

EXHIBIT A

Public Art collection - initial maintenance assessment

	PROPOSER #1	PROPOSER #2	PROPOSER #3
General Description	Art Conservators Lab	Evergreene Architectural Arts	RLA Conservation
Assessment of 13 public art projects			
Certain projects contain series			
Assessment does not include:			
works in storage			
works scheduled for restoration			
works currently under a maintainance agreement			
Total Quote (excludes Allowance)	\$3,200.00	\$8,169.00	\$15,240.00

Invitation for Quotes was sent by e-mail to 3 professional service providers specializing in the conservation and preservation of fine artworks.

Art Conservators Lab art.conservation.services@gmail.com
 Evergreene Architectural Arts mrabinowitz@evergreene.com
 RLA Conservation of Art & Architecture rlowinger@rosalowinger.com

Staff recommends applying the procurement exemption for professional services:

Sec. 2-607

(24) Consultants for professional services with special skills, abilities, expertise or of a technical nature as determined by the procurement officer. Contracts for such service not exceeding \$25,000.00 plus related expenses shall be approved by the procurement officer, and with the approval of the city manager if up to \$50,000.00 plus related expenses

Staff recommendation is to procure the services of Evergreene Architectural Arts.

Artist	Title	Year	Nbr in series	Material	Location	Comments
Unknown	Fountain of Youth (Four Horses)	uk	1	Italian marble & Concrete pond	Ponce de Leon park	Clean
Unknown	Juan Ponce de Leon	uk	1	Alloy	Ponce de Leon park	Clean
Hector Lombana	Old Shoes	1976	1	Cast Concrete	Cartagena Circle	Clean
Jean Ward	Tuxedo	1981	1	Steel, painted	Pittman Park	Clean
Marc Andries Smit	Jose Marti	1997	1	Bronze, Marble & Granite base	Freedom Plaza	Wax
Leonel Matheu	Vessel	2004	1	Marble	Cartagena Circle	Clean
The Cracking Art Group	Regeneration (Art Snail)	2010	1	Recycled Plastic	Coral Gables Youth Center	Clean
David Hayes	Quadruped #2	2011	1	Steel, painted	City Hall	Clean
Hank Willis Thomas	"The Truth is I Welcome You"	2018	22	Acrylic & Steel Signs	Miracle Mile	Clean
R & R Studios	Midsummer Nights Dream	2018	1	Oolite veneer	Balboa Plaza	Clean
Sibylle Pasche	Coral Forest	2018	1	Carrara Marble	Giralda Ave. & Galiano St.	Clean
Sibylle Pasche	Secrets of the Sea	2018	1	Carrara Marble	Giralda Ave. & Ponce de Leon Blve.	Clean
Various	Venetian Posts	2018	9	Painted Fiberglass	Venetian Pool & Youth Center	Clean

Artworks currently in storage, scheduled for restoration, or under a current maintenance agreement:

Jean Ward	Will o' the Wisp	1980	1	Steel, painted	tbd	In storage
Jean Ward	Louie had to Leave the Rigging Guage. The Years Made him Stop Climbing	1980	1	Steel, painted	Ingraham Park	Restoration scheduled
Jean Ward	The Prince	1981	1	Steel, painted	tbd	In storage
Jean Ward	The Most Beautiful, The Most Good (For Rebecca with Love)	1984	1	Steel, painted	tbd	In storage
Jean Ward	They were the Words of a Dear Friend, Life is a Treasure	1984	1	Steel, painted	Ingraham Park	Restoration scheduled
Jean Ward	She Provides, Clean, Clean Windows; Such is her Nature	1984	1	Steel, painted	Ingraham Park	Restoration scheduled
Tino Marmoles Studio	La Granada (Pomegranate)	2005	1	Marble	Granada Park	Clean / PW
William N. Beckwith	George Merrick	2005	1	Bronze	City Hall	Wax / PW
American Bronze Foundry	Mrs. Althea Merrick	2010	1	Bronze	Merrick House	Wax / PW
Alice Aycock	Passion/Passiflora Incarnation	2016	1	Powder-coated Steel and Aluminum	Segovia St. & Biltmore Way	EES Contract
Alice Aycock	Passion/Passiflora Incarnation	2016	1	Powder-coated Steel and Aluminum	Segovia St. & Coral Way	EES Contract
Carlos Cruz-Diez	Induction Chromatique Coral Gables	2017	1	Paint on Asphalt	Biltmore Way	LFA Contract
Hank Willis Thomas	Ernest and Ruth (Exuberant Pink)	2018	1	Steel, painted	tbd	Restoration
Hank Willis Thomas	Harriet and Annie (Capri)	2018	1	Steel, painted	tbd	Restoration
Hank Willis Thomas	Josephine and Kazumi (Real Red)	2018	1	Steel, painted	tbd	Restoration
Hank Willis Thomas	Saverio and Daisy (Navel)	2018	1	Steel, painted	tbd	Restoration
Rafael Barrios	Pause	2019	1	Steel, painted	tbd	Relocation

REQUEST FOR PROPOSAL:

ASSESSMENT & MAINTENANCE PLAN/ESTIMATE
Coral Gables Public Art Collection

Project Description:

The City of Coral Gables requests proposals for a thorough condition assessment and ongoing maintenance of its public artworks.

The intent of this proposal is to establish an annual schedule to maintain the City's public artworks in their best condition.

The City requests a quote for the following:

- **Condition Assessment of public art as noted on attachment**
- **Maintenance Recommendation**
 - Personnel
 - Material
 - Equipment
 - Any and All related expenses
 - MOT if required
 - Insurance and permits as required by the City
- **Schedule for annual maintenance**
- **Recommended Repair, Restoration, Conservation if applicable**
- **Restoration & Repair estimate if applicable**

Including, but not limited to:

 - Personnel
 - Material
 - Equipment
 - Any and All related expenses
 - MOT if required
 - Insurance and permits as required by the City; City will assist with permit process



Date: 09/09/2020

**ACL RESPONSE to: REQUEST FOR PROPOSAL: ASSESSMENT & MAINTENANCE
PLAN/ESTIMATE
Coral Gables Public Art Collection
Total 43 pieces**

Scope of Work:

Thorough condition assessment and ongoing maintenance of its public artworks.
The intent of this proposal is to establish an annual schedule to maintain the City’s public artworks in their best condition.

Condition Assessment of public art will include as follows

• Maintenance Recommendation

- Personnel
- Material
- Equipment
- Any and All related expenses
- MOT if required
- Insurance and permits as required by the City

• Schedule for annual maintenance

• Recommended Repair, Restoration, Conservation if applicable

• Restoration & Repair estimate if applicable

Including, but not limited to:

- Personnel
- Material
- Equipment
- Any and All related expenses
- MOT if required
- Insurance and permits as required by the City; City will assist with permit process

ACL will submit a written and photographic report with minimum 5 to 8 photographs
Files (one per piece) with other photographs taken will be send to the City via Dropbox
or WeTransfer to the City .

