

**Agreement between
City of Coral Gables and Fung Collaboratives and Kiki Smith for
Commissioned Artwork in Coral Gables, Florida**

This is an Agreement, made and entered into this ___ day of _____, 202_, by and between: **City of Coral Gables**, a municipal corporation, existing under the laws of the State of Florida (the "City"), and Fung Collaboratives (the "Exhibitor" or "Consultant"), with a principal office at 13519 Skyline Blvd. Woodside, CA 94062 and Kiki Smith (the "Artist").

WHEREAS, the City has implemented the Art in Public Places program pursuant to Coral Gables Zoning Code, Article 3, Division 21 by allocating funding for the establishment and display of artwork in public places; and

WHEREAS, pursuant to Resolution No. 2020-153, adopted by the City Commission on July 14, 2020, the City wishes to engage the Consultant, as the representative of Kiki Smith (the "Artist") to coordinate and oversee the Artist who will design, fabricate, transport and install a unique (as hereinafter defined) and original artwork (also referred to herein as the "Artwork" or the "Project") at Giralda Plaza within the City, as indicated in the design proposal which has previously been approved by the City (such location hereafter referred to as **the "Site"**), at the agreed upon fees, and subject to all other terms and conditions, as set forth in this Agreement; and

WHEREAS, the Consultant represents and warrants that (1) it is authorized to act on behalf of the Artist and to make representation on behalf of the Artist with respect to the Artwork and the terms set forth in this agreement; (2) the Artist has designed and created an exclusive exhibition for the City; and (3) that the Artist desires to place the Artwork within the City so that the City may display it as set forth herein; and

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

NOW THEREFORE, City and Consultant, 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**. Kiki Smith, the individual selected to create the Artwork contemplated pursuant to this Agreement and who will coordinate the successful implementation of the Artwork.
- 1.3 **Artwork or Project**. That certain unique and original artwork is to be created by Artist and temporarily installed on the Site, and to be known as Blue Night, that has been approved by the City Commission, and is further described in **Exhibit "A"** (entitled, "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 **Consultant.** Shall mean Fung Collaboratives, which represents the Artist throughout the process and will coordinate the successful implementation of the Project such that it promotes positive benefits to the City of Coral Gables.
- 1.9 **Contract (Agreement) Amendment.** Shall mean a written agreement with the Consultant, approved by the City and signed by the City's duly authorized representative as well as the Consultant, 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.
- 1.10 **Exhibits.** Shall mean the various exhibits attached to and incorporated in this Agreement and referred to as follows:
 Exhibit A: Scope of Services
 Exhibit A-1: Project Schedule
 Exhibit B: Project Budget
 Exhibit C: Compensation and Schedule of Payments
- 1.11 **Notice to Proceed.** A written notice issued by the Contract Administrator to Consultant authorizing the commencement of Fabrication.
- 1.12 **Pre-Construction Meeting.** A meeting between the City staff and the Consultant's team prior to the start of the fabrication of the Artwork.
- 1.13 **Project Budget.** Shall mean an amount budgeted by the City for the Project, as specified in Exhibit "B", attached hereto.
- 1.14 **Project Cost.** Shall mean the total cost of the Project to the City including, design, fabrication, permitting, and installation costs, compensation to Artist and Consultant, contingencies, and other miscellaneous costs.
- 1.15 **Project Scope.** Shall mean the description of the Project, as specified in Exhibit "A", attached hereto.
- 1.16 **Work.** Any work and/or services required by Consultant 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 Consultant shall perform all Work and requirements identified in this Agreement and Exhibit "A" to coordinate the design, fabrication, transportation, inspection, and installation of the Project. Consultant shall perform all services and furnish all supplies, materials and equipment as necessary for the design, execution and fabrication of the Artwork, including, but not limited to insurance, supplies, materials, tools, equipment, consultants, and all other items incidental to producing the Artwork (the Conceptual Design of which has already been accepted), and shall either directly or through qualified subcontractors, undertake the transportation, installation, and integration of the Artwork at the Site.
- 2.2 Consultant is responsible for notifying City in a timely manner of the personnel and equipment that will be required for the installation. While all coordination and installation will be provided by Consultant, the City may choose to assist with necessary equipment, such as barricades. Consultant is responsible for notifying City in a timely manner of all necessary equipment for Consultant's implementation and of the maintenance of traffic plan (if needed).

