonably concludes that the Client is not implementing the intent of the planning documents, DKP shall at the earliest reasonable opportunity notify the Client in writing and explain the basis for this conclusion. If the Client is unable to resolve the concerns of DKP within a reasonable period of time, then DKP may remove its name from the project and prohibit the Client from using the name of DKP in connection with the design or any presentation, advertisement, or promotional material associated with the Project. Upon withdrawal, the client shall compensate DKP for services performed and reimburse expenses reasonably incurred up to the date of withdrawal. Should some other unforeseen condition arise that would cause the need for DKP to withdraw from the Project, DKP shall work with the Client to resolve the conflict or to coordinate a withdrawal process to stop the work or transition the work to others, following advance written notice to Client.

V. MISCELLANEOUS

5.1 Amendments. The provisions of this Agreement shall not be restricted, extended, or modified without prior written agreement signed by Client and DKP.

5.2 Assignments. The Client and DKP each bind themselves, and their partners, legal representatives, successors, and assigns, to the other parties to this agreement and to their partners, legal representatives, successors, and assigns. Neither the Client nor DKP may, without the prior written

consent of the other parties, assign or transfer to third parties any rights or obligations arising under this Agreement.

5.3 Indemnification and Hold Harmless. To the fullest extent permitted by laws and regulations, DKP shall defend, indemnify, and hold harmless the Client, its commissioners, attorneys, administrators, 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 either (i) any willful, intentional, reckless, or negligent act or omission of DKP, 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 Client or the Client's officers, agents, or employees. The parties expressly agree that this provision shall be construed broadly, and DKP's obligations to pay for the Client's legal defense hereunder shall arise and be fully enforceable when DKP (or any subconsultant or any person or organization directly or indirectly employed by DKP) is alleged to have acted willfully, intentionally, recklessly, or negligently in the performance of the work required under this Agreement. Any failure of DKP to comply with the terms of this provision shall be deemed a material breach of this Agreement and may subject DKP 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.

In any and all claims against the Client or any of its consultants, agents, or employees by any employee of DKP, 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 DKP 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.

5.4 Liability to third parties. Nothing contained in this Agreement shall create a contractual relationship with third parties or give rise to such third parties having any claim for damages at law or in equity against DKP.

5.5 Integration and Severability. This letter agreement and the Terms and Conditions attached hereto as Attachment 1, which are expressly incorporated herein, constitute the entire Agreement between DKP, on one side, and Client on the other side, regarding the terms of this engagement. In the event Client requires DKP to execute a purchase order or other Client documentation in order to receive payment for DKP's services, the terms and conditions contained in such purchase order or documentation shall be null and void and shall not govern the terms of this engagement. This Agreement is entered into without reliance on any promise or representation, written or oral, other than those expressly contained herein and supersedes any other such promises or representations. If any provision of this Agreement is found to be void and unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall nevertheless be binding upon the parties with the same effect as though the void or unenforceable provision had been severed and deleted.

5.6 Default and remedies for default. Violations of any of the provisions of this Agreement, including a failure to pay any sum of money when due, shall constitute an act of default if not cured as contemplated herein. Upon any uncured act of default, the non-defaulting parties may terminate this Agreement and exercise any and all legal and equitable remedies.

5.7 Force majeure. If any party is unable to perform its obligations under this Agreement due to a natural disaster or any circumstances beyond reasonable control, such obligation shall be suspended as long as those circumstances persist, provided that the delaying party promptly notifies the other parties of the delay and the causes. Except where the delay is caused by an act or omission of the delaying party, any costs arising from such delay shall be borne by the party incurring the delay.

5.8 Notice. Where this Agreement provides that written notice be delivered, such notice shall be delivered using the most expeditious means available, while taking into consideration such factors as delivery time, reliability, verifiability, and expense. The Client and DKP have designated the following business addresses as appropriate for receiving such notice:

For DKP:
Victor Dover, Principal
Dover, Kohl & Partners
1571 Sunset Drive
Coral Gables, FL 33143

For Client:
Cathy Swanson-Rivenbark, City Manager
City of Coral Gables
405 Biltmore Way
Coral Gables, FL 33134

Cc: Ramon Trias, Assistant Director of Development Services
427 Biltmore Way
Coral Gables, FL 33134

5.9 Waiver. The failure of the Client or DKP to insist upon the performance of particular terms or conditions arising under this Agreement shall not be construed as a waiver of any subsequent breach of such terms or conditions.

