

CITY OF CORAL GABLES, FLORIDA

RESOLUTION NO. 2019-260

A RESOLUTION APPROVING SALE OF ART AND COPYRIGHT LIMITED LICENSE AGREEMENT WITH ATELIER CRUZ-DIEZ; APPROVING ARTWORK INSTALLATION AND PRESERVATION AGREEMENT WITH LOGISTICS FINE ARTS, LLC; AND APPROVING ADDITIONAL COSTS FOR THE INSTALLATION OF THE ARTWORK *INDUCTION CHROMATIQUE CORAL GABLES* PAINTED CROSSWALKS BY CARLOS CRUZ-DIEZ AS A PERMANENT INSTALLATION.

WHEREAS, pursuant to Resolution No. 2018-151, the City Commission approved the acquisition of the artwork *Induction Chromatique Coral Gables* by Master Carlos Cruz-Diez (the “Artwork”) at a cost of \$180,000.00; and

WHEREAS, the City has been negotiating the terms for the acquisition of the Artwork with Atelier Cruz-Diez (“Atelier”), representing the artist’s work, and the details and logistics for the installation and preservation of the Artwork with Logistics Fine Arts, LLC (“LFA”), Atelier’s representative in the United States; and

WHEREAS, on July 27th, 2019, Master Cruz-Diez passed away at the age of 95; and

WHEREAS, the City and Atelier have negotiated a Sale of Art and Copyright Limited License Agreement with Atelier and an Artwork Installation and Preservation Agreement with LFA, but the exhibits to the agreements are still being finalized; and

WHEREAS, the Sale of Art and Copyright Limited License Agreement includes the following key terms:

- (1) Payment by the City to Atelier, payable to LFA, in the amount of \$180,000.00;
- (2) Atelier will sell, transfer, and convey to the City the Artwork, but the shades and colors are not exclusive;
- (3) Atelier represents and warrants that it owns and has the right to license the Artwork;
- (4) Atelier retains all intellectual property rights;
- (5) Atelier grants the City a limited license for non-commercial uses as defined in the agreement;
- (6) The permitted uses of the Artwork include non-commercial and not-for-profit photographic reproductions, displays and images of or relating to the City’s municipal purposes as listed in the agreement. For other uses, the City must obtain Atelier’s consent;
- (7) The City will initially paint the design of the Artwork within the edge lines of the crosswalk and upon its request, will re-paint the Artwork in full;

- (8) The City may at its sole and absolute discretion decide to completely remove the Artwork at any time and shall give notice to Atelier within ten days after removal, but shall not install the Artwork in a different location;
- (9) The City shall undertake reasonable efforts to ensure that the Artwork is properly maintained following the Artist's instructions and recommendations as set forth in the agreement and Exhibit C;
- (10) Any repairs and restoration the Artwork require Atelier's written approval and LFA is Atelier's authorized representative to carry out assessments of quality and control of all repairs and restorations to the Artwork;
- (11) City agrees to indemnify, defend, and hold harmless Atelier, including for failure to obtain any required permits.

WHEREAS, the Artwork Installation and Preservation Agreement with LFA includes the following key terms:

- (1) Annual fee of \$18,000.00 payable in two installments; and
- (2) Installation of the Artwork by LFA, with the City being responsible for all costs for preparation of the site; and
- (3) Initial installation may be within the edge lines of the crosswalk and upon City's request, LFA will re-paint the Artwork in full at an additional cost to the City, to be mutually agreed upon by the parties; and
- (4) During a ten-year term, LFA will be responsible for the preservation and conservation of the Artwork, including an annual cleaning, removal of any mild atmospheric soil and dirt by application of medium pressure water, and restoration of the Artwork by reapplying a new paint surface coating to the Artwork; and
- (5) LFA warrants the quality of the Work, Preservation Activities, and Restoration Treatment for a period of up to one (1) year after each reapplication of a new paint surface coating; and
- (6) The City is responsible for obtaining any required licenses, consents, and building permits from Miami-Dade and agrees to develop a traffic plan and provide necessary equipment, such as signs and barricades.

WHEREAS, the maintenance/preservation schedule requires four non-consecutive sunny days with staggered street closures to complete the work; and

WHEREAS, the cost of designing and setting up Maintenance of Traffic (MOT) is yet to be determined, however, police coverage is estimated at \$12,096 per instance;

NOW, THEREFORE, BE IT RESOLVED BY THE COMMISSION OF THE CITY OF CORAL GABLES:

SECTION 1. The foregoing "Whereas" clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Resolution upon adoption hereof.

SECTION 2. That the City Commission approves the Sale of Art and Copyright License Agreement with Atelier Cruz-Diez, in substantially the form attached, with such modifications as may be approved by the City Manager and the City Attorney in order to carry out the Commission's intent.

SECTION 3. That the City Commission approves the Artwork Installation and Preservation Agreement with Logistics Fine Arts, LLC, in substantially the form attached, with such modifications as may be approved by the City Manager and the City Attorney in order to carry out the Commission's intent.

SECTION 4. That the City Commission approves the additional costs for the installation and maintenance of the Artwork.

SECTION 5. That this Resolution shall become effective upon the date of its passage and adoption herein.

PASSED AND ADOPTED THIS TWENTY-SEVENTH DAY OF AUGUST, A.D., 2019.

(Moved: Mena / Seconded: Keon)

(Yeas: Fors, Jr., Keon, Lago, Mena, Valdes-Fauli)

(Unanimous: 5-0 Vote)

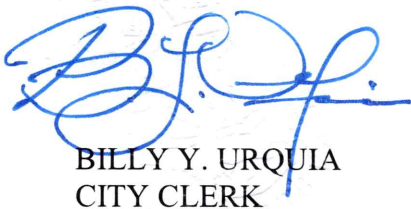
(Agenda Item: I-5)

APPROVED:



RAÚL VALDÉS-FAULI
MAYOR

ATTEST:



BILLY Y. URQUIA
CITY CLERK

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:



for MIRIAM SOLER RAMOS
CITY ATTORNEY

Artwork Installation And Preservation Agreement

This Artwork Installation And Preservation Agreement (the "Agreement") is made this ___ day of _____, 2019, by and between the **City of Coral Gables**, a municipal corporation existing under the laws of the State of Florida (the "City"); and **Logistics Fine Arts, LLC**, a Florida limited liability company, with address at 311 NW 28 Street, Miami, FL 33127 (the "Service Provider").

WITNESSETH:

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 Nos. 2018-151 and 2019-260 adopted by the City Commission on May 22, 2018 and on August 27, 2019, respectively, the City wishes to acquire certain work of art (the "Artwork") created by Carlos Cruz- Diez (the "Artist"), to be fixed on two of the crosswalks located in front of the City Hall, and more particularly described in **Exhibit "A"** attached hereto and made a part hereof, the purpose of which is to enhance the community and to promote and reinforce the arts and culture in the City;

WHEREAS, pursuant to that certain Sale of Art and Copyright Limited License Agreement (the "License Agreement") contemporaneously executed with this Agreement, the City has acquired a perpetual, royalty-free, non-exclusive, non-transferable limited license to install, reproduce, publicly perform, display, transmit, and distribute visual content of the Artwork (as defined in Section 2.1 below) for non-commercial purposes as determined in the License Agreement;

WHEREAS, pursuant the License Agreement the City is required to install and repair the Artwork by precisely following Atelier's instructions set forth in **Exhibit "C"** attached hereto and made a part hereof;

WHEREAS, the Parties hereto desire to execute this agreement establishing the parties' rights and responsibilities with respect to the installation and preservation of the Artwork, as hereafter set forth.

NOW, THEREFORE, the City and the Service Provider, in consideration of the mutual covenants and agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, agree as follows:

Article 1 Incorporation of Recitals

1.1 Recitals. The foregoing recitals are true and correct and are hereby incorporated by reference.

Article 2 Scope of Work

2.1 Services. Service Provider shall perform all the work (the “Work”) described in this Agreement and **Exhibits “A” and “A-1”** in connection with the installation, fabrication, inspection, and preservation of the Artwork to be located next to the City Hall at LeJeune Road and Biltmore Way (crossing Biltmore Way) and at LeJeune Road and Coral Way (crossing Coral Way on the westbound, south crosswalk) (collectively the “Site”), such location being more particularly described in **Exhibit “B”** attached hereto and made a part hereof. For purposes of this Agreement, the term “Artwork” shall mean an exclusive Artist-designed schematic composition consisting in a series of pictorial elements presented in a specifically arranged pattern to give it visual expression in harmony with the artist's intentions.

2.2 Equipment and Supplies. Except as otherwise provided in Section 4.1 of this Agreement, Service Provider shall furnish all supplies, materials and equipment as necessary for the fabrication and installation of the Artwork, either directly or through qualified subcontractors, including, but not limited to materials, tools, equipment, personnel, and all other items incidental to producing a complete and acceptable Work, and undertake the installation and integration of the Artwork at the Site.

2.3 Subcontractors. The Service Provider may subcontract and/or assign portions of the Work to additional parties not previously identified by Service Provider, but the Service Provider will still be held ultimately responsible for all portions of the Work and the City shall have no liability whatsoever, whether financial or otherwise, with regard to same.

2.4 Third Party Vendors. In the event that the services of the Service Provider are integrated into, combined, or otherwise coordinated with services by third parties employed by City and not within the control of Service Provider, the Service Provider shall not be responsible for such third party services.

2.5 Duty to Report Discrepancies. If any part of the Service Provider’s Work depends upon proper execution or results from the work of the City or a third party responsible to the City, the Service Provider 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 Service Provider, prior to proceeding with the Service Provider’s

Work. The City shall immediately take such actions as necessary in accordance with this Agreement to solve the discrepancy.

Article 3 Service Provider's Covenants and Obligations

3.1 Project Management. The Service Provider shall perform the Service Provider's services and administer any project authorized pursuant to this Agreement, each exhibit referred to and attached to this Agreement and any amendments or revisions thereto. The Service Provider shall provide and/or coordinate the services necessary and reasonably inferable for the complete performance of the Work pursuant to this Agreement.

3.2 Period of Installation. The Service Provider shall begin the Work after the Effective Date of this Agreement (as defined in Section 6.1 herein), and payment of the first fee installment pursuant Section 5.1(a), at a time mutually agreed upon by the Service Provider and the City. Notwithstanding the foregoing, the Service Provider shall begin the Work no later than forty-five (45) days from the date of City's payment of the first fee installment pursuant Section 5.1(a), provided entry to the Site has been granted to Service Provider by the City pursuant Section 4.3 of this Agreement. Unless otherwise agreed by the parties, the Service Provider hereby covenants to complete the installation of the Artwork for delivery to the City within sixty-days (60) of commencement of the Work (the "Delivery Date").

3.3 Preservation of the Artwork.

(a) The Service Provider shall be responsible during the Term of this Agreement (as defined in Section 6.1 below) for the preservation and conservation of the Artwork as provided for and in the manner set forth in Section 3.3(b) herein.

(b) Commencing one (1) year after the Delivery Date and continuing on or about the same date each following year of the ten (10) year period of this Agreement, and provided the City has paid the Service Provider at least fifty per cent (50%) of the Annual Fixed Price for the specific year, the Service Provider shall perform the cleaning of the Artwork and removal of any mild atmospheric soil and dirt by application of medium pressure water (the "Preservation Activities"). On that occasion, the Service Provider will conduct an inspection of the Artwork and reapply a new paint surface coating to the Artwork that will restore the Artwork to its original design (the "Restoration Treatment") at no additional cost to the City, provided deterioration shown by the Artwork is due to normal wear and tear and not as a result of the events described in Section 9.1 of this Agreement. Except if the Crosswalks are damaged or defaced or otherwise experience extraordinary erosion, or wear and tear as a result of the

events described in Section 9.1 of this Agreement, or exposure to extraordinary elements, the Service Provider warrants the quality of the Work, Preservation Activities, and Restoration Treatment for a period of up to one (1) year after each reapplication of a new paint surface coating. For the avoidance of doubt, extraordinary wear and tear or erosion shall not include deterioration as a result of the regular exposure to sun, rain, and traffic density and composition that is typical for the Crosswalk locations.

(c) If the Artwork is not preserved by Service Provider in the manner set forth in Section 3.3(b) above, the City may notify the Service Provider in writing of the need to perform Preservation Activities and/or the Restoration Treatment. The Service Provider will perform the Preservation Activities and/or the Restoration Treatment necessary in the manner set forth in Section 3.3(b). If, after forty-five (45) days from the date of City's notification to the Service Provider of the need to perform Preservation Activities and/or the Restoration Treatment, the Service Provider has not performed the Preservation Activities and/or the Restoration Treatment necessary for compliance with this provision, the City may, at its option and notwithstanding anything contained herein, terminate this Agreement.

3.4 Excluded Services. The Preservation Activities and/or the Restoration Treatment do not include restoration or repairs to the Artwork for sustained injury or decay as a result of the events described in Section 9.1 of this Agreement.