- 2.3 In addition, the Consultant will assist with providing mutually agreed-upon materials necessary for educational purposes, an interpretive exhibition, and will coordinate a lecture with the Artist to the public in Coral Gables, Florida after the work is completed at a date and time mutually agreeable to Consultant and the City.
- 2.4 Consultant 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 to commence and complete the Work, and the amount of compensation the City is obligated or committed to pay), 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.
- 2.5 Consultant shall schedule and have a representative attend a pre-construction meeting to establish communication and engage in problem solving between City staff and the design/installation 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 changes must be discussed at this meeting, which may be held on site or via video conference.
- 2.6 Consultant shall be solely responsible for the quality and timely prosecution, completion and installation of the Work and the Project. Consultant shall be responsible for ensuring that Artist designs the Project so that it can be fabricated and installed without exceeding the approved Project Budget. The Consultant shall, without additional compensation, correct or revise any errors, omissions, or other deficiencies in the Work upon the written request of the Contract Administrator.
- 2.7 Consultant acknowledges and warrants to City that an essential element of this Agreement is the skill and creativity of Artist, and that Consultant is solely responsible for the quality of the Project. The Consultant may not subcontract and/or assign portions of the Work to additional parties not previously identified by Consultant, without the prior written approval of the Contract Administrator, which shall not be unreasonably withheld. Notwithstanding the Contract Administrator's approval of any such subcontract and/or assignment, Consultant will still be held ultimately responsible for all portions of the Work. Consultant warrants to City that it shall be solely responsible for supervision of (and any compensation to) any and all third parties it subcontracts, and that the City shall have no liability whatsoever, whether financial or otherwise, with regard to same.
- 2.8 Consultant agrees to obtain and provide signed, stamped engineering drawings and calculations prepared by a Florida licensed design professional as Design Development documents so that the Artwork, which is a temporary exhibition, shall comply with applicable State, Miami-Dade County, and City laws, ordinances, codes and regulations. Consultant 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 obtaining all applicable permits related to the Project.
- 2.9 Consultant 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 prior to the City's own announcement of the Project
- 2.10 Consultant shall coordinate with the City so that Consultant can 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 Consultant 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 Consultant, any background materials and information on matters affecting the Site.
- 2.12 Consultant warrants and represents to the City that it has visited the site of the Work, examined the actual job conditions, and that Consultant is familiar with local conditions and all things required

that will have a bearing on performance of Consultant's Work and 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. Consultant, 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 Consultant 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 Consultant 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, Consultant shall promptly perform such periodic clean up as may be required by the Contract Administrator; provided, however, that the Contract Administrator shall not materially interfere with the installation. The Consultant shall also remove any of its equipment, excess materials, and waste promptly from the Site at the end of the installation process and after inspection and acceptance of the Project, as directed by Contract Administrator.
- 2.14 Consultant shall bear any transportation and storage costs resulting from the fabrication, delivery, storage, and installation of the Work and the Project.

ARTICLE 3
CHANGES IN SCOPE OF SERVICES

- 3.1 Minor changes in form, shape, materials and color may be made at the discretion of Consultant with approval by the Artist for refinement of the design of the Artwork, provided that Consultant notifies Contract Administrator 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 any other material changes in the terms and conditions of the Agreement, 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.
- 3.3 In the event that the services of the Consultant are integrated into, combined, or otherwise coordinated with services by third parties not within the control of Consultant, the Consultant shall not be responsible for such third-party services. If any part of the Consultant's Work depends upon proper execution or results from the work of the City or a third party responsible to the City, the Consultant shall have an ongoing duty to promptly report to the City any apparent discrepancies or other defects in such other work which renders it unsuitable for proper execution and results by the Consultant, prior to proceeding with the Consultant's Work. Failure of the Consultant to report a discrepancy or defect shall constitute an acceptance of the City's or third party's work as fit and proper to receive the Artwork. Any costs caused by defective or ill-timed work shall be borne by the party responsible thereof. Nothing in this section shall limit the responsibility of the Consultant to take all reasonable steps to coordinate the Work with the work of the City or of a third party on the Site.