Average time estimated per piece: 2.5 hrs per piece

32.5 hours

Hourly rate \$100.00

**13 pieces..... \$3,200.00 (parking and
other miscellenous expenses included)**

September 10, 2020

Catherine Cathers

Arts & Culture Specialist
City of Coral Gables
Historical Resources and Cultural Arts
Department
2327 Salzedo St
Coral Gables, FL 33134
305.460-5094
CCathers@coralgables.com
www.coralgables.com

ASSESSMENT & MAINTENANCE PLAN/ESTIMATE

Coral Gables Public Art Collection

Dear Catherine Cathers,

Thank you for requesting this proposal for assessing the City of Coral Gables' public art collection. We are always pleased to assist the Coral Gables "Client" in the preservation of your fine city. Please note that we are offering this proposal with the expectation that performing this assessment would NOT disqualify us from bidding on implementing the recommended work.

Based on the request, and as we discussed, we are providing pricing for the first item in the RFP: the Condition Assessment. We would inspect each work of art listed in the AiPP CG Collection for Maintenance spreadsheet, review documents held by the City provided by the Client (if any) as needed to develop an understanding of each work and its sub components. Based on the observations and research we will develop a condition assessment report for each work.

The report will be standardized to match any filing, formatting or data management system employed by the Client. It will include the object record number, location, dimension, artist, dates and other pertinent information. The materials and history of treatment will be listed if known. Each object will be photographed in overall elevations and detail digital images. The materials and conditions will be sited and illustrated as well.

Based on the condition assessment we will prepare recommendations and budgets for:

- Maintenance – work procedures, means and methods, equipment and special considerations
- Schedule for on-going care and maintenance
- Repair, restoration or conservation treatments if required which will include the same details as in the maintenance recommendation.



QUALIFICATIONS

EverGreene has extensive experience in the treatment of citywide collections. Please view the following projects on our website:

We have performed similar citywide assessments of Public Art for the Cities of Alexandria, VA, Asheville, NC, Palm Beach Gardens, FL and Calgary, Alberta, CA and Miami Beach, FL.

We recently completed the maintenance and conservation of the Public Art collection of Jacksonville, FL which included an in-depth assessment of the conditions prior to commencing treatment.

You can also use the [search feature](#) on our web site to view other related projects.

PRICING

Coral Gables Public Art Assessment

ELEMENT / SCOPE		NOTES	COST
		Condition assessment, report with recommendations, and budgets for the recommended work.	\$8,169.00
TOTAL			\$8,169.00

Pricing is good for a period of 30 days after the date of the proposal unless otherwise noted.

INCLUSIONS

- Labor
- Materials
- Insurance
- Standard Working Hours
- Local Travel + Housing

EXCLUSIONS

- Tax (if applicable)
- Additional Insurance beyond what is normally carried by EverGreene
- Access to areas of work
- Multiple mobilizations
- Any overtime or second shifts required to meet a compressed schedule due to factors beyond EverGreene's control



- Handling, removal disposal, remediation or abatement of hazardous waste
- Water & power
- Sanitary facilities
- Laydown area and storage for equipment and supplies

ACCESS

Pricing presumes the assessment will be performed from the ground or adjacent accessible sites. The cost of access is not factored into our fee and, if required, will need to be provided locally by others.

EverGreene requires safe OSHA compliant access if required. It is our understanding any access will be provided in the form of lifts/built scaffold supplemented by rolling scaffolds, towers, etc. Please note that EverGreene is a ladder-free company.

SCHEDULE

We are projecting on site assessment work will be completed within a week. The reports should be issued within 2 – 3 weeks afterwards.

Regarding COVID-19 potential schedule impact: EverGreene has an exceptional track record of delivering projects on time. At the time of this proposal the anticipated schedule is achievable. Given the unpredictability of how COVID-19 safety measures may affect operations beyond our control, the schedule may be impacted. We will make every effort to complete work per the anticipated schedule, but neither party shall be held liable for delays to the schedule or negative cost impacts as a result of COVID-19 related delays. If supply chains, regulations or observance of reasonable safety measures will impact delivery of this project in unforeseen ways, our team will meet regularly with yours to review obstacles and develop a strategy to mitigate impact to the schedule.

DISCLAIMER

EverGreene Architectural Arts, Inc. is not a licensed design professional firm. Accordingly, any reports, surveys, observations, recommendations, renderings, models, mock-ups, sketches, drawings or other deliverables provided by EverGreene are not to be relied upon for construction or code compliance purposes unless and until they are signed and sealed by the design professional of record as part of the construction documents. If any EverGreene-produced material is provided to third-parties, Client shall include the foregoing disclaimer on all transmittals, correspondence, email and the like.

PLEASE NOTE

- This proposal is subject to EverGreene Terms and Conditions, attached.



NEXT STEPS

If you would like to proceed with this proposal please send us:

- A Contract draft and a copy of the Prime Contract (if applicable)
- A signed hard copy of this proposal with initials on each page, including terms and conditions.
- Scanned digital copy of the signed proposal to mrabinowitz@evergreene.com

EverGreene preferably will accept payment by electronic bank transfers, details of which will be provided upon contract. Work shall occur on a mutually agreeable schedule to be determined between the Client and EverGreene after our receipt of a signed contract or proposal.

We look forward to the opportunity of working with you on your project. Please contact me at my email address or by phone to discuss this proposal further.

Best Regards,

Mark Rabinowitz
Vice President - Conservation

Client Signature _____

Name _____

Date _____

This proposal contains proprietary information prepared and copyright by EverGreene Architectural Arts, Inc. (EAA). This proprietary information is submitted solely for the purpose of evaluating the proposal and it is understood and agreed that this information shall be kept confidential. Clients or Contractors may reference this material ONLY with prior written consent of EAA. Any use of this information by Clients or Contractors implies their agreement that they intend to engage EAA in the proposed work. Such proprietary information is submitted with the understanding that it will not be disclosed to others or used in a manner detrimental to the interests of the bidder. EAA will aggressively pursue damages if this proposal is used to bid shop or advance the interests of parties other than the bidder. This proposal and all enclosures are returnable to the bidder upon request.



STANDARD TERMS AND CONDITIONS

1. General

These Standard Terms and Conditions, together with the attached proposal, constitute the Agreement between EverGreene and Client to perform basic or additional services.

2. Indemnification

To the fullest extent permitted by law, the Client shall defend, indemnify and hold harmless EverGreene, its officers, directors, agents and employees from any claims, damages, losses, causes of action, legal or administrative proceedings, costs and reasonable attorneys' fees for injuries or damages (including economic losses) to the extent caused by the negligent acts, errors or omissions of Client, its officers, employees, agents, independent contractors or consultants, except that Client shall have no duty to indemnify EverGreene for EverGreene's own negligence or willful misconduct. This clause shall not have the effect of extending the time period within which a claim must otherwise commence under the applicable statutes of limitations or repose. This agreement to indemnify and defend shall survive the termination, expiration or completion of this Agreement.

3. Suspension of Work and Termination

If Client fails to make payment to EverGreene in accordance with this Agreement, such failure shall be considered substantial non-performance and cause for termination or, at EverGreene's option, cause for suspension of its work under this Agreement. If EverGreene elects suspension, EverGreene shall give seven (7) days' written notice to Client before suspending work. In the event of a suspension of work, EverGreene shall have no liability to Client for damages for delay, lost profits or loss of use. Before resuming work, EverGreene shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of its work. EverGreene's fees for the remaining services and the time schedules shall be equitably adjusted.