5.10 Equal Opportunity. It is understood that DKP shall not discriminate against any employee in the performance or the contract with respect to hire, tenure, terms, conditions or privileges of employment, or any other matter directly or indirectly related to employment because of age, marital status, race, color, religion, national origin, sex, or disability.

5.11 Policy Regarding Conduct. All contractors, including DKP, its employees, agents and subcontractors, must abide by the Client's policies regarding conduct. Discrimination, harassment, and/or violations of Client policies will not be tolerated and are grounds for termination of the contract without liability to the Client or its employees.

5.12 Attorney's fees; costs. If any party to this Agreement must retain an attorney to enforce its performance by commencing legal proceedings, then the prevailing party(ies) to such proceedings

shall be entitled to recover fees and costs from the non-prevailing party(ies), including reasonable attorney's fees and the costs incurred while prosecuting or defending such proceedings to a conclusion.

5.13 Applicable laws and venue. This Agreement shall be construed in accordance with the laws of the state of Florida in the United States of America, and venue shall lie in Miami-Dade County, Florida.

5.14 Effective Date. The effective date of this Agreement shall be the date upon which the last party executes it by signing below.

If Client wish to engage DKP to provide the services outlined in this Agreement, please sign in the spaces provided below and return an executed original to DKP. We look forward to providing our services in connection with this matter. If you have any questions, please do not hesitate to call me.

Very truly yours,

DOVER, KOHL & PARTNERS



Victor B. Dover FAICP, Founding Principal

Approved as to insurance:

David Ruiz
Risk Management Division

AS TO CITY:

Cathy Swanson-Rivenbark
City Manager

Approved by Department Director
or head of negotiations team as to
the negotiated business terms

[Print Name]

ATTEST:

Walter J. Foeman
City Clerk

APPROVED AS TO FORM AND LEGAL
SUFFICIENCY:

Approved as to compliance with
applicable procurement requirements:

Celeste Walker
Assistant Finance Director for Procurement

Miriam Ramos
City Attorney

Letter of Engagement: DKP & City of Coral Gables: North of 8th Street, April 20, 2018

Approved as to funds appropriation:

Diana Gomez
Finance Director

Attachment A

SCOPE OF SERVICES

Consultant shall create a vision for future improvement of the public realm in the neighborhood north of SW 8th Street (“Nof8”), to upgrade its identity as a unique Coral Gables neighborhood, and to make it more pleasant to walk, bike, and use public transportation. This area is referred to as the “Study Area” below; it is bordered on the south by SW 8th Street and on the east, north and west by the city limits.

TASK 1.1 Review Relevant Base Information

In order to prepare for and perform tasks described under this agreement, DKP will review relevant base information and documentation, which shall be provided by the Client or City of Coral Gables. This information should include, to the extent available:

- Existing conditions documentation of Study Area, including land surveys, aerial photos, and/or scale base maps that indicate existing conditions. The maps should include right-of-way dimensions, existing edge of pavement, sidewalks, planting areas, utility locations, and any other physical limitations of concern to DKP. This information should be in digital format, if available.
- Relevant existing ordinances and land development regulations for the City of Coral Gables and/or City of Miami and Miami-Dade County.
- Traffic and/or multimodal transportation analysis, if recent and relevant
- Current and/or upcoming public and private improvement projects

TASK 1.2 Meeting with Client team and Site Visit

At the onset of the project, DKP will meet with the Client team to discuss overall project objectives, and clearly define limits of conceptual design work. DKP will visit the Nof8 Study Area to photograph existing conditions and gain a better understanding of the site. During this phase of work, DKP will meet with stakeholders invited by Client to learn about the Study Area and its history, challenges and opportunities, and to discuss a range of possible improvements to improve the neighborhood’s appearance, reinforce the visual themes and features common to historic Coral Gables neighborhoods, and encourage residents to walk, bike and use public transit. Client will take responsibility for promoting the event to invited stakeholders and arranging for the room, refreshments, and event-related needs.

TASK 1.3 Deliverables

Based on conversations with the Client and stakeholders in the neighborhood, DKP will create design concepts for the study areas.