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, Consultant shall diligently and continually prosecute the Work in accordance with the Project Schedule set forth in **Exhibit "A-1"**, attached hereto. Consultant and Artist acknowledge that the City is currently under a state of emergency due to the COVID-19 worldwide pandemic ("COVID-19") and Consultant and Artist acknowledge and agree that the City may need to reschedule the

timing of the Project due to circumstances surrounding COVID-19 and that the City shall have sole discretion as to such modifications to the Project Schedule as set forth in Exhibit "A-1."

- 4.2 Time shall be deemed to be of the essence in the Parties' performance of their respective duties, obligations and responsibilities, as required by this Agreement.
- 4.3 The Contract Administrator may grant a reasonable extension of time to Consultant 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 Consultant for proceeding with the Work; or if conditions beyond Consultant'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, 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 Consultant, in the manner specified in this Article and **Exhibit "C"** (Compensation and Schedule of Payments) hereto, the total amount not to exceed \$200,000 (two hundred thousand dollars) and all contingencies, which shall be at the risk of the Consultant.
- 5.2 Consultant may submit invoices for compensation in accordance with the schedule of payments set forth in Exhibit "C", payable after the portion of the Work for which the invoice is submitted has been satisfactorily completed and accepted by the Contract Administrator.

Invoices shall designate the nature and portion of the Work performed (as numbered on Exhibit C). 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. Hi-resolution photographic documentation demonstrating progress of the Work shall also be included with each invoice.**

- 5.3 City shall pay Consultant (but only for Work satisfactorily performed and accepted by the Contract Administrator), based upon the schedule in Exhibit A-1 and upon prior receipt of proper invoices. Invoices shall be submitted by Consultant to the City as follows:

Kara Kautz, Historical Resources & Cultural Arts Interim Director
City of Coral Gables
2327 Salzedo Street
Coral Gables, FL 33134
KKautz@coralgables.com

or to:
Catherine Cathers, Arts & Culture Specialist
City of Coral Gables

2327 Salzedo Street
Coral Gables, FL 33134
CCathers@coralgables.com

- 5.4 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.
- 5.5 Payment shall be made to Consultant as coordinated with the Consultant.

ARTICLE 6 WARRANTIES

- 6.1 Consultant 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.
- 6.2 Consultant warrants to the City that reasonable maintenance of the Project will not require any extraordinary procedures. The City acknowledges that the Consultant shall not be responsible for damage caused by the City's failure to properly maintain the site.
- 6.3 Consultant warrants to the City that the Project shall be delivered to the City free and clear of any liens from any source whatsoever.
- 6.4 Consultant 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 the exhibition period the City finds the Work in need of repair, such repairs will be made at no expense to the City promptly and satisfactorily. Consultant agrees to facilitate touch-up of the work if necessary, for optimum presentation by the Artist.
- 6.5 If Consultant fails to remedy any defect or damage as a result of subsection 6.4 above, 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 Consultant's expense.
- 6.6. Consultant 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 Consultant, 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 Consultant with the Project Budget;
 - c. Arrange for access so that Consultant may enter upon the Site for Consultant to perform the Work;

- d. Give prompt written notice to Consultant whenever the City becomes aware of any development that affects the scope or timing of the Work;
- e. Arrange public meetings and consultations as deemed necessary by the Contract Administrator or City Manager; except as otherwise noted in Exhibit A Scope of Services.
- f. Review submitted materials in a reasonably timely manner;
- g. Prepare and implement, at its expense, signage and marketing information identifying Artist and Consultant, the title of the Project, materials used, year of completion, and reasonably maintain same in good repair;
- h. Reasonably assure that the Project is properly maintained, taking into account the recommendations of Artist.
- i. Give prompt written notice to Consultant within a reasonable time after the discovery of any failure, defect, or damage;
- j. All references to the Artwork and all reproductions of the Artwork by City shall credit the Artist and Consultant;
- k. Never modify the Artwork or permit the Artwork to be modified. If the Artwork becomes modified after final acceptance, Consultant, on Artist's behalf, may request removal of the Artist's name from the Artwork by sending City legal notice as required by this Agreement.