4. Limitation of Liability

To the fullest extent permitted by law, the Client agrees to limit the liability of EverGreene to the Client for any and all claims, causes of action, losses, costs, expenses (including attorneys' fees and expenses), damages of any nature whatsoever, and claims expenses from any and all causes, arising out of, resulting from or in any way related to breach of contract by, or negligent acts, errors or omissions of, EverGreene and its subcontractors, so that the total aggregate liability of EverGreene shall not exceed the fee earned by, or paid to, EverGreene (whichever is less). It is intended that this limitation applies to any and all liability or cause of action described herein, regardless of the legal theory alleged unless otherwise prohibited by law.

5. Waiver of Consequential Damages

Client and EverGreene waive claims as against the other for consequential, indirect or special damages arising out of or relating to this Agreement, including but not limited to loss of use, lost profit, lost opportunity costs, or claims for delay, impact or disruption damages made by Client or any third parties. This mutual waiver is applicable, without limitation, to all consequential damages due to the termination of this Agreement.

6. No Responsibility for Third Parties

EverGreene shall not be responsible for the acts or omissions of the Client, Owner, Contractor, Consultants, Subcontractors, agents or employees of any of them, or other persons performing any of the Work. EverGreene shall not be responsible for a Contractor's or Subcontractor's schedule or failure to carry out the Work in accordance with the Contract Documents.

7. Waiver of Damages Covered by Property Insurance

To the extent damages are covered by property insurance, Client and EverGreene waive all rights against each other and their respective officers, directors, agents and employees for damages, except such rights as they might have to the proceeds of such insurance.

8. Warranty

EverGreene warrants the work performed within the requirements of the contract documents for one year. All defects occurring within that period shall be corrected at no cost to Client. This warranty excludes damage caused by fire, smoke, extraordinary weather, water damage, excessive humidity/condensation, natural catastrophe, abuse, modification, improper or insufficient maintenance, improper operation, or normal wear and tear.

9. Existing Conditions

An initial site visit will be performed to assess existing conditions. This visual assessment will not include any destructive testing, opening of concealed areas, probes, soundings or other exploratory or investigative measures unless requested by Client as an additional service. If the observed existing conditions vary from those depicted in the bid documents ("Changed Conditions"), we will promptly notify you in writing of the Changed Conditions and the estimated impact on scope, schedule and price.

10. No Withholding of Payment

Payments to EverGreene shall not be withheld, postponed or made contingent on the construction, completion, acceptance or success of the project or upon Client's receipt of off-setting reimbursement or credit from other parties who may have caused delays, necessitated additional services, increased expenses or delayed completion of the Work or the Project. No withholdings, deductions or offsets shall be made from EverGreene's compensation for any reason unless EverGreene has been found to be legally liable for such amounts in a binding dispute resolution proceeding.

11. Entire Agreement

This Agreement, along with any exhibits, appendices, addendums, schedules, and amendments hereto, encompasses the entire agreement of the parties and supersedes all previous understandings and agreements between the parties, whether oral or written. The parties hereby acknowledge and represent that they have not relied on any representation, assertion, guarantee, warranty, collateral contract or other assurance, except those set out in this Agreement, made by or on behalf of any other party or any other person or entity whatsoever prior to the execution of this Agreement.

12. No Third-Party Rights

Nothing in this Agreement shall be construed to give any person other than Client and EverGreene any legal or equitable right, remedy or claim under this Agreement. This Agreement represents the entire and integrated agreement and supersedes all prior negotiations, representations or agreements, either written or oral.

13. Force Majeure

Neither party to this Agreement will be liable to the other party for delays in performing the work, or for direct or indirect costs resulting from such delays that may result from labor strikes or disharmony, riots, acts of war or terrorism, acts of governmental authorities, contagion or communicable disease, epidemic or pandemic, extraordinary weather conditions or other circumstances beyond the reasonable control or contemplation of either party.

14. Severability

If any of these Terms and Conditions are adjudicated in a court of competent jurisdiction and determined to be invalid or unenforceable in whole or in part, the remaining provisions shall remain in full force and effect and remain binding upon the parties.

15. Survival

These Terms and Conditions shall survive the completion of EverGreene's work on this Project and the termination of this Agreement for any reason.

16. Governing Law

This Agreement shall be governed and construed in accordance with the laws of the state where the project is located, without giving effect to principles of conflicts of law.



**PROPOSAL FOR COLLECTION SURVEY & CONSERVATION/ MAINTENANCE PLAN
CITY OF CORAL GABLES**

Prepared for: Catherine Cathers, Arts & Culture Specialist
City of Coral Gables
Historical Resources and Cultural Arts Department
2327 Salzedo St Coral Gables, FL 33134
305.460-5094 CCathers@coralgables.com

Prepared by: Rosa Lowinger, President & Chief Conservator
rlowinger@rosalowinger.com
Kelly Ciociola, Principal Conservator
Kciociola@rosalowinger.com

Date of Proposal: September 16, 2020

RLA Conservation is pleased to present the following revised proposal to Catherine Cathers at the City of Coral Gables for a condition survey and conservation and maintenance plan for select public artworks. The city selected the following 13 artworks, with 27 separate components:

1. David Hayes Quadraped #2
2. Hector Lombana Old Shoes
3. Hank Willis Thomas "The Truth is I Welcome You"
4. Jean Ward Tuxedo
5. Leonel Matheu Vessel
6. Marc Andries Smit Jose Marti
7. R & R Studios Midsummer Nights Dream
8. Sibylle Pasche Coral Forest
9. Sibylle Pasche Secrets of the Sea
10. Cracking Art Group Regeneration (Art Snail)
11. Unknown Fountain of Youth (Four Horses)



12. Unknown Juan Ponce de Leon

13. Various 12 Venetian Posts

PROJECT UNDERSTANDING & APPROACH

RLA understands the work to be an object-by-object assessment with detailed estimates for conservation and maintenance. The following will be performed:

1. Assessment of each artwork from ground level with binoculars as needed.
2. Preparation of condition reports with record photos. These reports will comment on landscaping and siting as well as issues with the artworks.
3. For each artwork: conservation treatment proposals and cost estimates for remedial conservation work as needed. These will include cost estimates, time and materials required, and any extenuating equipment, permits, or street closure needs. The city will use these to develop a conservation treatment plan and budget.
4. For each artwork: proposals and cost estimates for routine maintenance. This will include cost estimates, time and materials required, equipment, safety, and street closure needs.
5. A proposed schedule for maintenance, taking into account art fairs, hurricane season, traffic patterns and clustering treatments to maximize efficiency.
6. Notes on emergency planning for each artwork.
7. A summary report on the findings that sets priorities based on condition and public safety.
8. All costs for the aforementioned projects in a separate outline.

PROPOSED APPROACH FOR CARRYING OUT THE PROJECT:

- Begin with a zoom conference call with the City to review the logistics of the survey.
- Prepare forms offsite with tombstone artwork information provided by the City.
- Carry out the object-by-object examinations in situ. If any urgent issues are noted, especially related to public safety, contact the city ASAP.
- Prepare a report for each artwork as outlined above.
- Prepare a narrative summary that compiles the information in the individual entries and prioritizes work. (This strategy, which was employed by RLA for the Arts Foundation of Tucson and Southern Arizona, Santa Monica, Beverly Hills, Inglewood, Tampa, Jacksonville, West Hollywood, Sioux Falls, University of Miami, Cal State Long Beach, and Arizona State University, allows the City to have a comprehensive view of the findings in an easily readable format.)