3.5 Initial Painting. The Service Provider agrees to provisionally paint the Artwork within the edge lines of the Crosswalk as described in "**Exhibit A-1**" (unless the City initially requests that the Artwork be painted as described in Exhibit A). Thereafter, upon City's request, the Service Provider will re-paint the Artwork in full as described in **Exhibit A**, at an additional cost to the City, to be mutually agreed upon by both parties. If the City and the Service Provider are unable to agree on a price to re-paint the Artwork, the Service Provider shall have no obligation to re-paint the Artwork, but the next annual Restoration Treatment shall include painting the Artwork in full as described in **Exhibit A**.

3.6 Additional Services. In the event that the City needs the Service Provider to assume additional repair and restoration responsibilities not included in the Preservation Activities, including but not limited to the re-painting activities described in Section 3.5 above, the City and the Service Provider will negotiate for additional services ("Additional Services"). Prior to commencing any Additional Service, Service Provider shall prepare and submit for acceptance by the City a proposal (the "Additional Services Proposal"), which shall describe in detail the nature or scope of the Additional Services to be rendered, the basis upon which Service Provider has determined that such services are Additional Services, and the maximum amount of fees and reimbursable expenses for which Service Provider is prepared to perform such Additional Services, together with a proposed schedule for the performances of such Additional Services. Any Additional Services shall be authorized or confirmed in writing by the City and the Service Provider shall be entitled to Additional Compensation pursuant Section 5.2 of this Agreement. Notwithstanding the foregoing, the Service Provider and the City agree to work together in

good faith so that to the extent possible, any repair and/or restoration activities to address any of the foregoing conditions can be scheduled to coincide with and incorporated into the annual Preservation Activities and Restoration Activities to minimize or eliminate any additional fees, costs, and expenses incurred by the City.

3.7 Representative: Service Provider shall designate a primary contact as its authorized representative with respect to all matters pertaining to this Agreement (the “Project Manager”). The designated representative shall act on behalf of Service Provider with respect to all phases of the Work and shall be available as required for the benefit of any Work and the City.

3.8 Standard of Care. Service Provider agrees to use its best professional efforts, skill, judgment, and abilities to perform the Work in an expeditious and timely manner as is consistent with professional standards of care and the orderly progress of any project authorized pursuant to this Agreement. Service Provider shall at all times provide a sufficient number of qualified personnel to accomplish the Work within the time limits set forth in each schedule.

Article 4 **City’s Covenants and Obligations**

4.1 Licenses and Permits. The City acknowledges that it shall be responsible for ensuring that the installation of the Artwork complies at all times with all policies, procedures and directives of the City of Coral Gables and Miami-Dade County, and thus, the City hereby agrees that it shall be solely responsible for obtaining any required licenses, consents, and building permits from the Miami-Dade Transportation and Public Works Department. In addition, the City hereby agrees to develop a traffic plan and provide the necessary equipment, such as signage and barricades on the dates scheduled by Service Provider for the Work to be performed and to prevent City-caused delays in Service Provider’s completion of the Work. In no event shall the Service Provider be responsible or liable for failure to comply with public right-of-way licenses or any other permits issued by the City or County for the location of the Artwork or for any crosswalk marking insufficiencies or inadequacies; failure to comply with safety guidelines or standards for pedestrians; penalties, fines, costs, or expenses of whatever kind; claims or actions of any nature whatsoever, including inability to use the Crosswalks, which arise out of, or in connection with the Artwork, whether such actions arise in or are claimed to arise in contract, tort or statute.

4.2 Representative. The City shall designate one of its agents to serve as its primary contact with respect to this Agreement and to act as its authorized representative with respect to matters pertaining to this Agreement.

4.3 Entry on Site. The City shall be solely responsible for all cost and expense for preparation of the Site before installation of the Artwork, and employ the labor services of any third parties as needed for the cleaning and preparation of the Crosswalks so that Service Provider may start

performing services pursuant to this Agreement. The City shall give prompt written notice to Service Provider whenever the City becomes aware of any development that affects the scope or timing of the Work. If the City initially requests that the Artwork be painted within the edge lines of the Crosswalks as set forth in Exhibit A-1, then preparation of the Site by the City shall include painting the asphalt black to cover the ephemeral artwork outside the edges of the provisional Artwork.

4.4 Special Information. The City shall provide Service Provider, upon reasonable request, but without warranty or representation by City of any kind, and to the extent in City's possession, any background materials and information on matters affecting the Site. In addition, the City shall furnish, to the extent in City's possession, boundary, easement, right-of-way, topographic and utility surveys; plans and specifications, as needed, and special data and conditions relevant to the Site.

4.5 Time for Response. The City shall furnish the required information and render approvals as soon as reasonably practical for the orderly progress of the Work, and the City shall: (i) give written notice to Service Provider within a reasonable time after the discovery of any failure, defect, or damage; (ii) give prompt written notice to Service Provider whenever the City becomes aware of any development that affects the scope or timing of the Work; and/or (iii) respond promptly to any reasonable requests from Service Provider for instructions, information, or approvals required to provide the services.

4.6 Time for Processing Payments. The City shall pay any undisputed amounts when due under this Agreement no later than thirty (30) days after receipt of the invoice from the Service Provider.

4.7 Cooperation. The City shall cooperate with Service Provider in its performance of the Work and provide access to the Site, the City's premises, employees, contractors, and equipment as reasonably requested to enable Service Provider to accomplish the Work.

4.8 Extensions. The City shall grant a reasonable extension of time to Service Provider after the Delivery Date in the event that there is a delay on the part of the City in performing its obligations hereunder; or in making the Site available to Service Provider for proceeding with the Work.

4.9 The City shall reasonably assure that the Artwork is properly maintained, taking into account the recommendations of Service Provider, as set forth in **Exhibit "C"**.

Article 5 Compensation for Work

5.1 Payment. In consideration for the provision of the services herein (not including Additional Services) City shall pay the Service Provider each year during the Term (as defined below) an annual fee of Eighteen Thousand and 00/100 Dollars (\$18,000.00) (the “Annual Fixed Price”) in accordance with the terms of this Agreement, and as follows:

(a) The first Annual Fixed Price shall be paid by the City to the Service Provider in two (2) installments of Nine Thousand and 00/100 (\$9,000) each. The first such installment shall be paid to the Service Provider following the execution of this Agreement and no later than thirty (30) days after receipt of the invoice from the Service Provider, provided that the City has received approval from Miami-Dade County, the Florida Department of Transportation, and/or the City of Coral Gables of the maintenance of traffic plan for the Work (the “Approvals”). The second installment shall be paid by the City promptly following the Delivery Date and no later than thirty (30) days after receipt of the invoice from the Service Provider. If, within ninety (90) days after execution of this Agreement the City has not obtained the Approvals, this Agreement shall be deemed immediately cancelled, terminated and of no further force and effect. The Parties, however, may at any time prior to the expiration of the ninety (90) days, by mutual written agreement, extend this Agreement for such additional periods as they may agree.

(b) Commencing on January 2020, and continuing on each following year of the ten (10) year period of this Agreement, the City shall pay the Annual Fixed Price in two (2) installments of Nine Thousand Dollars and 00/100 (\$9,000.00) each, due and payable no later than thirty (30) days after receipt of the invoice by the City from the Service Provider, as follows: the first in each and every year, upon receipt by the City of the Approvals, and the second, upon completion of the Annual Preservation Activities for that year. The Parties understand and agree that the Service Provider shall not be required to render any of the Preservation Activities or the Restoration Treatment, unless the City has paid the Service Provider fifty per cent (50%) of the Annual Fixed Price for the specific year at least forty-five (45) days in advance to the date in which performance of the Preservation Activities and/or the Restoration Treatment is scheduled to commence.

5.2 Payment for Additional Services. Unless otherwise provided in the Additional Services Proposal, Service Provider shall be compensated on an hourly rate basis or on a per-service fee basis (“Additional Compensation”) in accordance with Service Provider’s Additional Services Proposal. Service Provider shall proceed only after written acceptance by City of the Additional Services Proposal. Service Provider’s amount of fees and expenses shall be paid by the City in the following manner: (i) fifty per cent (50%) at least forty-five (45) days in advance to the date

in which performance of the Work is scheduled to commence; and (ii) fifty percent (50%) after the Work has been completed, within thirty (30) days of receipt by the City of an invoice from Service Provider.

5.3 Late Payments. Service Provider shall be entitled to suspend the provision of any Preservation Activities if the City fails to pay any undisputed amounts when due hereunder and such failure continues for thirty (30) days following written notice thereof.

5.4 Costs and Expenses. The City acknowledges that the Service Provider will perform all works and services identified in this Agreement, either directly or through qualified subcontractors. Service Provider shall pay, out of Service Provider's fees, for all subcontractor services and costs associated with subcontractor's services under this Agreement, either for the Preservation Activities or any Additional Services as the case may be. City is not responsible for any such subcontractor fees or costs unless otherwise specified herein or agreed to in writing.

Article 6

Term, Extension, and Termination

6.1 Effective Date and Term. This Agreement shall become effective (the "Effective Date") upon the later of (a) the execution and delivery hereof by the Parties hereto and (b) confirmation of the conditions to effectiveness of the License Agreement pursuant Section 8 of the License Agreement. This Agreement shall have a term of ten (10) years from the Effective Date (the "Term"), unless terminated earlier pursuant to the terms and provisions of this Agreement.

6.2 Extension. Upon the expiration of the Term or any renewal term, this Agreement shall automatically renew for an additional ten (10) year period, unless, at least sixty (60) days prior to the renewal date, either party gives the other party written notice of its intent to terminate this Agreement. During any renewal term, the terms and conditions set forth in this Agreement shall remain in effect.

6.3 Termination by Service Provider. Notwithstanding anything to the contrary in Section 6.4 herein, Service Provider may terminate this Agreement before the expiration date of the Term or any renewal term, on written notice if City fails to pay any amount when due hereunder: (a) and such failure continues for forty-five (45) days after City's receipt of written notice of nonpayment; or (b) more than two (2) times in any 12 month period.

6.4 Termination by the City. The City may elect to terminate this Agreement for any reason before the expiration date of the Term or any renewal term upon sixty (60) days prior written notice to the Service Provider. Upon termination of this Agreement, the City shall have the right

to contract with another service provider for the Preservation of the Artwork. In the event of termination under this Article, the Service Provider shall be fully discharged from any and all liabilities, duties and terms arising out of/or by virtue of this Agreement.

6.5 Default. The following shall be “Events of Default” by the Service Provider:

(a) The Service Provider has breached any portion of this Agreement, and the Service Provider does not cure such breach within any applicable cure periods hereunder after receipt of written notice of such breach.

(b) The Service provider fails to timely provide and/or satisfactorily perform any task, deliverable, services or other work required under this Agreement and has not cured said breach within thirty (30) calendar days.

(c) The Service Provider shall be deemed insolvent, including if it has ceased to pay its debts for at least thirty (30) days in the ordinary course of business, whether or not a petition has been filed under the Federal Bankruptcy Code and whether or not the Service Provider is insolvent within the meaning of such laws.

(d) If there has been a filing of a voluntary or involuntary petition regarding the Service Provider under the Federal Bankruptcy Code.

(e) If there has been an appointment of a receiver or trustee for the Service Provider; and

(f) If there has been an execution by the Service Provider of a general assignment for the benefit of creditors.

6.6 No Waiver. Failure of the City to declare any default immediately upon occurrence thereof, or delay in taking any action in connection therewith, shall not waive such default, but the City shall have the right to declare any such default at any time and take such action as might be lawful or authorized hereunder, in law and/or in equity. No waiver of any term, provision, condition or covenant of this Agreement by either party, or the failure of either party to insist upon strict performance of one or more covenants or conditions of this Agreement shall be deemed to imply or constitute a further waiver by said party of any other term, provision, condition or covenant of this Agreement.

6.7 City’s Remedies. Upon the occurrence and continuation of any Event of Default that remains uncured beyond any applicable cure periods, the City shall have the right to immediately terminate this Agreement.

Article 7 Installation Guidelines

7.1 Installation Specifications. The Service Provider shall install and/or repair the Artwork, as the case may be, by precisely following Atelier's instructions set forth in **Exhibit "C"** attached hereto and made a part hereof, and the location guidelines in **Exhibit "B"**, unless otherwise approved by Atelier and the City in writing.

7.2 Performance Dates. The City acknowledges that the painting and coating treatment of the Crosswalks must be performed during daylight and under dry weather conditions. Service Provider shall use reasonable efforts to meet any performance dates specified in each and any order confirmation, but any such dates shall be estimates only, since the final performance dates will depend on the various events not under Service Provider's control such as the weather, the conditions of the roads in the Site, the prompt availability of materials, permits, licenses, among others.

7.3 Notice and Schedule of Installation. Prior to commencing the installation of the Artwork, the Service Provider shall provide the City with a detailed schedule of the installation process, including an anticipated Delivery Date and the dates and times the Service Provider intends to install the Artwork. The City shall make all arrangements and take all steps necessary pursuant City's obligations as set forth in Article 4 of this Agreement.