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 Consultant, as the representative of the Artist, makes no waiver 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) or 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.

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 property of Artist. Artist may apply to register any mark or copyright which depicts, is derived from, represents, duplicates, or is related to Artist or the Artwork. Consultant agrees that it shall cause Artist to use best efforts in public showing or use of reproductions to give acknowledgement to the City in substantially the following form: "an original Artwork for a temporary exhibition by the City of Coral Gables."
- 9.2 Notwithstanding Section 9.1 or any other term or condition of this Agreement, Consultant, as the representative of and authority of the 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 related to the exhibition of the Artwork while the Artwork is on display pursuant to this Agreement. Notwithstanding anything to the contrary herein, any reproduction of the Artwork for commercial purposes by third parties (including on merchandise or in commercial advertising for third party products) shall be subject to separate agreement with Artist. 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 Artist and/or to third parties as a result of any failure by third parties to obtain authorization by Consultant and/or Artist, or give credit to Consultant and/or Artist, for such third party uses.

- 9.3 Consultant agrees that all Work shall comply with all applicable patent, trademark and copyright laws, rules, regulations and codes. Consultant further agrees that it will not knowingly use any third party's patent, trademark or copyright unless Consultant has obtained proper permission and all releases, and other necessary documents. If Consultant uses any protected material, process or procedure, Consultant 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. In the event that City learns of any infringement, threatened infringement, or passing-off of all or any portion of the Artwork by a third party, City shall make all reasonable efforts to notify Consultant at the address provided in the Notices section of this Agreement. Either City or Consultant, on behalf of the Artist, may bring infringement actions against third parties. Any award received from such actions shall be split evenly between City and Consultant, on behalf of the 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 Consultant 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 Consultant.
- 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 material 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, Consultant shall not be relieved of liability to the City for damages sustained by the City by any breach of the Agreement by Consultant. 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 Consultant. The City shall be entitled to recover all costs of such actions, including reasonable attorney's fees.
- 10.5 This Agreement may be terminated by the Consultant upon thirty (30) days' prior written notice to the City for the City's failure to pay any invoice when payment is in fact due.

ARTICLE 11

MISCELLANEOUS

11.1 AUDIT RIGHT AND RETENTION OF RECORDS

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

Consultant 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. Consultant 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. Consultant 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, Consultant 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 CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSULTANT'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

Consultant 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. Consultant 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.

Consultant'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

Consultant 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, Consultant 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 Consultant has been placed on the convicted vendor list.

11.5 INDEPENDENT CONTRACTOR

Consultant is an independent contractor under this Agreement. In providing such services, neither Consultant, 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 Consultant, 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: Kara Kautz, Historical Resources & Cultural Arts Interim Director
305-460-5093
kkautz@coralgables.com

For Consultant:

Fung Collaboratives
13519 Skyline Blvd
Woodside, CA 94062
Attn: John Talley

With a Courtesy Copy to:
Kiki Smith
59 Snake Road
Catskill, NY 12414

11.8 ASSIGNMENT

Consultant 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 discretion. Notwithstanding anything to the contrary herein, Consultant shall be permitted to retain the fabricators, engineers, installers, and other professionals needed to make the Artwork and carry out the Work under this Agreement.

11.9 STANDARD OF CARE

Consultant shall perform each of its duties, obligations, services, and work under this Agreement in a skillful and respectable manner, in accordance with recognized professional standards and principles.

Consultant 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

Consultant 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

Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee and/or sub-contractor working solely for Consultant, 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 sub-contractor working solely for Consultant 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

Consultant shall comply with all Federal, State, and local (County and City) laws, codes, ordinances, rules, and regulations in performing its 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 preparation of this Agreement has been a joint effort for the parties;

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

Consultant 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 Consultant.