- Provide the City sample forms for recording damage/vandalism and future maintenance.
- Submit an electronic draft report for comments and review within four weeks of the completion of the survey. One round of edits will be accepted and incorporated.
- Provide a final digital copy with assessment photographs and all reports.

RESOURCES THAT WE REQUEST FROM THE CITY:

- Addresses or location of each of the artwork identified for surveying.
- Where possible, the existing inventory form/database, any previous surveys, installation and/or fabrication documentation, condition assessments, and/or treatment reports. These can be integrated into individual survey entries for the more in-depth assessments.
- A parking pass if possible (otherwise we will add parking costs).
- If possible, an official letter that we might show site managers in case city personnel asks about our photographing City Property.
- Alerting any relevant site managers to our activities.

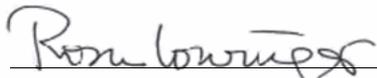
ESTIMATED COSTS: Note: Costs do not reflect prevailing wage rates. They do not include costs for lifts/special access, licensing, certifications, and/or permitting.

Conservators: 10-12 days total @ \$ 1,280.00/day \$12,800.00- \$ 14,840.00
Includes site inspection, 4 hours of meetings, inspection of prior documentation, compilation of report and edits to draft report.

Materials, admin, and expenses: Add \$200.00 if Parking Pass cannot be provided \$ 400.00

TOTAL: **\$13,200.00- \$15, 240.00**

Proposed by:



Rosa Lowinger, President & Chief Conservator

PLEASE NOTE: THIS PROPOSAL IS PROVIDED AT NO CHARGE AND IS THEREFORE THE INTELLECTUAL PROPERTY OF RLA CONSERVATION OF ART & ARCHITECTURE. IT MAY NOT BE SHARED WITH ANY OTHER PARTIES OR INDIVIDUALS WITHOUT THE EXPRESS WRITTEN PERMISSION OF RLA CONSERVATION OF ART & ARCHITECTURE OR USED TO CREATE A REQUEST FOR PROPOSAL (RFP) TO SOLICIT WORK FROM ANOTHER FIRM.



CLIENT REFERENCES

The following are clients for whom we have done similar work within the last 5 years:

1. CITY OF WEST HOLLYWOOD, CA

RLA serves as a primary consulting conservation firm for the City of West Hollywood and has done so since 2013. In 2017, we assessed sixty-eight (68) city-owned artworks to prioritize treatments, maintenances, emergency stabilization, and help determine de-accessioning. Select collections maintenance is carried out by us annually, and full conservation treatments have been performed on a sound and sculptural work by Bruce Odland, on a Peter Shire stainless steel and enamel sculpture, and on a multi-component mosaic tile installation within a 5-story parking garage. RLA also has provided intermittent services and consulting surrounding repairs and upgrades to a 2014 replica neon sculpture that is currently installed in the median along Santa Monica Blvd. RLA also provides ongoing assessments for private-owned artworks installed under the City's Urban Art Policy and pre-construction review of new commissions.

Contact: Rebecca Ehemann, Public Art Coordinator
Andrew Campbell, Arts Administrator
City of West Hollywood
8300 Santa Monica Blvd.
West Hollywood, CA 90069
REhemann@weho.org Tel: 323-848-6846
ACampbell@weho.org Tel: 323-848-6883

2. SAN DIEGO INTERNATIONAL AIRPORT, SAN DIEGO, CA

RLA currently serves as the conservation firm for the Airport's public art collection. In 2014, we did a brief survey of the collection's then 40 artworks along with an appraisal by a subcontractor. The collection includes both indoor and outdoor artworks as well as electronic and time-based media installations throughout the terminals. In December 2018, RLA updated our 2014 survey and expanded it to include the collections now 51 artworks. In addition to current condition, we commented on siting, recommended treatments and associated costs as well as recurring maintenance, its frequency, and associated costs. RLA has cleaned and conserved works throughout the airport, working around the security and safety needs of this high-traffic location. Proximity of pedestrians is a constant concern and we adhere to TSA and airport security regulations, including providing all MSDS for products utilized, establishing processes to protect the public from the byproducts of the treatments, and securing our work sites and all materials.

Contact: Lauren Lockhart, Airport Art Program manager
San Diego International Airport
P.O. Box 82776



San Diego, CA 92138
Tel: 619-400-2887
llockhar@san.org

3. ARTS FOUNDATION FOR TUCSON AND SOUTHERN ARIZONA, TUCSON, AZ

In January and February 2019, RLA conservators traveled to Tucson to survey over 150 public artworks throughout the City. Working with a local technician, we photographed each artwork and input notes into pre-populated condition reports on tablets. Following our site visit, we fleshed out treatment proposals, maintenance recommendations, and associated costs in a spreadsheet as well as provided a collection summary. Additionally, RLA assisted with having the surveyed artworks uploaded to Public Art Archive, a national database of public art collections.

Contact: Carol Varney, Executive Director
Arts Foundation for Tucson and Southern Arizona
236 S. Scott Ave., Ste. 150
Tucson, AZ 85701
Tel: 520-624-0595 Email: cvarney@artsfoundtucson.org

4. CITY OF BEVERLY HILLS, CA

RLA serves as the on-call consulting firm for the City of Beverly Hills public art commission. In 2012, we surveyed the collection and provided treatment recommendations for works in painted ferrous metal, stainless steel, bronze, wood, granite, fiberglass, concrete, and marble. RLA maintains the collection annually and has performed full treatments on works by Tony Smith, Yayoi Kusama, Fletcher Benton, Alexander Liberman, and Carol Bove. In addition to conservation services, RLA assists the City with designing elegant barriers to prevent public from climbing on and/or damaging the artworks.

Contact: Patty Acuña, Recreation Supervisor
City of Beverly Hills
471 S. Roxbury Drive
Beverly Hills, CA 90212
Tel: 310-285-6842 Email: pacuna@beverlyhills.org

5. ARTS AND SCIENCES COUNCIL, CHARLOTTE, NC

The Arts and Sciences Council serves as the designated “Office of Cultural Resources” for the City of Charlotte, Mecklenburg County, and six suburban towns. In 2015, RLA conducted a survey of fifty-nine (59) works of sculpture, integrated design elements, murals, paintings, textiles, and photographs located



both indoors and outdoors throughout the region. The survey was the basis for developing a comprehensive maintenance, preservation, and conservation program for the collection.

Contact: Mr. Todd Stewart, Program Director – Public Art
Arts and Sciences Council
227 W. Trade Street, Ste. 250
Charlotte, NC 28202
Tel: 704-335-3273 Email: todd.stewart@artsandscience.org

6. CULTURAL COUNCIL OF GREATER JACKSONVILLE, FL

In 2016, RLA conducted two surveys that encompassed fifty-six (56) City-owned public artworks and integral architectural works including painted and ceramic tile murals, paintings on canvas, framed and glazed photographs, aluminum, granite, soapstone, concrete, LED lighting, neon, stained glass, acrylic, fiberglass, cast stone, mirror, and bronze. Special focus on this collection has addressed emergency concerns from floods and hurricanes. RLA continues to provide pre-fabrication and pre-construction reviews of proposed/new public artworks as well as re-assessing artworks recently impacted by Hurricane Irma in 2017.