7.4 Cost of Materials. The Service Provider shall be responsible for providing, at its cost, all materials necessary to perform the Work.

Article 8 Removal of Artwork

8.1 Removal. The City may, at its sole and absolute discretion, decide to remove the Artwork at any time at City's cost and expense. Nonetheless, the City shall give notice of such decision to the Service Provider within ten (10) days after removal of the Artwork has taken place. At all times, the Service Provider shall be entitled to immediate payment by the City of any payment installment due of the Annual Fixed Price for that year as of the date of the removal.

Article 9 Restoration Treatment due to Extraordinary Deterioration

9.1 In the event the Crosswalks are damaged or defaced or otherwise experience extraordinary erosion, wear and tear, whether due to vandalism, force majeure, exposure to extraordinary elements (e.g. oil spills, heavy fork lift traffic or increase in traffic fluctuation,

pour drainage in the road bed, damage by vehicle collision or accident, pavement defects, chemical wash-downs, etc.) the City shall make, or cause to be made, within a reasonable time after receipt of Service Provider's written notice, the necessary restoration and/or repairs to the Crosswalks. Any Restoration Treatment and/or repairs by Service Provider for extraordinary damage, deface or otherwise shall be deemed Additional Services as defined in Section 3.6 of this Agreement, and therefore, all fees, costs and expenses shall be the sole responsibility of the City pursuant to Sections 5.2 and 5.4 of this Agreement. The Service Provider and the City agree to work together in good faith so that to the extent possible, the annual Preservation Activities and Restoration Activities under this Agreement can be scheduled to coincide with such Additional Services to minimize the Additional Compensation and other fees, costs, and expenses incurred by the City.

Article 10 Risk of Loss or Damage

10.1 The Artwork shall be deemed to be in custody of the City from the Delivery Date to the City by Service Provider. As of the Delivery Date the City shall be responsible for the safekeeping of the Artwork and assumes all risk of loss or damage to the Artwork in its possession.

Article 11 Insurance and Indemnification

11.1 Insurance. The Service Provider shall obtain Commercial General Liability Insurance, protecting the Service Provider, and their respective servants, agents or employees against damages arising from bodily injury (including death) and from claims for property damage which may arise while performing the Work directly or indirectly out of the operations of the Service Provider, and its 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 dollars (\$1,000,000) per occurrence adding the City as an additional insured on a primary and non-contributory basis with a waiver of subrogation in favor of the City.

11.2 Independent Contractors Insurance. For services performed by third parties as independent contractors under the supervision of Service provider pursuant to Section 2.3 of this Agreement, the Service Provider shall furnish the corresponding third party's Certificates of Insurance as set forth in Section 11.1 prior to the commencement of any Work hereunder.

11.3 Indemnification.

(a) Indemnification by Service Provider. The Service Provider hereby agrees to defend, hold harmless, and indemnify the City, and any of its elected or appointed officers, for any losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind the City incurs, and reasonable attorneys' fees in connection with the Artwork caused by the actions of the Service Provider, its officers, employees, or agents, affiliates, successors, and assigns or any person under its control insofar as permitted by law, or arising out of or in connection with any third-party claim, suit, action, or proceeding relating to any actual or alleged breach by the Service Provider of its representations, warranties, covenants, or other obligations hereunder.

(b) Indemnification by City. The City hereby agrees to defend, hold harmless and indemnify Atelier and its officers, directors, employees, agents, affiliates, successors, and assigns from and against any losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, the Service Provider incurs, including but not limited to claims and actions pursuant to Section 4.1 of this Agreement, and reasonable attorneys' fees in connection with the Artwork caused by the actions of the City, its elected or appointed officers, or agents, or any person under its control insofar as permitted by law, or arising out of or in connection with any third-party claim, suit, action, or proceeding relating to any actual or alleged breach by the City of its representations, warranties, covenants, or other obligations hereunder, including but not limited to failure to obtain any required permits.

(c) No Waiver. Nothing in this Agreement shall be considered to increase or otherwise waive any limits of liability, or to waive any immunity, established by Florida Statutes § 768.28, any other sections of the Florida Statutes, case law, or any other source of law.

Article 12 **Intellectual Property**

12.1 License Agreement. The City, its permitted successors and/or assigns, has been granted a perpetual, royalty-free, non-exclusive, non-transferable, and non-sublicensable right and license in the Artwork, pursuant to that certain limited Copyright License Agreement that is being executed concurrently with the execution of this Agreement.

Article 13
Miscellaneous Provisions

13.1 Limitation of Liability.

(a) In the event the Agreement is terminated pursuant to Section 6.4 of this Agreement, Service Provider shall within forty-five (45) days after the effective date of termination, refund to City the pro rata portion of any fees paid in advance by the City for any Work not yet completed by the Service Provider up to and including the date of termination.

(b) IN NO EVENT SHALL ONE PARTY TO THIS AGREEMENT BE LIABLE TO THE OTHER PARTY OR TO ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE, OR PROFIT, OR FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGE WAS FORESEEABLE AND WHETHER OR NOT SERVICE PROVIDER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

(c) IN NO EVENT SHALL SERVICE PROVIDER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT, OR OTHERWISE, EXCEED TWO (2) TIMES THE AGGREGATE AMOUNTS PAID OR PAYABLE TO SERVICE PROVIDER PURSUANT TO THIS AGREEMENT IN THE QUARTERLY PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM.

13.2 No Assignment. Except as explicitly set forth in Section 2.3 herein, this Agreement cannot be, directly or indirectly, assigned, transferred, or pledged, without the City's prior written consent.

13.3 Modification and Amendments. This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement.

13.4 Invalidity of Provision. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision, to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and each term and provision of this Agreement shall be valid and be

enforceable to the fullest extent permitted by law.

13.5 Governing Law; Venue. The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of Florida, without regard to its conflict of laws principles. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in Miami-Dade County.

13.6 Headings. All article and section headings and captions contained in this Agreement are for reference only and shall not be considered in construing this Agreement.

13.7 Entire Agreement. This Agreement together with the Exhibits constitutes the sole and entire agreement of the parties with respect to the subject matter of this Agreement, and supersedes all other oral or written provisions.

13.8 Counterparts. This Agreement may be executed in multiple counterparts and signatures may be exchanged by facsimile or electronically, each of which shall be deemed to be an original document, and all of which together shall constitute one and the same document.

13.9 Relationship of the Parties. Nothing contained in the Agreement shall be construed as creating any agency, partnership, or other form of joint enterprise between the parties. The relationship between the parties shall at all times be that of independent contractors. Neither party shall have authority to contract for or bind the other in any manner whatsoever. The Agreement confers no rights upon either party except those expressly granted herein.

13.10 Holidays. It is hereby agreed and declared that whenever a notice or performance under the terms of this Agreement is to be made or given on a Saturday or Sunday or on a legal holiday observed in the City, it shall be postponed to the next following business day.

13.11 Exhibits. Each Exhibit referred to and attached to this Agreement is an essential part of this Agreement. The Exhibits and any amendments or revisions thereto, even if not physically attached hereto, shall be treated as if they are part of this Agreement and incorporated herein. The Exhibits referred to and attached to this Agreement are as follows:

Exhibit A – Artwork

Exhibit A-1 – Initial design painting.

Exhibit B – Location

Exhibit C - Atelier's instructions and recommendations.

13.12 Force Majeure. The Service Provider shall have no responsibility or liability for delay, failure, loss or damage in connection with this Agreement if the Service Provider's availability

or Work is prevented by acts of God, labor unrest, terrorist acts or threats of terrorism, shortage of supplies, strikes, orders or other interventions by governmental authorities or any other causes that are beyond the Service Provider's control. Service Provider may request, and the City may grant, reasonable extensions of time to perform the Work if any such event prevents Service Provider from timely complying with its obligations to perform such Work. Failure to fulfill contractual obligations due to conditions due to force majeure shall not be considered a breach of contract.

13.13 Florida Public Records Law. Records subject to the provisions of Public Records Law, Florida Statutes Chapter 119, shall be kept and maintained in accordance with such Statute. The Service Provider 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. The Service Provider 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, the Service Provider 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 SERVICE PROVIDER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE SERVICE PROVIDER'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.

13.14 Waiver to Trial by Jury. THE PARTIES TO THIS AGREEMENT HEREBY AGREE TO EXHAUST ALL ADMINISTRATIVE REMEDIES BEFORE FILING A LAWSUIT IN CIVIL COURT TO RESOLVE THE DISPUTE. THE CITY AND THE SERVICE PROVIDER HEREBY KNOWINGLY, IRREVOCABLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT EITHER MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY ACTION, PROCEEDING OR COUNTERCLAIM BASED UPON THIS AGREEMENT, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THE LOT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN), OR ACTIONS OF ANY PARTY.

13.15 Successors and Assigns. This Agreement binds and benefits the Parties and their respective permitted successors and assigns.

13.16 Sovereign Immunity. Notwithstanding anything to the contrary herein, the Service Provider and the City acknowledge that the Florida Doctrine of Sovereign Immunity limits all

claims against the City other than claims arising out of this Agreement. The term “this Agreement” means this document, and other terms and conditions which are included in the exhibits and documents that are expressly incorporated by reference herein, as well as any amendments thereto. Specifically, the Service Provider 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 or any other existing agreement between the City and the Service Provider, or in accordance with Florida Statutes Chapter 768.28. Nothing in this Agreement is intended to increase or otherwise waive any limits of liability, or to waive any immunity as set forth in the Florida Constitution and Florida Statutes Chapter 768.28.

13.17 Attorney Fees. In the event either party commences legal proceedings for the enforcement of this Agreement, the prevailing party shall be entitled to recovery of its attorney’s fees, litigation expenses, and court costs incurred in the action brought thereon. Attorney’s fees and litigation expenses shall include without limitation costs of preparation and discovery and retaining expert witnesses, and such fees and expenses shall be payable whether or not the litigation proceeds to final judgment. “Prevailing party” shall be defined as the party with a net monetary recovery, a defendant in whose favor a dismissal is entered, a defendant where neither plaintiff nor defendant obtains any relief, and a defendant as against those plaintiffs who do not recover any relief against that defendant. When any party recovers other than monetary relief and in situations other than as specified herein, the prevailing party shall be as determined by the court.

13.18 Notices. Notices or other communications required by this Agreement will be sufficiently made or given if mailed by certified First Class United States mail, postage pre-paid, or by commercial carrier (e.g., FedEx, UPS, etc.) when the carrier maintains receipt or record of delivery, addressed to the address stated below, or to the last address specified in writing by the intended recipient.

Notice to Service Provider:

Logistics Fine Arts
311 NW 28th Street
Miami, Florida 33127

Notice to City:

City of Coral Gables
405 Biltmore Way
Coral Gables, Florida 33134

Artwork Installation and Preservation Agreement
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Attn: Peter J. Iglesias
Phone: 305-460-5204
E-mail: piglesias@coralgables.com

With copy:

City of Coral Gables
405 Biltmore Way
Coral Gables, Florida 33134
Attn: Miriam Soler Ramos, Esq.
Email: mramos@coralgables.com

With copy:

Holland & Knight, LLP
701 Brickell Avenue, Suite 3300
Miami, Florida 33131
Attn: Vivian de las Cuevas-Diaz, Esq.
Email: Vivian.Cuevas@hklaw.com
Fax Number: (305) 789-7799

[Signature Page Follows]

[Signature Page to Artwork Installation and Preservation Agreement]

IN WITNESS WHEREOF, the parties hereto have signed, sealed and delivered this Agreement at Miami-Dade County, Florida, as of the day and year first above written.

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

ATELIER: Approved as to its contents.

ATELIER CRUZ-DIEZ, a Limited Liability Company

By: _____

Name: Carlos Cruz Delgado

Title: _____

SERVICE PROVIDER:

LOGISTICS FINE ARTS, a Florida limited liability company

By: _____

Name: José Ramon Moreno

Title: _____

WITNESS:

By: _____ Name: _____

By: _____ Name: _____

**Sale of Art and Copyright Limited License Agreement
City of Coral Gables and Atelier Cruz-Diez**

This Sale of Art and Copyright Limited License Agreement (the “Agreement”), made and entered into this ___ day of _____, 2019, by and between the **City of Coral Gables**, a municipal corporation, existing under the laws of the State of Florida (hereinafter called “City”), and **Atelier Cruz-Diez**, a limited liability company registered with the register of commerce and companies of Paris under number 483 363 248 R.C.S. Paris, France (hereinafter called “Atelier”), having its registered office located at 38-40, rue Stephenson, 75018 Paris, France.