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 CONSULTANT 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 Consultant.

11.19 ENTIRETY OF AGREEMENT

The City and Consultant 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 Consultant (hereinafter referred to as Contractor), 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 Contractor, 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 Contractor, 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 Contractor employ another Contractor (hereinafter Subcontractor), the Subcontractor shall comply with the Commercial General Liability Insurance requirements including the endorsements stated in this agreement.

Automobile Liability Insurance on the Contractor's owned, non-owned and hired vehicles, protecting the Contractor against damages arising from bodily injury (including death) and from claims for property damage arising out of their use or the operations of

the Contractor, 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 Contractor does not own any company vehicles. However, should the Contractor employ another Contractor, which includes but is not limited to a crane operator (hereinafter Subcontractor), the Subcontractor shall comply with the Automobile Liability Insurance requirements including the endorsements stated in this agreement. This requirement may be waived upon approval by the City's Risk Manager if the Contractor does not have company-owned vehicles.

Worker's Compensation Insurance covering all employees of Contractor, in compliance with the requirements of Florida Statutes Section 440, and employer's liability insurance with limits not less than, \$1,000,000. This requirement may be waived upon approval by the City's Risk Manager if the Contractor has less than 4 employees. However, should the Contractor employ another Contractor (hereinafter 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. Contractor 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 Contractor 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 Contractor shall be responsible for all deductibles under the Contractor's insurance policies. The Contractor shall be responsible for all loss or damage to the Work, including the Contractor's materials delivered to site for incorporation therein and all property issued to the Contractor by the City for use or incorporation in the Work. The Contractor 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 Contractor shall provide all waivers of subrogation in the endorsements and forms required by the City.

Additional Insured Endorsements. The Contractor 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 Contractor's "your work" as defined in the policy and liability arising out of the products-completed operations hazard. Additionally, the Contractor 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 Contractor shall bear the risk of loss for its acts or omissions pursuant to this Agreement. The Contractor bears all liability for losses and damages arising from any acts, errors, omissions, or negligence on the part of the Contractor and its subcontractors, including without limitation damages for defective and nonconforming work, and the Contractor and all applicable Subcontractors shall bear the risk and pay for such losses regardless of whether the Contractor should be covered for such losses by the Contractor's general liability or other insurance policies stated in this Article 11. In the event Contractor 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 Contractor's failure to maintain the insurance required by this Article 11 shall be grounds for the termination of this Agreement,

and Contractor 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 Contractor agrees by entering into this written Agreement to a Waiver of Subrogation in favor of the City and waives any right of recovery Contractor may have against the person or organization shown above because of payments Contractor makes for injury or damage arising out of work, as defined in the policy, done under contract with that person or organization. The waiver applies only to the person or organization shown above. All other provisions apply.

Right to Revise or Reject. The Contractor agrees 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 Contractor 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 Contractor 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 Contractor against any loss exposures, whether as a result of the Project or otherwise.

Certificate of Insurance. The Contractor agrees to provide City with Certificate(s) of Insurance that clearly evidence the Contractor'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 Contractor agrees to furnish City prior to the expiration of such insurance, a new Certificate of Insurance evidencing replacement coverage. When notified by City, the Contractor 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 Contractor from entering the Project site until a new Certificate of Insurance is provided to the City evidencing the replacement coverage. The Contractor agrees the City reserves the right to withhold payment to Contractor until evidence of reinstated or replacement coverage is provided to the City. If the Contractor fails to maintain the insurance as set forth herein, the Contractor agrees the City shall have the right, but not the obligation, to purchase replacement insurance, which the Contractor agrees to reimburse any premiums or expenses incurred by the City.

The Contractor 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

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

11.21 SOVEREIGN IMMUNITY

Consultant acknowledges that the Florida Doctrine on Sovereign Immunity bars all claims by Consultant against the City other than claims arising out of this Agreement. Specifically, the Consultant 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 Consultant 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 Consultant.

Consultant acknowledges the existence of the Florida Doctrine on Sovereign Immunity.