TASK 1.3.1 Base Drawing

DKP will generate a base drawing of existing conditions generated from the existing documentation provided by the Client. The drawing will include the approximate location of existing specimen trees, based on aerial photos. A City staff expert should be made available to identify important specimen trees that should remain after improvements.

TASK 1.3.2 Sketch Plans

The initial Sketch Plans will serve as a tool to illustrate design concepts and proposed layout. At least two (2) options will be provided to illustrate a range of possibilities.

TASK 1.3.3 Sketch Visualizations

DKP will produce two (2) sketch visualizations depicting proposed design concepts, in consultation with Client. These quick sketches will be produced through a combination of hand-drawn and computer-generated techniques; the drawings can also later be used for the City's further public outreach purposes.

TASK 1.4 Review Meeting with Client and select community leaders

The DKP team will participate in one (1) review meeting with the Client and invited community leaders to review work-in-progress for the above outlined tasks. This meeting will take place at City Hall or in a location arranged and prepared by the Client.

TASK 1.5 Revision to Work Products

DKP will provide one round of revisions to work products resulting from changes or constraints that arise after work products are submitted, provided that requested changes are made in writing within 60 days.

TASK 1.6 Follow-up Meeting (1)

DKP will meet with local stakeholders and staff at the request of the Client, at a location arranged and prepared by the Client. After this, all meetings requested by the Client will be billed on an hourly basis including preparation time for information compilation and dissemination and presentations.

ADDITIONAL DOCUMENTS AND SERVICES (Optional)

DKP will be available as needed on an hourly basis for additional items that may arise during this project. These may include additional presentations to community groups and to government officials, or for additional work items requested later by government authorities.

This project may require the services of a transportation engineer or other specialist. If needed, Client shall separately contract the required professionals and/or supply the necessary expertise from City staff.

parties agree to: (1) Change the Scope of Services; (2) Adjust the total fees estimate, if any; and (3) Change the schedule, as appropriate.

- C. **Additional Services.** Additional services that Client may authorize, and which Consultant has not expressly agreed to provide, unless subject to a written change order, shall be considered outside the scope of this Agreement. Such additional services shall be billed to Client at the hourly rates indicated below in Section D of this Article. Consultant will present Client with a monthly invoice for additional fees whenever additional services have been provided.
- D. **Hourly Rate Schedule.** Where this Agreement provides for Client's payment to Consultant of compensation on an hourly basis, professional fees shall accrue, and compensation shall be paid in accordance with the following hourly rate schedule:

Lead Principal Victor Dover	\$375.
Principal Joseph Kohl	300.
Senior Project Director	185.
Project Director	150.
Senior Illustrator / Director of Design	185.
Staff Illustrators	90.
Staff Planners, Staff Designers	90.
Clerical Staff	45.
NOTE: Travel time is billed at 50% of the rates above.	

Consultant reviews its hourly rates each calendar year, and reserves the right to modify its rate schedule commencing January 1, 2019. Consultant shall provide Client with written notification in advance of any such change.

- E. **Reimbursable Expenses:** Professional fees do not include expenses arising in the performance of this Agreement or in the service of Client. Client authorizes and shall reimburse Consultant for all reasonable expenses incurred, up to a maximum amount of **\$4,000**. Consultant shall seek pre-authorization for a single expenditure in excess of \$500.00. Should additional expenses arise, Consultant will seek authorization from Client prior to expending the charges. Although Consultant will seek Client's authorization prior to incurring any extraordinary expenses, Consultant considers ordinary expenses to include the following:
1. Reproduction expenses, such as printing, photocopying, photographing, photo-processing, and materials;
 2. Mailing, packaging, and shipping by couriers, overnight, express, priority, or other type of delivery service or the U.S. Postal Service;
 3. Long-distance communications charges for telephone, fax, and computer data transmission;

4. Commercial rentals, if required onsite in the Study Area, for supplies, equipment, workrooms, meeting rooms, and presentation rooms;
5. Any other limited miscellaneous or out-of-pocket expenses reasonably contemplated by the scope of services for the Project or in the service of the Client;
6. Expenses of any additional insurance limits or coverage, including professional liability insurance requested by the Client beyond present coverage; and

F. Late Payments. All invoices are due upon receipt.