WHEREAS, pursuant to Resolution Nos. 2018-151 and 2019-260 adopted by the City Commission on May 22, 2018 and on August 27, 2019, respectively, the City wishes to acquire from the Artist (as defined below) the Artwork (as defined below) and to obtain a license to the Artwork for the uses described herein, the purpose of which is to enhance the community and to promote, reinforce the growth of arts and culture within the City;

WHEREAS, Atelier represents master Carlos Cruz-Diez (the “Artist”), who is the creator and owner of the Artwork and is also the artistic heritage manager of the Artist with full rights to sell, transfer, convey and grant license on behalf of the Artist;

NOW, THEREFORE, in consideration of the mutual covenants, terms, and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Sale of Artwork.

(a) Artwork. Subject to the terms and conditions of this Agreement, Atelier does hereby sell, transfer, and convey to the City and its heirs, executors, administrators, successors, and assigns forever, an exclusive Artist-designed schematic composition consisting in a series of pictorial elements presented in a specifically arranged pattern to give it visual expression in harmony with the artist's intentions (the “Artwork”) more particularly described in **Exhibit “A”** attached hereto and made a part of this Agreement. City acknowledges and agrees that shades and colors of the Artwork are not exclusive.

(b) Location. The Artwork shall be permanently fixed on the City’s crosswalks (the “Crosswalks”) located next to the Coral Gables City Hall at LeJeune Road and Biltmore Way (crossing Biltmore Way) and at LeJeune Road and Coral Way (crossing Coral Way on the westbound, south crosswalk), as described in **Exhibit “B”** attached hereto and made a part

hereof.

(c) No Intellectual Property Rights Transfer. This sale does not comprise the right, privilege, exclusivity or entitlement to the colors used in the Artwork, nor the transfer has the effect of transferring to the City the Artist's material and intellectual property rights to the Artwork

2. Grant of Limited License. Subject to the terms and conditions of this Agreement, Atelier hereby grants to the City a fully paid up, perpetual, royalty-free, non-exclusive, non-transferable, and non-sublicensable right and license for non-commercial uses (not for resale, download, distribution, or any commercial use of any kind) to reproduce, publicly perform, display, transmit, and distribute visual content of the Artwork through all print and digital media now known or hereinafter developed, as part of the City's own non-profit advertising campaigns (the "Permitted Uses") as described in Article 4 of this Agreement.

3. Reservation of Rights.

3.1 Atelier and/or the Artist expressly reserves all copyright, trade dress and trademark rights in and to the images, displays, transmissions and the prints published by City pursuant to the grant of rights herein. No advertising, publicity and promotional use by Atelier and/or the Artist of the Artwork in any medium or manner will be deemed to interfere with the limited permissions made to the City by Atelier herein.

3.2 The City acknowledges and agrees that nothing in this Agreement limits or restricts the Artist's copyrights and trademarks in the Artwork in any way.

4. Usage of the Artwork. Notwithstanding any other provision to the contrary contained in this Agreement, the Permitted Uses of the Artwork shall be deemed to include non-commercial and not-for-profit photographic reproductions, displays and images of or relating to the City's municipal purposes: (i) in promotional brochures, greeting cards, posters, calendars and pamphlets pertaining to the City and any other similarly descriptive materials; (ii) in catalogues, slides, photos, videos and films; (iii) in books, art magazines, advertisements, articles and news sections of newspapers and other periodicals; (iv) over the Internet in web sites in connection with the City. For any other uses not explicitly listed in the Permitted Uses, the City shall first obtain express consent in writing of Atelier for the commercial or non-commercial reproduction and distribution of goods and materials containing engravings, inscriptions, or ink impressions of the Artwork, such as textiles, magnets, imitations, still images, mugs, stationery, wall-art, toys, hats, and other similar materials.

5. Intellectual Property

5.1 Copyright Notices. The City shall ensure that its use of the Artwork is marked with the appropriate copyright notice specified by Atelier in a reasonably prominent position in the order and manner provided by Atelier, and abide by the copyright laws and what are considered to be sound practices for copyright notice provisions in the State of Florida. Further, the City shall not use any copyright notices that conflict with, confuse, or negate the notices Atelier provides and requires hereunder. The Artist's signature and/or copyright notice as they appear on the Artwork shall not be removed or concealed.

5.2 Attribution. The City shall provide Artist with the following credit, including any applicable copyright notice, in the Artwork:

©Carlos Cruz Diez, *Induction Chromatique Coral Gables, 2017* ©ADAGP PARIS 20XX

Other than such credit, the City has no right to use the Artist's name or any trademarks, logos, and the name and likeness or any other intellectual property rights of the Artist. The City acknowledges that compliance with this Section 5.2 is a material term of this Agreement.

5.3 Integrity. The Artwork is an original work of visual art containing copyrightable subject matter for which copyright protection exists under the Copyright Act, 17 U.S.C. § 101, the Visual Artists Rights Act of 1990, 17 U.S.C. §§ 106A and 113(d) and all other local, state, federal or international laws that convey rights of the same nature as those conveyed under 17 U.S.C. § 106A. 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.

5.4 Moral Rights. The City hereby acknowledges the Moral Rights of the Artist (as defined below). "Moral Rights" mean any rights to claim authorship of the Artwork or to prevent the modification of the Artwork, or to withdraw from circulation or control the publication or distribution of the Artwork, and any similar right, existing under judicial or statutory law of any country in the world, or under any treaty, regardless of whether or not such right is denominated or generally referred to as a "moral right."

5.5 Quality and Control Provisions. At all times the City must comply with the Artwork proportions, artistic features, directions and technical specifications provided by Atelier. The Artwork shall be of the same configuration and dimensions as the design rendition in **Exhibit "A"** unless otherwise specifically approved by Atelier in writing. Atelier and the Artist acknowledge that the City will initially paint the design of the Artwork within the edge lines

of the Crosswalk, and upon City's request, the City shall re-paint the Artwork in full as described in **Exhibit "A."**

5.6 Modifications and Removal.

(a) The City shall not translate, recast, edit, alter, damage, or modify the Artwork in any way whatsoever, unless first approved in writing by the Artist and/or Atelier. If any alteration of any kind occurs after receipt by the City without the Artist's or Atelier's written consent, whether intentional or accidental and whether done by the City or others, the Artwork shall no longer be represented to be the work of the Artist.

(b) The City may, at its sole and absolute discretion, decide to completely remove the Artwork at any time at City's cost and expense, but shall not install the Artwork in a different location. The City shall give notice of such decision to the Artist and/or Atelier within ten (10) days after removal of the Artwork has taken place.

6. Maintenance. The City, at its sole cost and expense, shall undertake reasonable efforts to ensure that the Artwork is properly maintained by precisely following the Artist's instructions and recommendations set forth in the books provided by Atelier pursuant Article 10 herein and in **Exhibit "C"** attached hereto and made a part hereof.

7. Restoration and Repairs. Given the Artwork's specific color palette, the City shall seek Atelier's prior written approval for all repairs and restorations to the Artwork, which shall not be unreasonably withheld, conditioned or delayed. City acknowledges and agrees that Logistics Fine Arts, LLC is the sole Atelier' authorized representative in the United States qualified to carry out assessments of quality and control of all repairs and restorations to the Artwork, including but not limited to, conducting visual inspections on-site, recommend, propose and instruct technical corrections as necessary to the Artwork for further approval by Atelier. Atelier hereby acknowledges and consents to that certain Artwork Installation and Preservation Agreement that the City and Logistics Fine Arts, LLC are executing contemporaneously with the signing and delivery of this Agreement.

8. Payment. As consideration in full for the sale of the Artwork and the limited license of rights granted herein, the City shall pay Atelier a one-time lump sum non-recoupable fee (the "Fee") in the amount of one hundred eighty thousand dollars (\$180,000.00) upon execution of this Agreement and by check payable to the order of Logistics Fine Arts, LLC, but only after the City has received approval from Miami-Dade County, the Florida Department of Transportation, and/or the City of Coral Gables for the maintenance of traffic plan for the installation of the Artwork (the "Approvals"). This Agreement shall be effective as of the last date on which the following conditions have been satisfied: (a) Receipt by City of the

Approvals, and (b) payment of the Fee by City. If any of the foregoing conditions are not satisfied within ninety (90) days after execution of this Agreement, this Agreement shall be null and void *ab initio* and will have no force or effect. The Parties may, nonetheless, at any time prior to the expiration of the ninety (90) days, by mutual written consent, extend this Agreement for such additional periods as they may agree. The compensation payable to Atelier in connection with this project is solely in consideration of professional design services and the limited license of rights specified elsewhere in this Agreement.

9. Ownership and Protection of the Artwork.

9.1 Acknowledgment of Ownership. The parties acknowledge that (a) the artistic design of the Artwork shall not be deemed a “work for hire”; (b) neither this Agreement, nor any act, omission, or statement by Atelier or the City, conveys any copyrights to the City in the Artwork, or to any element or portion thereof; and (c) City shall not, directly or indirectly, create or permit the creation of derivative works based on the Artwork nor adapt the Artwork or any elements thereof for any use not stated in the Permitted Uses, without prior notice to and agreement with Atelier and/or the Artist, nor without negotiating in good faith reasonable additional compensation to Atelier in connection with such additional use or derivative work.

9.2 Custody and Possession. The City shall, at its sole expense, maintain the Artwork within the City’s possession, custody, or control under first-class conditions, taking into account ordinary wear and tear, and shall take all necessary actions to protect all copyright and other rights in the Artwork, including but not limited to, complying with all the specifications by Atelier as set out in **Exhibits “A” and “C”** to protect and safeguard the Artwork. The Artworks will be deemed to be in custody of the City from the date of delivery to the City by Atelier and/or its agents.

9.3 Risk of Loss or Damage. The City assumes all risk of loss or damage to the Artwork in its possession.

9.4 Notification. 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 immediately notify Atelier in writing with reasonable detail of any: (i) actual, suspected, or threatened infringement of the Artwork; (ii) actual, suspected, or threatened claim that use of the Artwork infringes the rights of any third party; or (iii) any other actual, suspected, or threatened claim to which the Artwork may be subject.

10. Portfolio. Atelier is providing the City with a portfolio that includes:

- (a) Certificate of Authenticity issued by the Cruz-Diez Art Foundation.
- (b) Specific plan of *Induction Chromatique Coral Gables, 2017*;
- (c) One set of books with information about the Artwork, archives, credentials and the Artist's art Parcours; and
- (d) One set of books with the instructions for painting, installing, maintain and preserving the Artwork.

11. Representations and Warranties.

11.1 Mutual Representations and Warranties. Each party represents and warrants to the other party that:

- (a) it is duly organized, validly existing, and in good standing as a corporation or other entity as represented herein under the laws of its jurisdiction of incorporation or organization;
- (b) it has the full right, power, and authority to enter into this Agreement and to perform its obligations hereunder;
- (c) the execution of this Agreement by its representative whose signature is set forth at the end hereof has been duly authorized by all necessary corporate or organizational action of the party; and,
- (d) when executed and delivered by such party, this Agreement will constitute the legal, valid, and binding obligation of such party, enforceable against such party in accordance with its terms.

11.2 Atelier's Representations and Warranties. Atelier represents and warrants, solely to and for the benefit of the City, that it owns and therefore has the right to license the Artwork in connection with the City's uses permitted hereunder in the State of Florida. Atelier further warrants said Artwork to be free and clear of all encumbrances, liens, security agreements, claims, demands, and charges of every kind whatsoever and will warrant and defend the title to said Artwork against any and all persons whomsoever.

11.3 City's Representations and Warranties. The City represents and warrants that:

- (a) the City will not engage or participate in any activity or course of action that could diminish or tarnish the image or reputation of the Artist or Atelier; and

(b) the City's use of the Artwork will not infringe, misappropriate, or otherwise violate the United States intellectual property or other rights of any third party or violate any applicable regulation or law.

11.4 Disclaimer of Representations and Warranties. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, ATELIER EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, WITH RESPECT TO THE LICENSED PROPERTY, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, AND WARRANTIES THAT MAY ARISE OUT OF COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE, OR TRADE PRACTICE.

12. Indemnification.

12.1 Indemnification by City. The City shall indemnify, defend, and hold harmless Atelier and its officers, directors, employees, agents, affiliates, successors, and assigns from and against any losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys' fees and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers, arising out of or in connection with any third-party claim, suit, action, or proceeding relating to any actual or alleged breach by the City of its representations, warranties, covenants, or other obligations hereunder, or resulting directly or indirectly from the City's use of the Artwork, including but not limited to failure to obtain any required permits. Nothing in this Agreement shall be considered to increase or otherwise waive any limits of liability, or to waive any immunity, established by Florida Statutes § 768.28, any other sections of the Florida Statutes, case law, or any other source of law.

13. Artist's Affiliations. The Artist is a member of the ADAGP (*Société des Auteurs Dans les Arts Graphiques et Plastiques*), a French royalty collecting and distribution society in the field of graphic and visual arts. The Artist directed on an exclusive basis all of his economic rights in the artworks he produces to such society (reproduction rights, rights of public communication and collective rights).