11.22 INDEMNIFICATION

To the fullest extent permitted by laws and regulations, the Consultant 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 (i) any willful, intentional, reckless, or negligent act or omission of Consultant, the Consultant, 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 Consultant's obligations to pay for the City's legal defense hereunder shall arise and be fully enforceable when Consultant and/or Consultant (or any subconsultant or any person or organization directly or indirectly employed by them) is alleged to have acted willfully, intentionally, recklessly, or negligently in the performance of the work required under this Agreement. Any failure of Consultant to comply with the terms of this provision shall be deemed a material breach of this Agreement and may subject Consultant 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.

For any and all claims against the City or any of its consultants, agents, or employees by any employee of Consultant or Consultant, 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 Consultant or Consultant 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.

- A. **INDEMNIFICATION BY CONSULTANT.** Consultant agrees to protect, defend, indemnify and hold harmless the City and their officers, agents and employees, from and against all claims, costs and damages (collectively, "Liabilities") arising out of negligent or willful acts or omissions in the performance of this Agreement by Consultant, or the Consultant's agents or Consultant's subcontractors. Consultant's obligations to indemnify and hold the City harmless under this subsection exclude only those Liabilities, which are substantially due to material negligence or willful misconduct of the City, its officers, agents and employees. Nothing in this Indemnification 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. This provision shall survive termination of this Agreement.
- B. **INDEMNIFICATION BY CITY.** The City agrees to protect, defend, indemnify and hold harmless Consultant and its officers, agents, employees and contractors, from and against all claims, costs and damages (collectively, "Liabilities") arising out of negligent or willful acts or omissions in the performance of this Agreement by City, or the City's agents or subcontractors, including but not limited to insufficient payment to the Consultant and/or its contractors and negligent maintenance of, or security at, the Artwork after the termination or expiration of this Agreement. The City's obligations to indemnify and hold Consultant, its agents, servants, employees and contractors harmless under this subsection exclude only those Liabilities, which are substantially due to material negligence or willful misconduct of Consultant, its officers, agents and employees, except as otherwise provided above. Provided, however, this indemnification shall only be to the extent of the limitations of Section 768.28, Florida Statutes.

It is the specific intent of the parties hereto that the foregoing indemnification complies with Section 725.06 (Chapter 725), Florida Statutes.

11.23 PURCHASE.

Upon fabrication and installation of the Artwork, Consultant shall notify the City of the purchase price for acquisition of the Artwork ("Purchase Price"). Should the City wish to purchase the Artwork, it shall have a right of first refusal at the Purchase Price less a credit in an amount to be determined by the Artist. All terms of such a purchase shall be memorialized in a separate agreement, subject to the approval of the City Commission. Consultant and Artist agree that the right of first refusal shall be valid as long as the City notifies Consultant and Artist of its intention to purchase the Artwork prior to the removal of the exhibition of the Artwork under this Agreement. Consultant and the Artist agree that if the Project Schedule is modified due to Covid-19 such that the initial installation does not occur until November 2021, the right of first refusal shall remain valid until removal of the Artwork after any second installation which would not occur until after November 2022.

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:

CITY OF CORAL GABLES, a municipal corporation of the State of Florida

By: _____

Name: Peter Iglesias

Title: City Manager

Approved as to form and legal sufficiency:

By: _____

Name: Miriam Soler Ramos

Title: City Attorney

ATTEST:

By: _____

Name: Billy Y. Urquia

Title: City Clerk

CONSULTANT

Fung Collaboratives

By: _____

Name:

Title: _____

WITNESS:

By: _____ Name: _____

By: _____ Name: _____

ARTIST:

Kiki Smith

By: _____

WITNESS:

By: _____ Name: _____

By: _____ Name: _____

EXHIBIT A
SCOPE OF SERVICES

ARTWORK/PROJECT: Blue Night

PURPOSE: Consultant, as Artist's representative, will coordinate design, fabrication, transportation, inspection, and installation of the above original works of art (also referred to as Artwork or Project), except as otherwise agreed to in writing between the City and the Consultant.