Contact: Ms. Christie Holechek
Cultural Council of Greater Jacksonville – Art in Public Places Program
300 W. Water Street, Suite 201
Jacksonville, FL 32202
Tel: 904-358-3600, ext. 12 Email: christie@culturalcouncil.org

7. FROST ART MUSEUM- FLORIDA INTERNATIONAL UNIVERSITY, MIAMI, FL

In 2009, RLA carried out the survey of forty-two (42) works of indoor and outdoor sculpture for Florida International University's South Dade and Biscayne Campuses. In 2016, we completed an updated survey of sixty-six (66) works located on two campuses. The collection is comprised of Cor-Ten steel, painted mild steel, granite, limestone, bronze, wood, rubber, rope, ceramic, acrylic paint, Formica, Plexiglas, fiberglass, plaster, concrete, glass. Treatments have included major repaintings of works by James Rosati and Alexander Liberman, stabilization of a monumental Carlos Alfonso ceramic tile mural, and Anthony Caro steel sculptures. We will soon begin work on a monumental architectural sculpture by Albert Vrana.

Contact: Ms. Debbye Kirschtel-Taylor, Curator of Collections
The Patricia and Phillip Frost Art Museum
10975 SW 17th Street



Miami, FL 33199
Tel: 305-348-289

Email: taylor@fiu.edu

8. CITY OF SIOUX FALLS, SD

In spring 2013, RLA began a full survey and assessment of the city's collection of thirty-nine (39) pieces. RLA surveys the collection each year of our 5-year contract, now comprising 44 works. The collection consists of indoor and outdoor works in bronze, stone, aluminum, stainless steel, ceramic tile, cast stone, and painted ferrous metal. RLA treated 19 sculptures during an initial two-week period in 2013 training two local artisans to assist with routine maintenances and respond to unexpected maintenance concerns, such as vandalism. Maintenance and new treatments are performed annually. We also provide pre-acquisition reviews of artworks gifted to the City and have been assisting with determination of de-accessioning of a major tile mural in poor condition.

Contact: Russ Sorenson, Urban Planner
City of Sioux Falls
Box 7402
Sioux Falls, SD 57117-7402
Tel: 605.367.8828

Email: rsorenson@siouxfalls.org

9. LOS ANGELES COUNTY ARTS COMMISSION, CA

From 2015 to 2017, RLA was selected to perform reviews of field assessment surveys performed by a County registrar. The registrar performed cursory condition assessments of county-owned artworks at over 800 locations. RLA reviewed the assessments in order to flag any artwork that was problematic, posed a safety concern, and/or warranted more in-depth inspection. We also provided maintenance guidelines for county staff to carry out. In 2018, we surveyed sixty (60) artworks that RLA identified as priority within the County's collection that require further assessment. Since 2012, RLA has provided conservation services for stained glass, painted murals, and tile murals. RLA routinely provides pre-fabrication review of new public art commissions for artists selected by the County.

Contact: Neelima Narayanan, Civic Art Registrar
Los Angeles County Arts Commission
1055 Wilshire Blvd., Suite 800
Los Angeles, CA 90017
Tel: 213-202-3962

Email: nnarayanan@arts.lacounty.gov

PROFESSIONAL SERVICES AGREEMENT
CONTRACT NO. PSA 2020-
ASSESSMENT & MAINTENANCE PLAN
EVERGREENE ARCHITECTURAL ARTS

THIS PROFESSIONAL SERVICES AGREEMENT (this "Agreement"), is made as of this ____ day of _____, 2020, between the City of Coral Gables (hereinafter called the "CITY"), and Evergreene Architectural Arts (hereinafter called the "CONTRACTOR").

In accordance with the exemption of the Procurement Code set forth in Section 2-607(24), and in consideration of the promises and the mutual covenants herein contained, the CITY agrees to retain the CONTRACTOR for the term specified herein.

1. **Services.** The CONTRACTOR agrees to perform as an independent contractor all the services described herein in the scope of services set forth in Exhibit 1 hereto (the "Services").

a. **Changes in Services.** This Agreement cannot be modified except by written Change order (issued on CITY'S form) signed by both parties, and CONTRACTOR shall not rely on any alleged verbal or written statement to the contrary. If the CONTRACTOR believes it is entitled to additional compensation or additional time to perform its Services, CONTRACTOR shall notify CITY of such claim within twenty one (21) days of the event giving rise to the claim, or it shall be deemed waived by the CONTRACTOR .

b. **Subcontractors/Assignment.** If CONTRACTOR desires to utilize the services of subcontractors or other third parties not identified in the Scope of Services attached as Exhibit 1, such persons or parties must be approved in advance by the CITY. The CITY agrees to provide such approval, to be determined by the CITY, within fourteen (14) days of the CONTRACTOR'S request. All agreements entered into with subcontractors by CONTRACTOR shall contain a provision binding the subcontractor to the terms of this Agreement. The duties and obligations of the CONTRACTOR under this Agreement may not be delegated to any other person or party, and the rights and privileges of CONTRACTOR under this Agreement may not be assigned to any other person or party. It is understood that a sale of the majority of the stock or partnership shares of the CONTRACTOR, a merger, bulk sale, or an assignment for the benefit of creditors, shall each be deemed transactions that would constitute an assignment or sale hereunder requiring prior CITY approval. Notwithstanding anything to the contrary herein, any transfer, pledge, sale, assignment, or delegation without such express prior written consent shall be null and void and shall constitute a material breach of this Agreement, upon which the CITY may immediately terminate the Agreement. The CITY may assign its rights, together with its obligations hereunder.

2. **Schedule.** Time is of the essence of this Agreement. CONTRACTOR agrees to perform the Services in accordance with a schedule reasonably established by CITY after consultation with CONTRACTOR, or as specifically set forth in Exhibit 1.

3. **Payment.** Unless otherwise provided in Exhibit 1, the CONTRACTOR shall be paid in a sum not to exceed \$9,000 in accordance with Exhibit 2 (Fee Schedule) upon satisfactory completion of and acceptance by the CITY of the Services. There shall be no additional reimbursable expenses.

4. **Independent Contractor.** The CONTRACTOR acknowledges entering into this Agreement as an independent contractor, and the CONTRACTOR shall therefore be responsible for the deposit and payment of any Federal Income Taxes, FICA, Unemployment Taxes or any similar fees or taxes that

become due, and shall be responsible for the collection and payment of all withholdings, contributions and payroll taxes relating to CONTRACTOR'S services, or those of employees of the CONTRACTOR. The CITY shall not withhold from sums payable to the CONTRACTOR, any amount whatsoever for Federal Income Taxes, FICA, Unemployment Insurance Taxes or any similar fees or taxes. The CONTRACTOR, its employees or agents, will not be considered as employees of the CITY or entitled to participate in plans, distributions, arrangements or other benefits extended to the CITY employees. The CONTRACTOR is an independent contractor. This Agreement does not create a joint venture, partnership, or other business enterprise between the parties. Nothing herein shall imply or shall be deemed to imply an agency relationship between the CITY and CONTRACTOR. The CONTRACTOR has no authority to bind the CITY to any promise, debt, default, or undertaking. The CONTRACTOR and the CITY agree that it is not intended that any provision of the Agreement establish a third party beneficiary giving or allowing any claim or right of action whatsoever by any third party under this Agreement.