14. No Termination on Breach of Warranty or Representation. Except as otherwise specifically provided in this Agreement, if either party has a good faith reason to believe that either party has breached a warranty or representation stated herein, the non-breaching party shall have the right to give written notice to the breaching party specifying in reasonable

detail the basis for its good faith belief and the respects in which that party is in breach of its obligations under this Agreement. Upon receipt by the breaching party of such written notice, such breaching party shall have ninety (90) days to cure the noticed failure provided that the breaching party will verify the corrective measures to cure within thirty (30) days. In the event that such failure is reasonably incapable of cure within such ninety-day period, such period may be extended by the non-breaching party for a number of days reasonably necessary to effect the cure, and so long as such breaching party continues diligently to take all such steps to cure the breach.

15. Termination of License.

In addition to any other rights and remedies provided by law or under this Agreement, Atelier may terminate the limited license granted under this Agreement by providing written notice if (i) City has materially breached the quality and control provisions specified in Section 5.5 herein in Atelier's reasonable discretion and the City fails to cure such material breach within ninety (90) days of receipt of notice from Atelier; (ii) or the City's use of the Copyrights exceeds the scope of the rights set forth herein and the City fails to cure such non-compliance within ninety (90) days of receipt of notice from Atelier. Upon such termination of license, Atelier also reserves the right to cancel the Certificate of Authenticity provided to the City.

16. Remedies

16.1 Equitable Relief by Atelier. Atelier acknowledges that a breach by Atelier of this Agreement may cause the City irreparable damages, for which an award of damages would not be adequate compensation, and agrees that, in the event of such breach or threatened breach, the City will be entitled to seek equitable relief, including a restraining order, injunctive relief, specific performance, and any other relief that may be available from any court, in addition to any other remedy to which the City may be entitled at law or in equity. Such remedies are not exclusive but are in addition to all other remedies available at law or in equity, subject to any express exclusions or limitations in this Agreement to the contrary.

16.2 Equitable Relief by City. The City acknowledges that a breach by the City of this Agreement may cause the Artist and/or Atelier irreparable damages, for which an award of damages would not be adequate compensation, and agrees that, in the event of such breach or threatened breach, Atelier will be entitled to seek equitable relief, including a restraining order, injunctive relief, specific performance, and any other relief that may be available from

any court, in addition to any other remedy to which the Artist may be entitled at law or in equity. Such remedies are not exclusive but are in addition to all other remedies available at law or in equity, subject to any express exclusions or limitations in this Agreement to the contrary.

16.3 Limitation of Liability. NEITHER THE CITY, ARTIST NOR ATELIER WILL BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, LIQUIDATED, SPECIAL, OR EXEMPLARY DAMAGES OR PENALTIES, INCLUDING LOSSES OF BUSINESS, REVENUE, OR ANTICIPATED PROFITS, REGARDLESS OF WHETHER SUCH DAMAGE WAS FORESEEABLE AND WHETHER THE CITY, ARTIST, AND/OR ATELIER HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

17. General.

17.1 Notices. Each party shall give Notice in writing to the other either: (a) by e-mail with a required delivery receipt to sender, or (b) by letter sent by overnight mail, next day delivery, signature required. Notices delivered by e-mail shall be considered received as of the time and date stamp in the delivery receipt to sender. Notices delivered by overnight mail are deemed received as of the time and date in the signed receipt. Each party giving Notice shall address the Notice to the Parties at the addresses appearing below:

If to Atelier:

e-mail:

If to City of Coral Gables:

City Manager of Coral Gables
405 Biltmore Way
Coral Gables, Florida 33134
e-mail: piglesias@coralgables.com

City Attorney of Coral Gables
405 Biltmore Way
Coral Gables, Florida 33134
e-mail: mramos@coralgables.com

17.2 Interpretation. For purposes of this Agreement, (a) the words “include,” “includes,” and “including” are deemed to be followed by the words “without limitation”; (b) all

references to Atelier shall mean to include the Artist; and (c) the words “herein,” “hereof,” “hereby,” “hereto,” and “hereunder” refer to this Agreement as a whole. This Agreement is intended to be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted.

17.3 Headings. The article and section headings and captions of this Agreement and the table of contents preceding this Agreement are for convenience and reference only and in no way define, limit, describe the scope or intent of this Agreement or any part thereof, or in any way affect this Agreement or construe any article, section, subsection, paragraph or provision hereof.

17.4 Entire Agreement and Modifications.

This Agreement, including and together with any related attachments, constitutes the sole and entire agreement of the parties with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter. No amendment or modification to this Agreement is effective unless it is in writing and signed by an authorized representative of each party.

17.5 Exhibits. Each Exhibit referred to and attached to this Agreement is an essential part of this Agreement. The Exhibits and any amendments or revisions thereto, even if not physically attached hereto, shall be treated as if they are part of this Agreement and incorporated herein. The Exhibits referred to and attached to this Agreement are as follows:

Exhibit A – Artwork

Exhibit B – Location

Exhibit C - Artist’s instructions and recommendations.

17.6 Assignment. This Agreement cannot be transferred nor will it be inured to the benefit of the successors of Carlos Cruz-Diez, by either the application of the law or any other means, without the prior written consent of the City. The City shall not sub-license, re-sell, rent, lend, assign any of its rights, delegate, gift or otherwise transfer or distribute to any third-party the any of its obligations under this Agreement without the prior written consent of Atelier. Any purported assignment or delegation in violation of this Section is null and void. Atelier may freely assign or otherwise transfer any of its rights or delegate any of its obligations under this Agreement.

17.7 Force Majeure. Whenever a period of time is herein provided for performance of any act or thing, neither the City nor Atelier shall be liable or responsible for any delays due to

Force Majeure. The term "Force Majeure" shall mean "Acts of God", hurricane, fire, civil disobedience, riots, rebellions, explosion, flood, storm, labor disputes (whether lawful or not), material or labor shortages, terrorist acts or threats of terrorism, or other interventions by any governmental or utility authority, or any other causes that are beyond the parties' control, but shall not mean financial inability. 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.

17.8 Severability. If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability will not affect the enforceability of any other term or provision of this Agreement, or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon a determination that any term or provision is invalid, illegal, or unenforceable, the parties shall negotiate in good faith to modify this Agreement to effect the original intent of the parties as closely as possible in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

17.9 Choice of Law; Venue and Waiver to Jury Trial.

(a) Choice of Law. This Agreement and all matters arising out of or relating to this Agreement, including tort and statutory claims are governed by the laws of the State of Florida, without giving effect to any conflict of laws provisions thereof that would result in the application of the laws of a different jurisdiction.

(b) Venue. Either party shall institute any legal suit, action, or proceeding arising out of or relating to this Agreement in the federal or state courts in each case located in Miami-Dade, Florida, and each party irrevocably submits to the exclusive jurisdiction of such courts in any legal suit, action, or proceeding.

17.10 Waiver to Trial by Jury. THE PARTIES TO THIS AGREEMENT HEREBY AGREE TO EXHAUST ALL ADMINISTRATIVE REMEDIES BEFORE FILING A LAWSUIT IN CIVIL COURT TO RESOLVE THE DISPUTE. THE CITY AND ATELIER HEREBY KNOWINGLY, IRREVOCABLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT EITHER MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY ACTION, PROCEEDING OR COUNTERCLAIM BASED UPON THIS AGREEMENT, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THE LOT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN), OR ACTIONS OF ANY PARTY.

17.11 Relationship of the Parties. The relationship between the parties is that of independent contractors. Nothing contained in this Agreement will be construed as creating any agency, partnership, joint venture, or other form of joint enterprise, employment, or fiduciary relationship between the parties, and neither party has authority to contract for or bind the other party in any manner whatsoever.

17.12 Waiver. No waiver by any party of any of the provisions hereof will be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement will operate or be construed as a waiver thereof; nor will any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof, or the exercise of any other right, remedy, power, or privilege.

17.13 Attorneys' Fees. In the event that any claim, suit, action, or proceeding is instituted or commenced by either party hereto against the other party arising out of or related to this Agreement, the prevailing party will be entitled to recover its reasonable attorneys' fees and court costs from the non-prevailing party.

17.14 Counterparts. This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, email, or other means of electronic transmission is deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

17.15 Sovereign Immunity. Notwithstanding anything to the contrary herein, Atelier and the City acknowledge that the Florida Doctrine of Sovereign Immunity limits all claims against the City other than claims arising out of this Agreement. The term "this Agreement" means this document, and other terms and conditions which are included in the exhibits and documents that are expressly incorporated by reference herein, as well as any amendments thereto. Specifically, Atelier 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 or any other existing agreement between the City and Atelier, or in accordance with Florida Statutes Chapter 768.28. Nothing in this Agreement is intended to increase or otherwise waive any limits of liability, or to waive any immunity as set forth in the Florida Constitution and Florida Statutes Chapter 768.28.

17.16 Florida Public Records Law. Records subject to the provisions of Public Records Law, Florida Statutes Chapter 119, shall be kept and maintained in accordance with such Statute. Atelier 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. Atelier 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, Atelier 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 ATELIER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE ATELIER'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.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, Atelier and the City have caused this Agreement to be executed as of the date first written above by their respective duly authorized officers.

City of Coral Gables, Florida

Atelier Cruz-Diez/Carlos Cruz Diez

Peter J. Iglesias
City Manager

Name:
Title:

____ day of _____, 2019

____ day of _____, 2019

ATTEST:

Witnesses:

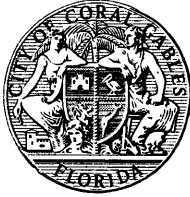
Billy Y. Urquia
City Clerk

Print Name _____

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

Signature
Print Name _____

Miriam Soler Ramos
City Attorney



City of Coral Gables
 CITY COMMISSION MEETING
 August 27, 2019

ITEM TITLE:

A Resolution approving Sale of Art and Copyright Limited License Agreement with Atelier Cruz-Diez; approving Artwork Installation and Preservation Agreement with Logistics Fine Arts, LLC; and approving additional costs for the installation of the Artwork *Induction Chromatique Coral Gables* painted crosswalks by Carlos Cruz-Diez as a permanent installation.

DEPARTMENT HEAD RECOMMENDATION:

Approval

BRIEF HISTORY:

In May 2018, pursuant to Resolution No. 2018-151, the City Commission approved the acquisition of the artwork *Induction Chromatique Coral Gables* by Master Carlos Cruz-Diez (the "Artwork") at a cost of \$180,000.00. The City has been negotiating the terms for the acquisition of the Artwork with Atelier Cruz-Diez ("Atelier"), representing the artist's work, and the details and logistics for the installation and preservation of the Artwork with Logistics Fine Arts, LLC ("LFA"), Atelier's representative in the United States.

On July 27th, 2019, Master Cruz-Diez passed away at the age of 95. The City and Atelier have negotiated a Sale of Art and Copyright Limited License Agreement with Atelier and an Artwork Installation and Preservation Agreement with LFA. The exhibits are being finalized by the parties.

The proposed Sale of Art and Copyright Limited License Agreement includes the following key terms:

- (1) Payment by the City to Atelier, payable to LFA, in the amount of \$180,000.00;
- (2) Atelier will sell, transfer, and convey to the City the Artwork, but the shades and colors are not exclusive;
- (3) Atelier represents and warrants that it owns and has the right to license the Artwork;
- (4) Atelier retains all intellectual property rights;
- (5) Atelier grants the City a limited license for non-commercial uses as defined in the agreement;
- (6) The permitted uses of the Artwork include non-commercial and not-for-profit photographic reproductions, displays and images of or relating to the City's municipal purposes as listed in the agreement. For other uses, the City must obtain Atelier's consent;
- (7) The City will initially paint the design of the Artwork within the edge lines of the crosswalk and upon its request, will re-paint the Artwork in full;
- (8) The City may at its sole and absolute discretion decide to completely remove the Artwork at any time and shall give notice to Atelier within ten days after removal, but shall not install the

Artwork in a different location;

(9) The City shall undertake reasonable efforts to ensure that the Artwork is properly maintained following the Artist's instructions and recommendations as set forth in the agreement and Exhibit C;

(10) Any repairs and restoration the Artwork require Atelier's written approval and LFA is Atelier's authorized representative to carry out assessments of quality and control of all repairs and restorations to the Artwork;

(11) City agrees to indemnify, defend, and hold harmless Atelier, including for failure to obtain any required permits.

The proposed Artwork Installation and Preservation Agreement with LFA includes the following key terms:

(1) Annual fee of \$18,000.00 payable in two installments; and

(2) Installation of the Artwork by LFA, with the City being responsible for all costs for preparation of the site; and

(3) Initial installation may be within the edge lines of the crosswalk and upon City's request, LFA will re-paint the Artwork in full at an additional cost to the City, to be mutually agreed upon by the parties; and

(4) During a ten-year term, LFA will be responsible for the preservation and conservation of the Artwork, including an annual cleaning, removal of any mild atmospheric soil and dirt by application of medium pressure water, and restoration of the Artwork by reapplying a new paint surface coating to the Artwork; and

(5) LFA warrants the quality of the Work, Preservation Activities, and Restoration Treatment for a period of up to one (1) year after each reapplication of a new paint surface coating; and

(6) The City is responsible for obtaining any required licenses, consents, and building permits from Miami-Dade and agrees to develop a traffic plan and provide necessary equipment, such as signs and barricades.