LOCATION OF ARTWORK: Giralda Plaza

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. Consultant shall maintain regular communication with the Contract Administrator via phone, letter or e-mail.

DESIGN COLLABORATION: During the design of the Artwork, Consultant or Consultant's designee shall coordinate its progress with the Contract Administrator. Should the design of the Artwork require specialized professional services, Consultant shall hire an appropriate sub-consultant and/or sub-contractor, subject to the prior written approval of the Contract Administrator if such sub-consultant and/or sub-contractor has not previously identified by Consultant. Upon approval of the Artwork Conceptual Design, Consultant shall prepare the Design Development documents necessary for fabrication of the Artwork and ancillary/support facilities needed to install the Artwork, as required by this Agreement except as otherwise agreed to in writing between the City and the Consultant, and in compliance with all applicable laws and codes as certified by signed, stamped drawings prepared and submitted by an engineer licensed in the State of Florida. Consultant 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.

FABRICATION AND INSTALLATION COORDINATION: During the fabrication and the installation of the Artwork, Consultant shall coordinate the Work with the Contract Administrator or his/her designated public art project coordinator, or any other qualified professional or qualified individual designated by the City. The Consultant shall coordinate the installation of the Artwork in accordance with the approved documents. The Consultant shall be responsible for oversight during the fabrication and integration of all Artist-designed components, whether fabricated by Artist or Consultant's subcontractors or included in documents to be fabricated and installed by others. Consultant is responsible for notifying City in a timely manner of any personnel and equipment that will be required for the installation. While all coordination and installation will be provided by Consultant, the City will work with the Consultant to develop a maintenance of traffic plan and provide limited equipment, such as barricades. Consultant is responsible for notifying City in a timely manner of all necessary equipment for Consultant's implementation of the maintenance of traffic plan.

DELIVERABLES: The Consultant shall provide the following deliverables:

- I-A Conceptual Design. It is acknowledged that the Consultant, on behalf of the Artist, submitted the developed conceptual design proposal, which was approved by the City Commission on July 14, 2020, in accordance with the attached Resolution 2020-153.

- I-B Design Development. Consultant shall coordinate completion of the design development of the approved Artwork, develop necessary documents (based on the approved concept and except as otherwise agreed to in writing between the City and the Consultant) for fabrication of the Work, coordinate the Work with the Contract Administrator, and provide all applicable information for approvals and permits.
 - 1. Consultant shall submit final design drawings as signed and sealed engineered drawings with calculations.

2. Consultant shall submit verified cost estimate, sub-contractor list, and a fabrication and installation schedule as agreed upon with the City.
3. Consultant shall submit hi-resolution images for use as set forth in the Agreement.
4. Consultant shall supply City with any video (if it exists) of process and research used to develop and document the Project.
5. The established budget is "all in," and no further funds are available to the Consultant for the Project.
6. It is understood that initial site visits for concept development and presentation purposes have already occurred.

I-C Fabrication and Installation. Consultant shall coordinate fabrication, delivery and installation of all Artwork and Artwork support components (except as otherwise agreed to in writing between the City and the Consultant). Consultant shall coordinate construction administration services as required during the installation of the Artwork at the Site as follows and provide as follows:

I-D 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 up to five (5) months after final acceptance of the Project by Contract Administrator.

Should Artwork show excessive wear and appear lack-luster prior to Art Basel event, Consultant agrees to facilitate touch-up of the work for optimum presentation by Art Basel event.

I-E Consultant shall coordinate with the City's Arts & Culture Specialist and provide materials, text, and input to be mutually agreed upon for educational purposes and a related interpretive exhibition at a suitable agreed location.

COMMUNITY INVOLVEMENT and EDUCATIONAL OUTREACH: The Consultant shall coordinate at least one (1) educational public meeting with the Artist as set forth above after completion of the work and shall also attend the Art Basel VIP Reception, should it occur, at no additional cost.