5. **Indemnification and Hold Harmless.** Indemnification and Hold Harmless. To the fullest extent permitted by laws and regulations, CONTRACTOR shall defend, indemnify, and hold harmless the City, its elected and appointed officials, attorneys, administrators, CONTRACTORS, 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 CONTRACTOR, any subCONTRACTOR, 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 CONTRACTOR's obligations to pay for the City's legal defense hereunder shall arise and be fully enforceable when CONTRACTOR (or any subCONTRACTOR or any person or organization directly or indirectly employed by CONTRACTOR) is alleged to have acted willfully, intentionally, recklessly, or negligently in the performance of the work required under this Agreement. Any failure of CONTRACTOR to comply with the terms of this provision shall be deemed a material breach of this Agreement and may subject CONTRACTOR to debarment from consideration for future award of city contracts pursuant to Section 2-912(4) of the City of Coral Gables Code of Ordinances. This provision shall survive termination of the Agreement.

In any and all claims against the City or any of its elected and appointed officials, attorneys, administrators, CONTRACTORS, agents, or employees by any employee of CONTRACTOR, any subCONTRACTOR, any person or organization directly or indirectly employed by any of them to perform or furnish any of the work or anyone for whose acts any of them may be liable, the indemnification obligation under the above paragraph shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for CONTRACTOR or any such subCONTRACTOR or other person or organization under workers' or workman's compensation acts, disability benefit acts, or other employee benefit acts. 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.

6. **Insurance.** Pursuant to the City of Coral Gables Code, Section 2-971, the Risk Management Division of the Labor Relations Department has developed the following insurance requirements to protect the City of Coral Gables to the maximum extent feasible against any and all claims

that could significantly affect the ability of the City to continue to fulfill its obligations and responsibilities to the taxpayers and the public. Consequently, prior to commencing work, the CONTRACTOR shall procure, and provide the City with evidence of insurance coverage as required herein and name the City as an Additional Insured on a primary and non-contributory basis. The CONTRACTOR shall secure and maintain, at its own expense, and keep in effect during the full period of the contract a policy or policies of insurance, and must submit these documents to the Risk Management Division of the Office of Labor Relations and Risk Management for review and approval.

INSURER REQUIREMENTS

The CONTRACTOR shall maintain, at its own cost and expense, the following types and amounts of insurance with insurers with rating of "A-" "VI" or better according to the A.M. Best rating guide as a minimum standard. The insurers providing coverage must be approved by the State of Florida and hold all of the required licenses in good standing to conduct business within the State of Florida. In addition, they must be acceptable to the City of Coral Gables Risk Management Division and/or the City Attorney's Office.

TYPE OF COVERAGE & LIMIT OF LIABILITY REQUIREMENT

Workers' Compensation and Employers Liability Insurance covering all employees, subcontractors, and/or volunteers of the CONTRACTOR and/or Vendor engaged in the performance of the scope of work associated with this contract and/or agreement. The minimum limits of liability shall be in accordance with applicable state and/or federal laws that may apply to Workers' Compensation insurance, with the following limits:

Workers' Compensation - Coverage A
Statutory Limits (State of Florida or Federal Act)

Employers' Liability - Coverage B
\$1,000,000 Limit - Each Accident
\$1,000,000 Limit - Disease each Employee
\$1,000,000 Limit - Disease Policy Limit

Commercial General Liability Insurance written on an occurrence basis, including but not limited to, coverage for contractual liability, products and completed operations, personal & advertising injury, bodily injury and property damage liabilities with limits of liability no less than:

Each Occurrence Limit - \$1,000,000
Fire Damage Limit (Damage to rented premises) - \$100,000
Personal & Advertising Injury Limit - \$1,000,000
General Aggregate Limit - \$2,000,000
Products & Completed Operations Aggregate Limit - \$2,000,000

Business Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in connection with the performance of work under this Contract, with a combined single limit of liability for bodily injury and property damage of not less than:

Combined Single Limit (Each Accident) - \$1,000,000

Any Auto (Symbol 1)

Hired Autos (Symbol 8)

Non-Owned Autos (Symbol 9)

Uninsured and Underinsured motorist coverage with limits of not less than \$100,000 per accident

MINIMUM COVERAGE FORM (SHALL BE AT LEAST AS BROAD AS):

Workers Compensation

The standard form approved by the State of Jurisdiction

Commercial General Liability

ISO (Insurance Services Office, Inc.) Commercial General Liability coverage ("occurrence" Form CG 0001) or its equivalent. "Claims made" form is unacceptable except for professional or environmental liability coverage.

Commercial Auto Liability

ISO (Insurance Services Office, Inc.) Commercial Auto Liability coverage (form CA 0001) or its equivalent.

REQUIRED ENDORSEMENTS

In addition to being stated on the Certificate of Insurance, the following endorsements with City approved language

Additional insured status provided on a primary & non-contributory basis (except for Workers Compensation Insurance and Professional Liability)

Waiver of Subrogation for all required insurance coverages.

Notices of Cancellation/Non-renewal/Material Changes on any required insurance coverage must be sent directly to the City of Coral Gables by the Insurance Company. The City only requires the same statutory notice that an insurance company must provide to the insured, however this Notice may not be less than Thirty (30) Days, except a Ten (10) Day Notice of cancellation is acceptable for non-payment of premium.

Notices of Cancellation, Non-renewal or Material Change must be provided to the following address:

CITY OF CORAL GABLES
INSURANCE COMPLIANCE
P.O. Box 100085 – CE
Duluth, GA 30096

All policies shall contain a “severability of interest” or “cross liability” clause without obligation for premium payment of the City.

HOW TO EVIDENCE COVERAGE TO THE CITY

The following documents must be provided to the City;

A Certificate of Insurance containing the following information:

Issued to entity contracting with the City

Evidencing the appropriate Coverage

Evidencing the required Limits of Liability required

Evidencing that coverage is currently in force

Language provided in the Special Provision Section of the Certificate of Insurance affirming that all endorsements required by the City have been endorsed to all of the policies.

A copy of each endorsement that is required by the City

All Certificates of Insurance must be signed by a person authorized by that insurer to bind or amend coverage on its behalf.

The City reserves the right to require a complete copy of any insurance policies required by the City. Should the City invoke this right, the policy must be provided directly to the City by the insurance agent or insurance company.

The city reserves the right to require additional insurance requirements **at any time during the course of the agreement.**

WAIVER OF INSURANCE REQUIREMENTS

Should a bidder not be able to comply with any insurance requirement, for any reason, the bidder must write a letter to the Risk Management Division on their letter head requesting that a waiver of a specific insurance requirement be granted. The requested waiver will be evaluated by the Risk Management Division.