The annual fee of \$18,000.00 pursuant to the Artwork Installation and Preservation Agreement will be paid from the general fund as ordinary maintenance. Additional fees will apply if painting more than once per year is required.

The proposed maintenance/preservation schedule requires four non-consecutive sunny days with staggered street closures to complete the work. The cost of designing and setting up Maintenance of Traffic (MOT) is yet to be determined; however, police coverage is estimated at \$12,096 per instance.

LEGISLATIVE ACTION:

Date.	Resolution/Ordinance No.	Comments
May 22, 2018		Artwork approved

ADVISORY BOARD/COMMITTEE RECOMMENDATION(S):

Date.	Board/Committee	Comments
N/A		

FINANCIAL INFORMATION: (If Applicable)

Account No.	Amount	Source of Funds
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001-381-001	\$180,000	Art in Public Places, Art Acquisition Fund
001-1330-573-3190	\$18,000 annually	Annual maintenance per year/General Fund, Other Professional Services
001-1330-573-3190	\$15,000 estimate	tbd

APPROVED BY:

Department Director	City Attorney	Assistant City Manager	City Manager

ATTACHMENT(S):

1. **Proposed Resolution**
2. **Sale of Art and Copyright License Agreement DRAFT**
3. **Artwork Installation and Preservation Agreement DRAFT**

CITY OF CORAL GABLES, FLORIDA

RESOLUTION NO. 2019-

A RESOLUTION APPROVING SALE OF ART AND COPYRIGHT LIMITED LICENSE AGREEMENT WITH ATELIER CRUZ-DIEZ; APPROVING ARTWORK INSTALLATION AND PRESERVATION AGREEMENT WITH LOGISTICS FINE ARTS, LLC; AND APPROVING ADDITIONAL COSTS FOR THE INSTALLATION OF THE ARTWORK *INDUCTION CHROMATIQUE CORAL GABLES* PAINTED CROSSWALKS BY CARLOS CRUZ-DIEZ AS A PERMANENT INSTALLATION.

WHEREAS, pursuant to Resolution No. 2018-151, the City Commission approved the acquisition of the artwork *Induction Chromatique Coral Gables* by Master Carlos Cruz-Diez (the "Artwork") at a cost of \$180,000.00; and

WHEREAS, the City has been negotiating the terms for the acquisition of the Artwork with Atelier Cruz-Diez ("Atelier"), representing the artist's work, and the details and logistics for the installation and preservation of the Artwork with Logistics Fine Arts, LLC ("LFA"), Atelier's representative in the United States; and

WHEREAS, on July 27th, 2019, Master Cruz-Diez passed away at the age of 95; and

WHEREAS, the City and Atelier have negotiated a Sale of Art and Copyright Limited License Agreement with Atelier and an Artwork Installation and Preservation Agreement with LFA, but the exhibits to the agreements are still being finalized; and

WHEREAS, the Sale of Art and Copyright Limited License Agreement includes the following key terms:

- (1) Payment by the City to Atelier, payable to LFA, in the amount of \$180,000.00;
- (2) Atelier will sell, transfer, and convey to the City the Artwork, but the shades and colors are not exclusive;
- (3) Atelier represents and warrants that it owns and has the right to license the Artwork;
- (4) Atelier retains all intellectual property rights;
- (5) Atelier grants the City a limited license for non-commercial uses as defined in the agreement;
- (6) The permitted uses of the Artwork include non-commercial and not-for-profit photographic reproductions, displays and images of or relating to the City's municipal purposes as listed in the agreement. For other uses, the City must obtain Atelier's consent;
- (7) The City will initially paint the design of the Artwork within the edge lines of the crosswalk and upon its request, will re-paint the Artwork in full;

- (8) The City may at its sole and absolute discretion decide to completely remove the Artwork at any time and shall give notice to Atelier within ten days after removal, but shall not install the Artwork in a different location;
- (9) The City shall undertake reasonable efforts to ensure that the Artwork is properly maintained following the Artist's instructions and recommendations as set forth in the agreement and Exhibit C;
- (10) Any repairs and restoration the Artwork require Atelier's written approval and LFA is Atelier's authorized representative to carry out assessments of quality and control of all repairs and restorations to the Artwork;
- (11) City agrees to indemnify, defend, and hold harmless Atelier, including for failure to obtain any required permits.

WHEREAS, the Artwork Installation and Preservation Agreement with LFA includes the following key terms:

- (1) Annual fee of \$18,000.00 payable in two installments; and
- (2) Installation of the Artwork by LFA, with the City being responsible for all costs for preparation of the site; and
- (3) Initial installation may be within the edge lines of the crosswalk and upon City's request, LFA will re-paint the Artwork in full at an additional cost to the City, to be mutually agreed upon by the parties; and
- (4) During a ten-year term, LFA will be responsible for the preservation and conservation of the Artwork, including an annual cleaning, removal of any mild atmospheric soil and dirt by application of medium pressure water, and restoration of the Artwork by reapplying a new paint surface coating to the Artwork; and
- (5) LFA warrants the quality of the Work, Preservation Activities, and Restoration Treatment for a period of up to one (1) year after each reapplication of a new paint surface coating; and
- (6) The City is responsible for obtaining any required licenses, consents, and building permits from Miami-Dade and agrees to develop a traffic plan and provide necessary equipment, such as signs and barricades.

WHEREAS, the maintenance/preservation schedule requires four non-consecutive sunny days with staggered street closures to complete the work; and

WHEREAS, the cost of designing and setting up Maintenance of Traffic (MOT) is yet to be determined, however, police coverage is estimated at \$12,096 per instance.

NOW THEREFORE BE IT RESOLVED BY THE COMMISSION OF THE CITY OF CORAL GABLES:

Section 1. The foregoing "Whereas" clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Resolution upon adoption hereof.

Section 2. That the City Commission approves the Sale of Art and Copyright License Agreement with Atelier Cruz-Diez, in substantially the form attached, with such modifications as may be approved by the City Manager and the City Attorney in order to carry out the Commission's intent.

Section 3. That the City Commission approves the Artwork Installation and Preservation Agreement with Logistics Fine Arts, LLC, in substantially the form attached, with such modifications as may be approved by the City Manager and the City Attorney in order to carry out the Commission's intent.

Section 4. That the City Commission approves the additional costs for the installation and maintenance of the Artwork.

Section 5. That this Resolution shall become effective upon the date of its adoption herein.

PASSED AND ADOPTED THIS ____ DAY OF _____, A.D., 2019.

(Moved: / Seconded:)

(Yeas:)

(; Vote)

APPROVED:

RAÚL VALDÉS-FAULI
MAYOR

ATTEST:

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:

BILLY Y. URQUIA
CITY CLERK

MIRIAM SOLER RAMOS
CITY ATTORNEY

Artwork Installation And Preservation Agreement

This Artwork Installation And Preservation Agreement (the "Agreement") is made this ___ day of _____, 2019, by and between the **City of Coral Gables**, a municipal corporation existing under the laws of the State of Florida (the "City"); and **Logistics Fine Arts, LLC**, a Florida limited liability company, with address at 311 NW 28 Street, Miami, FL 33127 (the "Service Provider").

WITNESSETH:

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 Nos. 2018-151 and 2019-___ adopted by the City Commission on May 22, 2018 and on _____, respectively, the City wishes to acquire certain work of art (the "Artwork") created by Carlos Cruz- Diez (the "Artist"), to be fixed on two of the crosswalks located in front of the City Hall, and more particularly described in **Exhibit "A"** attached hereto and made a part hereof, the purpose of which is to enhance the community and to promote and reinforce the arts and culture in the City;

WHEREAS, pursuant to that certain Sale of Art and Copyright Limited License Agreement (the "License Agreement") contemporaneously executed with this Agreement, the City has acquired a perpetual, royalty-free, non-exclusive, non-transferable limited license to install, reproduce, publicly perform, display, transmit, and distribute visual content of the Artwork (as defined in Section 2.1 below) for non-commercial purposes as determined in the License Agreement;

WHEREAS, pursuant the License Agreement the City is required to install and repair the Artwork by precisely following Atelier's instructions set forth in **Exhibit "C"** attached hereto and made a part hereof;

WHEREAS, the Parties hereto desire to execute this agreement establishing the parties' rights and responsibilities with respect to the installation and preservation of the Artwork, as hereafter set forth.

NOW, THEREFORE, the City and the Service Provider, in consideration of the mutual covenants and agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, agree as follows:

Article 1 Incorporation of Recitals

1.1 Recitals. The foregoing recitals are true and correct and are hereby incorporated by reference.

Article 2 Scope of Work

2.1 Services. Service Provider shall perform all the work (the "Work") described in this Agreement and **Exhibits "A" and "A-1"** in connection with the installation, fabrication, inspection, and preservation of the Artwork to be located next to the City Hall at LeJeune Road and Biltmore Way (crossing Biltmore Way) and at LeJeune Road and Coral Way (crossing Coral Way on the westbound, south crosswalk) (collectively the "Site"), such location being more particularly described in **Exhibit "B"** attached hereto and made a part hereof. For purposes of this Agreement, the term "Artwork" shall mean an exclusive Artist-designed schematic composition consisting in a series of pictorial elements presented in a specifically arranged pattern to give it visual expression in harmony with the artist's intentions.

2.2 Equipment and Supplies. Except as otherwise provided in Section 4.1 of this Agreement, Service Provider shall furnish all supplies, materials and equipment as necessary for the fabrication and installation of the Artwork, either directly or through qualified subcontractors, including, but not limited to materials, tools, equipment, personnel, and all other items incidental to producing a complete and acceptable Work, and undertake the installation and integration of the Artwork at the Site.

2.3 Subcontractors. The Service Provider may subcontract and/or assign portions of the Work to additional parties not previously identified by Service Provider, but the Service Provider will still be held ultimately responsible for all portions of the Work and the City shall have no liability whatsoever, whether financial or otherwise, with regard to same.

2.4 Third Party Vendors. In the event that the services of the Service Provider are integrated into, combined, or otherwise coordinated with services by third parties employed by City and not within the control of Service Provider, the Service Provider shall not be responsible for such third party services.

2.5 Duty to Report Discrepancies. If any part of the Service Provider's Work depends upon proper execution or results from the work of the City or a third party responsible to the City, the Service Provider 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 Service Provider, prior to proceeding with the Service Provider's Work. The City shall immediately take such actions as necessary in accordance with this Agreement to solve the discrepancy.

Article 3. Service Provider's Covenants and Obligations

3.1 Project Management. The Service Provider shall perform the Service Provider's services and administer any project authorized pursuant to this Agreement, each exhibit referred to and attached to this Agreement and any amendments or revisions thereto. The Service Provider shall provide and/or coordinate the services necessary and reasonably inferable for the complete performance of the Work pursuant to this Agreement.

3.2 Period of Installation. The Service Provider shall begin the Work after the execution of this Agreement and payment of the first fee installment pursuant Section 5.1(a), at a time mutually agreed upon by the Service Provider and the City. Notwithstanding the foregoing, the Service Provider shall begin the Work no later than November 1, 2019 provided entry to the Site has been granted to Service Provider by the City pursuant Section 4.3 of this Agreement. Unless otherwise agreed by the parties, the Service Provider hereby covenants to complete the installation of the Artwork for delivery to the City no later than December 31, 2019 (the "Delivery Date").

3.3 Preservation of the Artwork.

(a) The Service Provider shall be responsible during the Term of this Agreement (as defined in Section 6.1 below) for the preservation and conservation of the Artwork as provided for and in the manner set forth in Section 3.3(b) herein.

(b) Commencing one (1) year after the Delivery Date and continuing on or about the same date each following year of the ten (10) year period of this Agreement, and provided the City has paid the Service Provider at least 50% of the Annual Fixed Price for the specific year, the Service Provider shall perform the cleaning of the Artwork and removal of any mild atmospheric soil and dirt by application of medium pressure water (the "Preservation Activities"). On that occasion, the Service Provider will conduct an inspection of the Artwork and reapply a new paint surface coating to the Artwork that will restore the Artwork to its original design (the "Restoration Treatment") at no additional cost to the City, provided deterioration shown by the Artwork is due to normal wear and tear and not as a result of the events described in Section 9.1 of this Agreement. The Service Provider warrants the quality of the Work, Preservation Activities, and Restoration Treatment for a period of up to one (1)

year after each reapplication of a new paint surface coating.

(c) If the Artwork is not preserved by Service Provider in the manner set forth in Section 3.3(b) above, the City may notify the Service Provider in writing of the need to perform Preservation Activities and/or the Restoration Treatment. The Service Provider will perform the Preservation Activities and/or the Restoration Treatment necessary in the manner set forth in Section 3.3(b). If, after forty-five (45) days from the date of City's notification to the Service Provider of the need to perform Preservation Activities and/or the Restoration Treatment, the Service Provider has not performed the Preservation Activities and/or the Restoration Treatment necessary for compliance with this provision, the City may, at its option and notwithstanding anything contained herein, terminate this Agreement.