PERMITS AND APPROVALS: Consultant shall prepare application information and such documents and design data as may be required to assist the City to obtain approvals from all such governmental authorities that have jurisdiction over the Project. Consultant, his assistants or assigned subcontractors shall participate in meetings, submissions, resubmissions and negotiations with such authorities if necessary. Consultant shall respond to comments by such authorities in a timely manner (from the time that any such comments are provided to Consultant by the City) to adhere to Project Schedule. City shall be responsible for formally transmitting and receiving permits to and from the respective jurisdictional authorities.

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. City is not, however, responsible for soil preparation or installation of foundations required for the Artwork.

EXHIBIT A-1

PROJECT SCHEDULE

On or about July, 2020	Full Execution of Agreement
August, 2020	Completion and Submission of Design Drawings
August/September, 2020	Fabrication of Artwork
September/October, 2020	Finalize Locations, Apply for Permits, Submit hi-res images and materials for marketing and exhibition
November, 2020	Installation of Artwork and physical inspection.
December, 2020	Art Basel VIP Reception

The City reserves the right to change the schedule above due to the evolving circumstances surrounding the COVID-19 pandemic. Any changes shall be approved in writing by the City Manager. Consultant and Artist agree that the Artwork, at the City's discretion, may be exhibited in two showings (e.g. November 2020 through April 2021 and November 2021 through April 2022). Should the City modify the Project Schedule above due to Covid-19 such that the initial installation does not occur until November 2021, Consultant and Artist agree that the second exhibition may be installed, at the City's discretion, in November 2022.

The Consultant shall notify the Contract Administrator when installation begins, and when installation is anticipated to be complete. Twenty-four (24) hours before the end of installation, Consultant shall send the Contract Administrator a written notice via e-mail of the impending completion of installation. The Contract Administrator shall be present at the completion of installation to inspect the Artwork so that any deficiencies noted can be corrected while the Consultant and art installation team are on-site. If no deficiencies are noted then the fabrication and installation of the Artwork, then the Artwork shall be deemed complete and accepted by the City. If the Contract Administrator does note any deficiencies, those deficiencies shall be noted and delivered promptly, in writing and in sufficient detail so that the Consultant and on-site installation team can address and remedy the deficiencies. When the Consultant believes the deficiencies have been successfully remedied, the Contract Administrator shall again promptly inspect the listed deficiencies to confirm whether or not they have been remedied. If the deficiencies have been successfully remedied, and no further deficiencies are identified, then the Artwork shall be deemed complete and accepted by the City.

EXHIBIT B
PROJECT BUDGET
(SAMPLE)

Artwork & Related Expenses, including but not limited to:

• Signed and Sealed drawings	\$10,000
• Signage	\$3,000
• Photography	\$8,000
• Insurance	\$7,000
• Materials	\$32,000
• Fabrication	\$50,000
• Packing & Shipping	\$5,500
• Installation/De-installation(2)	\$5,000
• Lighting	\$4,500
• Travel	\$5,000
• Artist fee	\$50,000
• Consultant fee	\$20,000
Total	\$200,000.00

EXHIBIT C
COMPENSATION AND SCHEDULE OF PAYMENTS

As set forth in Article V above, City shall pay the Consultant the total sum of up to, and not to exceed, **Two Hundred Thousand Dollars (\$200,000.00)** for the Work described in this Agreement. No other amount shall be paid to Consultant by the City (including for reimbursable expenses). Consultant 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).

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

1. Payment #1: Eighty Thousand Dollars (\$80,000) to be paid upon execution of this Agreement.
2. Payment #2: Forty Thousand Dollars (\$40,000) to be paid upon the receipt of hi-resolution images, materials, and text for marketing and exhibition.
3. Payment #3: Thirty Thousand Dollars (\$30,000) to be paid upon completion of fabrication.
4. Payment #4: Thirty Thousand Dollars (\$30,000) to be paid upon completion of installation.
5. Payment #5: Ten Thousand Dollars (\$10,000) to be paid upon completion of Consultant talk and Art Basel event, should it occur.
6. Payment #6: Ten Thousand Dollars (\$10,000) to be paid upon completion of de-installation, or upon agreement to purchase Artwork, whichever occurs first.