CONTRACTOR is encouraged to review their individual insurance needs with their insurance agents/brokers regularly to determine the adequacy of the coverage and the limits of liability that are being purchased. In certain circumstances, the City of Coral Gables will require additional insurance to respond to the hold harmless and indemnification clauses executed with the City of Coral Gables. Based on the nature of the work performed, the City of Coral Gables will determine what additional types of insurance and/or higher limits of liability that must be obtained.

All insurance documents evidencing insurance to City of Coral Gables – Insurance Compliance should be sent via email to cityofcoralgables@ebix.com and copy to druiz@coralgables.com. Should you require assistance, contact the dedicated Call Service Lines for City of Coral Gables:

Call Service Lines - Insurance Compliance
Phone: (951) 652-2883.

Fax: (770) 325-0417
Email: cityofcoralgables@ebix.com

When submitting Professional, Contractor and/or Vendor evidence of insurance to the City of Coral Gables, the Certificate Holder section of the Certificate of Insurance should read as follows:

City of Coral Gables
Insurance Compliance
P.O. Box 100085 – CE
Duluth, GA 30096

7. **Standard of Care.** The CONTRACTOR shall exercise the same degree of care, skill, and diligence in the performance of the services as is ordinarily provided by a comparable professional under similar circumstances and the CONTRACTOR shall, at no additional cost to the CITY, re-perform services which fail to satisfy the foregoing standard of care. The CONTRACTOR shall be responsible for the quality of all services performed by subCONTRACTORS or other third parties retained by CONTRACTOR. The CONTRACTOR warrants that all services shall be performed by skilled and competent personnel to the highest professional standards in the field.

8. **Compliance with Applicable Law.** In performance of the services, the CONTRACTOR will comply with applicable regulatory requirements, including federal, state, special district, and local laws, rules, regulations, orders, codes, criteria, and standards, including but not limited to, compliance with all local, state and federal Equal Employment Opportunity (EEO) and American Disabilities Act (ADA) requirements. It shall be the responsibility of the CONTRACTOR to obtain and maintain, at no cost to the CITY, any and all license and permits required to complete the services provided pursuant to this Agreement. CONTRACTOR warrants that it fully complies with all Federal statutes and regulations regarding the employment of aliens and others and that all employees performing work under this Agreement meet the citizenship or alien status requirements set forth in Federal statutes and regulations. CONTRACTOR shall indemnify, defend, and hold harmless CITY, its officers and employees from and against any sanctions and any other liability which may be assessed against CONTRACTOR or CITY in connection with any alleged violation of any Federal statutes or regulations pertaining to the eligibility for employment of any persons performing work hereunder.

9. **Equal Opportunity.** It is understood that the CONTRACTOR 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.

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

11. **Conflict of Interest.** Any potential or actual conflict between private interests and responsibilities under this Agreement shall be immediately disclosed to the CITY. The CONTRACTOR agrees that it will not enter into any agreements during the term of this Agreement to provide services

for any person or corporation who applies for a permit or other development approval from the CITY. Upon request of the CONTRACTOR and full disclosure of the nature and extent of the proposed representation, the City Manager shall have the authority to authorize such representation during the term of this Agreement.

12. **Confidentiality.** Subject to the requirements of Chapter 119 of the Florida Statutes, the CONTRACTOR agrees that any information received by the CONTRACTOR for the CITY and in providing services in accordance with this Agreement which is not publicly available, shall not be revealed to any other persons, firm or organizations, and that no reports, information, computer programs, documentation, and/or data given to or prepared or assembled by the CONTRACTOR under this Agreement shall be made available to any individual or organization by the CONTRACTOR without prior written approval of the CITY.

13. **Ownership of Documents.** All right, title, and interest in and to all work performed under this Agreement, including without limitations all schematics, designs, plans, specifications, documents, records, disks, or other information (including electronic copies) produced or developed by the CONTRACTOR or sub-CONTRACTORS, shall become the property of the CITY for its use and/or distribution as may be deemed appropriate by the CITY; provided that any materials used by the CONTRACTOR and any sub-CONTRACTORS for which a patent or copyright protection has previously been secured by them shall remain the property of the CONTRACTOR or sub-CONTRACTORS. The CONTRACTOR shall be permitted to retain copies, including reproducible copies, solely for information and reference in connection with the CITY's use.

14. **Notice.** Any notice, request, instruction or other document required or permitted to be given hereunder by either party hereto to the other shall be in writing, and delivered personally, or sent by certified or registered mail, postage prepaid, return receipt requested, to the address set forth for such party at the bottom of this Agreement. Any notice so given shall be deemed received when personally delivered or rejected, or three (3) calendar days after mailing. Any party may change the address to which notices are to be sent by giving notice of such change of address to the other party in the manner herein provided for giving notice. Notice as the City of Coral Gables shall be to:

City Manager
City of Coral Gables
405 Biltmore Way
Coral Gables, FL 33134

cc: City Attorney

Notice as to CONTRACTOR shall be to:

Evergreene Architectural Arts
3009 Kaverton Road
District Heights, MD 20747
Attn: Mark Rabinowitz
VP Conservation, Principal Conservator
Phone: 866-895-2079
Email: mrabinowitz@evergreene.com

15. **Most Favored Public Entity.** CONTRACTOR represents that the prices charged to CITY in this Agreement do not exceed existing prices to other customers for the same or substantially similar items or services for comparable quantities under similar terms and conditions. If CONTRACTOR'S prices decline, or should CONTRACTOR, at any time during the term of this Agreement, provide the same goods or services to any other customer at prices below those set forth herein, then such lower prices shall be immediately extended to the CITY.

16. **Termination.** The CITY may terminate this Agreement without cause at any time by providing written notice to CONTRACTOR, and may terminate this Agreement for cause by providing thirty (30) days written notice to CONTRACTOR. In the event of a termination for cause, due to CONTRACTOR'S failure to perform in accordance with the terms of this Agreement, CONTRACTOR shall be paid any sums otherwise due and owing under this Agreement only after CITY has completed the work called for by this Agreement with other forces, and has deducted the cost of such work, and any other damages payable to CITY, from any contract balance otherwise due and owing to CONTRACTOR under this Agreement. In the event of a termination for convenience, the CONTRACTOR shall be paid for all services performed through the date of termination, based on the percentage of services completed (subject to applicable setoff rights), and CONTRACTOR shall not be entitled to any other compensation or damages from CITY. If, after notice of termination for cause, it is determined for any reason that the CONTRACTOR was not in default, the rights and obligations of the CITY and CONTRACTOR shall be the same as though the termination had been a termination for convenience. In no event shall the CITY be liable to the CONTRACTOR for lost profits on any work not performed, overhead, or any other type of consequential, special or indirect damages, and CONTRACTOR hereby waives same. The CONTRACTOR may terminate this Agreement due to the CITY'S failure to comply with the material terms of this Agreement after giving CITY thirty (30) days' notice of its default and an opportunity to cure. Upon termination of this Agreement, all schematics, designs, plans, specifications, documents, records, disks, or other information (including electronic copies) produced or developed by the CONTRACTOR or sub-CONTRACTORS, whether finished or not, shall become CITY property. Failure to timely deliver the documentation shall be cause to withhold any payments due without recourse by the CONTRACTOR until all documentation is delivered to the CITY.

17. **Waiver of Consequential Damages.** CONTRACTOR 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, or for loss of management or labor productivity, damages incurred for principal office expenses, including the compensation of personnel stationed there, and for anticipated profit on any work not performed by CONTRACTOR.