3.4 Excluded Services. The Preservation Activities and/or the Restoration Treatment do not include restoration or repairs to the Artwork for sustained injury or decay as a result of the events described in Section 9.1 of this Agreement.

3.5 Initial Painting. The Service Provider agrees to provisionally paint the Artwork within the edge lines of the Crosswalk as described in "**Exhibit A-1**" (unless the City initially requests that the Artwork be painted as described in Exhibit A). Thereafter, upon City's request, the Service Provider will re-paint the Artwork in full as described in **Exhibit A**, at an additional cost to the City, to be mutually agreed upon by both parties. If the City and the Service Provider are unable to agree on a price to re-paint the Artwork, the Service Provider shall have no obligation to re-paint the Artwork, but the next annual Restoration Treatment shall include painting the Artwork in full as described in **Exhibit A**.

3.6 Additional Services. In the event that the City needs the Service Provider to assume additional repair and restoration responsibilities not included in the Preservation Activities, including but not limited to the re-painting activities described in Section 3.5 above, the City and the Service Provider will negotiate for additional services ("Additional Services"). Prior to commencing any Additional Service, Service Provider shall prepare and submit for acceptance by the City a proposal (the "Additional Services Proposal"), which shall describe in detail the nature or scope of the Additional Services to be rendered, the basis upon which Service Provider has determined that such services are Additional Services, and the maximum amount of fees and reimbursable expenses for which Service Provider is prepared to perform such Additional Services, together with a proposed schedule for the performances of such Additional Services. Any Additional Services shall be authorized or confirmed in writing by the City and the Service Provider shall be entitled to Additional Compensation pursuant Section 5.2 of this Agreement.

3.7 Representative: Service Provider shall designate a primary contact as its authorized representative with respect to all matters pertaining to this Agreement (the "Project Manager"). The designated representative shall act on behalf of Service Provider with respect to all phases of the Work and shall be available as required for the benefit of any Work and the City.

3.8 Standard of Care. Service Provider agrees to use its best professional efforts, skill, judgment, and abilities to perform the Work in an expeditious and timely manner as is consistent with professional standards of care and the orderly progress of any project authorized pursuant to this Agreement. Service Provider shall at all times provide a sufficient number of qualified personnel to accomplish the Work within the time limits set forth in each schedule.

Article 4

City's Covenants and Obligations

4.1 Licenses and Permits. The City acknowledges that it shall be responsible for ensuring that the installation of the Artwork complies at all times with all policies, procedures and directives of the City of Coral Gables and Miami-Dade County, and thus, the City hereby agrees that it shall be solely responsible for obtaining any required licenses, consents, and building permits from the Miami-Dade Transportation and Public Works Department. In addition, the City hereby agrees to develop a traffic plan and provide the necessary equipment, such as signage and barricades on the dates scheduled by Service Provider for the Work to be performed and to prevent City-caused delays in Service Provider's completion of the Work. In no event shall the Service Provider be responsible or liable for failure to comply with public right-of-way licenses or any other permits issued by the City or County for the location of the Artwork or for any crosswalk marking insufficiencies or inadequacies; failure to comply with safety guidelines or standards for pedestrians; penalties, fines, costs, or expenses of whatever kind; claims or actions of any nature whatsoever, including inability to use the Crosswalks, which arise out of, or in connection with the Artwork, whether such actions arise in or are claimed to arise in contract, tort or statute.

4.2 Representative. The City shall designate one of its agents to serve as its primary contact with respect to this Agreement and to act as its authorized representative with respect to matters pertaining to this Agreement.

4.3 Entry on Site. The City shall be solely responsible for all cost and expense for preparation of the Site before installation of the Artwork, and employ the labor services of any third parties as needed for the cleaning and preparation of the Crosswalks so that Service Provider may start performing services pursuant to this Agreement. The City shall give prompt written notice to Service Provider whenever the City becomes aware of any development that affects the scope or timing of the Work

4.4 Special Information. The City shall provide Service Provider, upon reasonable request, but without warranty or representation by City of any kind, and to the extent in City's possession, any background materials and information on matters affecting the Site. In addition, the City shall furnish, to the extent in City's possession, boundary, easement, right-of-way, topographic and utility surveys; plans and specifications, as needed, and special data and

conditions relevant to the Site.

4.5 Time for Response. The City shall furnish the required information and render approvals as soon as reasonably practical for the orderly progress of the Work, and the City shall: (i) give written notice to Service Provider within a reasonable time after the discovery of any failure, defect, or damage; (ii) give prompt written notice to Service Provider whenever the City becomes aware of any development that affects the scope or timing of the Work; and/or (iii) respond promptly to any reasonable requests from Service Provider for instructions, information, or approvals required to provide the services.

4.6 Time for Processing Payments. The City shall pay any undisputed amounts when due under this Agreement no later than thirty (30) days after receipt of the invoice from the Service Provider.

4.7 Cooperation. The City shall cooperate with Service Provider in its performance of the Work and provide access to the Site, the City's premises, employees, contractors, and equipment as reasonably requested to enable Service Provider to accomplish the Work.

4.8 Extensions. The City shall grant a reasonable extension of time to Service Provider after the Delivery Date in the event that there is a delay on the part of the City in performing its obligations hereunder; or in making the Site available to Service Provider for proceeding with the Work.

4.9 The City shall reasonably assure that the Artwork is properly maintained, taking into account the recommendations of Service Provider, as set forth in **Exhibit "C"**.

Article 5 Compensation for Work

5.1 Payment. In consideration for the provision of the services herein (not including Additional Services) City shall pay the Service Provider each year during the Term (as defined below) an annual fee of Eighteen Thousand and 00/100 Dollars (\$18,000.00) (the "Annual Fixed Price") in accordance with the terms of this Agreement, and as follows:

(a) The first Annual Fixed Price shall be paid by the City to the Service Provider in two (2) installments of Nine Thousand and 00/100 (\$9,000) each. The first such installment shall be paid to the Service Provider following the execution of this Agreement and no later than thirty (30) days after receipt of the invoice from the Service Provider. The second installment shall

be paid by the City promptly following the Delivery Date and no later than thirty (30) days after receipt of the invoice from the Service Provider.

(b) Commencing on January 2020, and continuing on each following year of the ten (10) year period of this Agreement, the City shall pay the Annual Fixed Price in two (2) installments of Nine Thousand Dollars and 00/100 (\$9,000.00) each, due and payable no later than thirty (30) days after receipt of the invoice by the City from the Service Provider, as follows: the first in January of each and every year, and the second, upon completion of the Annual Preservation Activities for that year.

5.2 Payment for Additional Services. Unless otherwise provided in the Additional Services Proposal, Service Provider shall be compensated on an hourly rate basis or on a per-service fee basis (“Additional Compensation”) in accordance with Service Provider’s Additional Services Proposal. Service Provider shall proceed only after written acceptance by City of the Additional Services Proposal. Service Provider’s amount of fees and expenses shall be paid by the City in the following manner: (i) fifty per cent (50%) at least forty-five days in advance to the date in which performance of the Work is scheduled to commence; and (ii) fifty percent (50%) after the Work has been completed, within thirty (30) days of receipt by the City of an invoice from Service Provider.

5.3 Late Payments. Service Provider shall be entitled to suspend the provision of any Preservation Activities if the City fails to pay any undisputed amounts when due hereunder and such failure continues for thirty (30) days following written notice thereof.

5.4 Costs and Expenses. The City acknowledges that the Service Provider will perform all works and services identified in this Agreement, either directly or through qualified subcontractors. Service Provider shall pay, out of Service Provider’s fees, for all subcontractor services and costs associated with subcontractor’s services under this Agreement, either for the Preservation Activities or any Additional Services as the case may be. City is not responsible for any such subcontractor fees or costs unless otherwise specified herein or agreed to in writing.

Article 6

Term, Extension, and Termination

6.1 Term. This Agreement shall have a term of ten (10) years from the date of execution (the “Term”) by both parties, unless terminated earlier pursuant to the terms and provisions of this Agreement.

6.2 Extension. Upon the expiration of the Term or any renewal term, this Agreement shall

automatically renew for an additional ten (10) year period, unless, at least sixty (60) days prior to the renewal date, either party gives the other party written notice of its intent to terminate this Agreement. During any renewal term, the terms and conditions set forth in this Agreement shall remain in effect.

6.3 Termination by Service Provider. Notwithstanding anything to the contrary in Section 6.4 herein, Service Provider may terminate this Agreement before the expiration date of the Term or any renewal term, on written notice if City fails to pay any amount when due hereunder: (a) and such failure continues for forty-five (45) days after City's receipt of written notice of nonpayment; or (b) more than two (2) times in any 12 month period.

6.4 Termination by the City. The City may elect to terminate this Agreement for any reason before the expiration date of the Term or any renewal term upon sixty (60) days prior written notice to the Service Provider. Upon termination of this Agreement, the City shall have the right to contract with another service provider for the Preservation of the Artwork. In the event of termination under this Article, the Service Provider shall be fully discharged from any and all liabilities, duties and terms arising out of/or by virtue of this Agreement.

6.5 Default. The following shall be "Events of Default" by the Service Provider:

(a) The Service Provider has breached any portion of this Agreement, and the Service Provider does not cure such breach within any applicable cure periods hereunder after receipt of written notice of such breach.

(b) The Service provider fails to timely provide and/or satisfactorily perform any task, deliverable, services or other work required under this Agreement and has not cured said breach within thirty (30) calendar days.

(c) The Service Provider shall be deemed insolvent, including if it has ceased to pay its debts for at least thirty (30) days in the ordinary course of business, whether or not a petition has been filed under the Federal Bankruptcy Code and whether or not the Service Provider is insolvent within the meaning of such laws.

(d) If there has been a filing of a voluntary or involuntary petition regarding the Service Provider under the Federal Bankruptcy Code.

(e) If there has been an appointment of a receiver or trustee for the Service Provider; and

(f) If there has been an execution by the Service Provider of a general assignment for the benefit of creditors.

6.6 No Waiver. Failure of the City to declare any default immediately upon occurrence thereof, or delay in taking any action in connection therewith, shall not waive such default, but the City shall have the right to declare any such default at any time and take such action as might be lawful or authorized hereunder, in law and/or in equity. No waiver of any term, provision, condition or covenant of this Agreement by either party, or the failure of either party to insist upon strict performance of one or more covenants or conditions of this Agreement shall be deemed to imply or constitute a further waiver by said party of any other term, provision, condition or covenant of this Agreement.

6.7 City's Remedies. Upon the occurrence and continuation of any Event of Default that remains uncured beyond any applicable cure periods, the City shall have the right to immediately terminate this Agreement.

Article 7 Installation Guidelines

7.1 Installation Specifications. The Service Provider shall install and/or repair the Artwork, as the case may be, by precisely following Atelier's instructions set forth in **Exhibit "C"** attached hereto and made a part hereof, and the location guidelines in **Exhibit "B"**, unless otherwise approved by Atelier and the City in writing.

7.2 Performance Dates. The City acknowledges that the painting and coating treatment of the Crosswalks must be performed during daylight and under dry weather conditions. Service Provider shall use reasonable efforts to meet any performance dates specified in each and any order confirmation, but any such dates shall be estimates only, since the final performance dates will depend on the various events not under Service Provider's control such as the weather, the conditions of the roads in the Site, the prompt availability of materials, permits, licenses, among others.

7.3 Notice and Schedule of Installation. Prior to commencing the installation of the Artwork, the Service Provider shall provide the City with a detailed schedule of the installation process, including an anticipated Delivery Date and the dates and times the Service Provider intends to install the Artwork. The City shall make all arrangements and take all steps necessary pursuant City's obligations as set forth in Article 4 of this Agreement.

7.4 Cost of Materials. The Service Provider shall be responsible for providing, at its cost, all materials necessary to perform the Work.

Article 8 Removal of Artwork

8.1 Removal. The City may, at its sole and absolute discretion, decide to remove the Artwork at any time at City's cost and expense. Nonetheless, the City shall give notice of such decision to the Service Provider within ten (10) days after removal of the Artwork has taken place. At all times, the Service Provider shall be entitled to immediate payment by the City of any payment installment due of the Annual Fixed Price for that year as of the date of the removal.