18. **Sovereign Immunity.** CONTRACTOR acknowledges that the Florida Doctrine on Sovereign Immunity bars all claims by CONTRACTOR against the CITY other than claims arising out of this Agreement. Specifically, the CONTRACTOR 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. Further, the CONTRACTOR recognizes the CITY is a sovereign with regulatory authority that it exercises for the health, safety, and welfare of the public. This Agreement in no way estops or affects the CITY's exercise of that regulatory authority. In addition, the CITY retains the full extent of its sovereign immunity in relation to the exercise of its regulatory authority. The CONTRACTOR acknowledges that it has no right and will not make claim based upon any of 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 as 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 the City, its commissioners, attorneys, administrators, CONTRACTORS, agents, or any CITY employee;
- 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 for the CITY and CONTRACTOR.

19. **Force Majeure.** Neither the CITY nor CONTRACTOR shall be considered to be in default of this Agreement if delays in or failure of performance shall be due to Force Majeure, the effect of which, by the 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, fire, flood, earthquake, storm, lighting, epidemic, war, riot, civil disturbance, sabotage, and governmental action, but shall not include financial inability of the CONTRACTOR. The nonperforming party shall, within a reasonable time of being prevented or delayed from performance by a Force Majeure, give written notice to the other party describing the circumstances and Force Majeure preventing continued performance of the obligations of this Agreement.

20. **Financial records.** The CONTRACTOR shall maintain accurate and complete financial records of its activities and operations relating to this Agreement in accordance with generally accepted accounting principles. CONTRACTOR shall maintain adequate records to justify all charges and costs incurred in performing the services for at least three (3) years after completion of this Agreement. CONTRACTOR agrees that CITY, or its authorized representatives, shall have access to and the right to examine, audit, excerpt, copy or transcribe any pertinent transaction, activity, or records relating to this Agreement during normal business hours. All such materials shall be maintained by CONTRACTOR at a location in Miami-Dade County, Florida; provided that if any such material is located outside Miami-Dade County, then, at CITY'S option CONTRACTOR shall pay CITY for travel, per diem, and other costs incurred by CITY to examine, audit, excerpt, copy or transcribe such material at such other location. In the event that an audit is conducted by CONTRACTOR specifically regarding this Agreement by any Federal or State auditor, or by any auditor or accountant employed by CONTRACTOR, then CONTRACTOR shall file a copy of the audit report with the CITY'S Auditor within thirty (30) days of CONTRACTOR'S receipt thereof, unless otherwise provided by applicable Federal or State law. CITY shall make a reasonable effort to maintain the confidentiality of such audit report(s).

21. **Miscellaneous.**

- a. **Modification.** This agreement may not be amended or modified unless in writing and signed by both parties.
- b. **Availability of funds.** The obligations of the CITY under this Agreement are subject to the availability of funds lawfully appropriated for its purpose by the City Commission.
- c. **Conflict of Interest.** CONTRACTOR covenants that no person employed by the CONTRACTOR which exercises any functions or responsibilities in connection with

this Agreement has any personal financial interests direct or indirect with the CITY. CONTRACTOR further covenants that, in the performance of this Agreement, no person having a conflicting interest shall be employed. Any such interests on the part of CONTRACTOR or its employees must be disclosed in writing to CITY. CONTRACTOR is aware of the conflict of interest code of the City of Coral Gables, the Conflict of Interest and Code of Ethics of Miami-Dade County, Florida, Section 2-11.1 et seq., and the Ethics Laws of the State of Florida, and agrees that it shall fully comply in all respects with the terms of said laws.

- d. **Background check/Drug and Alcohol Policy.** CONTRACTOR agrees that all of its employees performing work on CITY property may be subject, at the CITY's discretion, to an annual "Level 2" background investigation in accordance with Chapter 435.04 of the Florida Statutes. If the CITY in its discretion determines that a specific employee of the CONTRACTOR should not perform work on CITY property, the CONTRACTOR will ensure that such employee does not perform work on CITY property. CONTRACTOR agrees to comply with the CITY's drug and alcohol policy. The CITY may waive all or part of this subsection d., in its discretion.
- e. **Federal and State taxes.** The CITY is exempt from Federal Tax and State Sales and Use Taxes. Upon request, the CITY will provide an exemption certificate to the CONTRACTOR. The CONTRACTOR shall not be exempted from paying sales tax to its suppliers for materials to fulfill the contractual obligations with the CITY, nor shall the CONTRACTOR be authorized to use the CITY'S Tax Exemption Number in securing such materials.
- f. **Entirety of agreement.** The CITY and the CONTRACTOR agree that this Agreement, as amended from time to time, sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. This Agreement supersedes all prior agreements, contracts, proposals, representations, negotiations, letters, or other communications, written or oral, between the CITY and the CONTRACTOR pertaining to the services. None of the provisions, terms, and conditions contained in this Agreement may be added to, modified, superseded, or otherwise altered, except by written instrument executed by the parties hereto.
- g. **Counterparts.** This Agreement may be executed simultaneously in several counterparts, each of which will be an original, but all of which together will constitute one and the same instrument.
- h. **Waiver.** A waiver by either the CITY or the CONTRACTOR of any breach of this Agreement shall not be binding upon the waiving party unless such waiver is in writing. In the event of a written waiver, such a waiver shall not affect the waiving party's rights with respect to any other or further breach. The making or acceptance of a payment by either party with knowledge of the existence of a default or breach shall not operate or be construed to operate as a waiver of any subsequent default or breach.
- i. **Severability.** 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.

- j. **Governing law and venue.** This Agreement shall be governed and construed 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, and the Agreement will be interpreted according to the laws of Florida.
- k. **Joint preparation.** Preparation of this Agreement has been a joint effort of the CITY and the CONTRACTOR and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than any other.
- l. **Headings.** The headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of the Agreement.
- m. **Public Records Law, Florida Statutes Chapter 119.** Records subject to the provisions of Public Record Law, Florida Statutes Chapter 119, shall be kept and maintained in accordance with such Statute. CONTRACTOR 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. CONTRACTOR 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, CONTRACTOR 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 CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 305-460-5210, cityclerk@coralgables.com, 405 Biltmore Way, First Floor, Coral Gables, FL 33134.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

Approved as to insurance:

AS TO CITY:

David Ruiz
Risk Management Division

Celeste S. Walker
Assistant Finance Director for Procurement

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

Kara Kautz
Historical Resources & Cultural Arts Interim Director

ATTEST:

Billy Y. Urquia
City Clerk

Approved as to compliance with
applicable procurement requirements:

APPROVED AS TO FORM AND LEGAL
SUFFICIENCY:

Celeste S. Walker
Assistant Finance Director for Procurement

Miriam Soler Ramos
City Attorney

Approved as to funds appropriation:

Diana M. Gomez
Finance Director

ATTEST:

AS TO CONTRACTOR:

Corporate Secretary
Print Name: _____
(SEAL)

President
Print Name: _____

(OR)
WITNESSES (2):

Print Name: _____

Print Name: _____

DRAFT

EXHIBIT 1.

DRAFT

EXHIBIT 2. (fee schedule)

See Exhibit 1.

DRAFT