Article 9 Restoration Treatment due to Extraordinary Deterioration

9.1 In the event the Crosswalks are damaged or defaced or otherwise experience extraordinary erosion, wear and tear, whether due to vandalism, force majeure, exposure to extraordinary elements (e.g. oil spills, heavy fork lift traffic or increase in traffic fluctuation, chemical wash-downs, etc.) the City shall make, or cause to be made, within a reasonable time after receipt of Service Provider's written notice, the necessary restoration and/or repairs to the Crosswalks. Any Restoration Treatment and/or repairs by Service Provider for extraordinary damage, deface or otherwise shall be deemed Additional Services as defined in Section 3.6 of this Agreement, and therefore, all fees, costs and expenses shall be the sole responsibility of the City pursuant to Sections 5.2 and 5.4 of this Agreement. Notwithstanding the foregoing, the Service Provider and the City agree to work together in good faith so that to the extent possible, any restoration and/or repairs necessary to address any of the foregoing conditions can be scheduled to coincide with and incorporated into the annual Preservation Activities and Restoration Activities to minimize or eliminate any additional fees, costs, and expenses incurred by the City.

Article 10 Risk of Loss or Damage

10.1 The Artwork shall be deemed to be in custody of the City from the Delivery Date to the City by Service Provider. As of the Delivery Date the City shall be responsible for the safekeeping of the Artwork and assumes all risk of loss or damage to the Artwork in its possession.

Article 11 Insurance and Indemnification

11.1 Insurance. The Service Provider shall obtain Commercial General Liability Insurance,

protecting the Service Provider, and their respective servants, agents or employees against damages arising from bodily injury (including death) and from claims for property damage which may arise while performing the Work directly or indirectly out of the operations of the Service Provider, and its 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 dollars (\$1,000,000) per occurrence adding the City as an additional insured on a primary and non-contributory basis with a waiver of subrogation in favor of the City.

11.2 Independent Contractors Insurance. For services performed by third parties as independent contractors under the supervision of Service provider pursuant to Section 2.3 of this Agreement, the Service Provider shall furnish the corresponding third party's Certificates of Insurance as set forth in Section 11.1 prior to the commencement of any Work hereunder.

11.3 Indemnification.

(a) Indemnification by Service Provider. The Service Provider hereby agrees to defend, hold harmless, and indemnify the City, and any of its elected or appointed officers, for any losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind the City incurs, and reasonable attorneys' fees in connection with the Artwork caused by the actions of the Service Provider, its officers, employees, or agents, affiliates, successors, and assigns or any person under its control insofar as permitted by law, or arising out of or in connection with any third-party claim, suit, action, or proceeding relating to any actual or alleged breach by the Service Provider of its representations, warranties, covenants, or other obligations hereunder.

(b) Indemnification by City. The City hereby agrees to defend, hold harmless and indemnify Atelier and its officers, directors, employees, agents, affiliates, successors, and assigns from and against any losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, the Service Provider incurs, including but not limited to claims and actions pursuant to Section 4.1 of this Agreement, and reasonable attorneys' fees in connection with the Artwork caused by the actions of the City, its elected or appointed officers, or agents, or any person under its control insofar as permitted by law, or arising out of or in connection with any third-party claim, suit, action, or proceeding relating to any actual or alleged breach by the City of its representations, warranties, covenants, or other obligations hereunder, including but not limited to failure to obtain any required permits.

(c) No Waiver. Nothing in this Agreement shall be considered to increase or otherwise waive any limits of liability, or to waive any immunity, established by Florida Statutes § 768.28, any

other sections of the Florida Statutes, case law, or any other source of law.

Article 12 Intellectual Property

12.1 License Agreement. The City, its permitted successors and/or assigns, has been granted a perpetual, royalty-free, non-exclusive, non-transferable, and non-sublicensable right and license in the Artwork, pursuant to that certain limited Copyright License Agreement that is being executed concurrently with the execution of this Agreement.

Article 13 Miscellaneous Provisions

13.1 Limitation of Liability.

(a) In the event the Agreement is terminated pursuant to Section 6.4 of this Agreement, Service Provider shall within forty-five (45) days after the effective date of termination, refund to City the pro rata portion of any fees paid in advance by the City for any Work not yet completed by the Service Provider up to and including the date of termination.

(b) IN NO EVENT SHALL ONE PARTY TO THIS AGREEMENT BE LIABLE TO THE OTHER PARTY OR TO ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE, OR PROFIT, OR FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGE WAS FORESEEABLE AND WHETHER OR NOT SERVICE PROVIDER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

(c) IN NO EVENT SHALL SERVICE PROVIDER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT, OR OTHERWISE, EXCEED TWO (2) TIMES THE AGGREGATE AMOUNTS PAID OR PAYABLE TO SERVICE PROVIDER PURSUANT TO THIS AGREEMENT IN THE QUARTERLY PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM.

13.2 No Assignment. Except as explicitly set forth in Section 2.3 herein, this Agreement cannot be, directly or indirectly, assigned, transferred, or pledged, without the City's prior written consent.

13.3 Modification and Amendments. This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement.

13.4 Invalidity of Provision. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision, to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and each term and provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by law.

13.5 Governing Law; Venue. The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of Florida, without regard to its conflict of laws principles. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in Miami-Dade County.

13.6 Headings. All article and section headings and captions contained in this Agreement are for reference only and shall not be considered in construing this Agreement.

13.7 Entire Agreement. This Agreement together with the Exhibits constitutes the sole and entire agreement of the parties with respect to the subject matter of this Agreement, and supersedes all other oral or written provisions.

13.8 Counterparts. This Agreement may be executed in multiple counterparts and signatures may be exchanged by facsimile or electronically, each of which shall be deemed to be an original document, and all of which together shall constitute one and the same document.

13.9 Relationship of the Parties. Nothing contained in the Agreement shall be construed as creating any agency, partnership, or other form of joint enterprise between the parties. The relationship between the parties shall at all times be that of independent contractors. Neither party shall have authority to contract for or bind the other in any manner whatsoever. The Agreement confers no rights upon either party except those expressly granted herein.

13.10 Holidays. It is hereby agreed and declared that whenever a notice or performance under the terms of this Agreement is to be made or given on a Saturday or Sunday or on a legal holiday observed in the City, it shall be postponed to the next following business day.

13.11 Exhibits. Each Exhibit referred to and attached to this Agreement is an essential part

of this Agreement. The Exhibits and any amendments or revisions thereto, even if not physically attached hereto, shall be treated as if they are part of this Agreement and incorporated herein. The Exhibits referred to and attached to this Agreement are as follows:

Exhibit A – Artwork

Exhibit A-1 – Initial design painting.

Exhibit B – Location

Exhibit C - Atelier's instructions and recommendations.

13.12 Force Majeure. The Service Provider shall have no responsibility or liability for delay, failure, loss or damage in connection with this Agreement if the Service Provider's availability or Work is prevented by acts of God, labor unrest, terrorist acts or threats of terrorism, shortage of supplies, strikes, orders or other interventions by governmental authorities or any other causes that are beyond the Service Provider's control. Service Provider may request, and the City may grant, reasonable extensions of time to perform the Work if any such event prevents Service Provider from timely complying with its obligations to perform such Work. Failure to fulfill contractual obligations due to conditions due to force majeure shall not be considered a breach of contract.

13.13 Florida Public Records Law. Records subject to the provisions of Public Records Law, Florida Statutes Chapter 119, shall be kept and maintained in accordance with such Statute. The Service Provider 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. The Service Provider 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, the Service Provider 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 SERVICE PROVIDER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE SERVICE PROVIDER'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.

13.14 Waiver to Trial by Jury. THE PARTIES TO THIS AGREEMENT HEREBY AGREE TO EXHAUST ALL ADMINISTRATIVE REMEDIES BEFORE FILING A LAWSUIT IN

CIVIL COURT TO RESOLVE THE DISPUTE. THE CITY AND THE SERVICE PROVIDER HEREBY KNOWINGLY, IRREVOCABLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT EITHER MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY ACTION, PROCEEDING OR COUNTERCLAIM BASED UPON THIS AGREEMENT, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THE LOT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN), OR ACTIONS OF ANY PARTY.

13.15 Successors and Assigns. This Agreement binds and benefits the Parties and their respective permitted successors and assigns.

13.16 Sovereign Immunity. Notwithstanding anything to the contrary herein, the Service Provider and the City acknowledge that the Florida Doctrine of Sovereign Immunity limits all claims against the City other than claims arising out of this Agreement. The term "this Agreement" means this document, and other terms and conditions which are included in the exhibits and documents that are expressly incorporated by reference herein, as well as any amendments thereto. Specifically, the Service Provider 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 or any other existing agreement between the City and the Service Provider, or in accordance with Florida Statutes Chapter 768.28. Nothing in this Agreement is intended to increase or otherwise waive any limits of liability, or to waive any immunity as set forth in the Florida Constitution and Florida Statutes Chapter 768.28.

13.17 Attorney Fees. In the event either party commences legal proceedings for the enforcement of this Agreement, the prevailing party shall be entitled to recovery of its attorney's fees, litigation expenses, and court costs incurred in the action brought thereon. Attorney's fees and litigation expenses shall include without limitation costs of preparation and discovery and retaining expert witnesses, and such fees and expenses shall be payable whether or not the litigation proceeds to final judgment. "Prevailing party" shall be defined as the party with a net monetary recovery, a defendant in whose favor a dismissal is entered, a defendant where neither plaintiff nor defendant obtains any relief, and a defendant as against those plaintiffs who do not recover any relief against that defendant. When any party recovers other than monetary relief and in situations other than as specified herein, the prevailing party shall be as determined by the court.

13.18 Notices. Notices or other communications required by this Agreement will be sufficiently made or given if mailed by certified First Class United States mail, postage pre-paid, or by commercial carrier (e.g., FedEx, UPS, etc.) when the carrier maintains receipt or record of delivery, addressed to the address stated below, or to the last address specified in

writing by the intended recipient.

Notice to Service Provider:

Notice to City:

With copy:

With copy:

Logistics Fine Arts Attn:

_____ 311 NW 28th Street,
Miami, Florida 33127

City of Coral Gables

405 Biltmore Way

Coral Gables, Florida 33134

Attn: Dona Spain

Phone: 305-460-5204

E-mail: piglesias@coralgables.com

City of Coral Gables

405 Biltmore Way

Coral Gables, Florida 33134 Attn: Miriam

Soler Ramos, Esq. Email:

mramos@coralgables.com

Holland & Knight, LLP

701 Brickell Avenue, Suite 3300 Miami,
Florida 33131

Attn: Vivian de las Cuevas-Diaz, Esq.

Email: Vivian.Cuevas@hklaw.com Fax

Number: (305) 789-7799

[Signature Page Follows]

[Signature Page to Artwork Installation and Preservation Agreement]

IN WITNESS WHEREOF, the parties hereto have signed, sealed and delivered this Agreement at Miami-Dade County, Florida, as of the day and year first above written.

WITNESS:

By: _____ Name: _____
By: _____ Name: _____

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

ATELIER: Approved as to its contents.
ATELIER CRUZ-DIEZ, a Limited Liability Company

By: _____
Name: Carlos Cruz Delgado
Title: _____

SERVICE PROVIDER:

LOGISTICS FINE ARTS, a Florida limited liability company

By: _____
Name: José Ramon Moreno
Title: _____

Artwork Installation And Preservation Agreement

This Artwork Installation And Preservation Agreement (the "Agreement") is made this ___ day of _____, 2019, by and between the **City of Coral Gables**, a municipal corporation existing under the laws of the State of Florida (the "City"); and **Logistics Fine Arts, LLC**, a Florida limited liability company, with address at 311 NW 28 Street, Miami, FL 33127 (the "Service Provider").

WITNESSETH:

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 Nos. 2018-151 and 2019-___ adopted by the City Commission on May 22, 2018 and on _____, respectively, the City wishes to acquire certain work of art (the "Artwork") created by Carlos Cruz- Diez (the "Artist"), to be fixed on two of the crosswalks located in front of the City Hall, and more particularly described in **Exhibit "A"** attached hereto and made a part hereof, the purpose of which is to enhance the community and to promote and reinforce the arts and culture in the City;

WHEREAS, pursuant to that certain Sale of Art and Copyright Limited License Agreement (the "License Agreement") contemporaneously executed with this Agreement, the City has acquired a perpetual, royalty-free, non-exclusive, non-transferable limited license to install, reproduce, publicly perform, display, transmit, and distribute visual content of the Artwork (as defined in Section 2.1 below) for non-commercial purposes as determined in the License Agreement;

WHEREAS, pursuant the License Agreement the City is required to install and repair the Artwork by precisely following Atelier's instructions set forth in **Exhibit "C"** attached hereto and made a part hereof;

WHEREAS, the Parties hereto desire to execute this agreement establishing the parties' rights and responsibilities with respect to the installation and preservation of the Artwork, as hereafter set forth.

NOW, THEREFORE, the City and the Service Provider, in consideration of the mutual covenants and agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, agree as follows:

Article 1 Incorporation of Recitals

1.1 Recitals. The foregoing recitals are true and correct and are hereby incorporated by reference.

Article 2 Scope of Work

2.1 Services. Service Provider shall perform all the work (the "Work") described in this Agreement and **Exhibits "A" and "A-1"** in connection with the installation, fabrication, inspection, and preservation of the Artwork to be located next to the City Hall at LeJeune Road and Biltmore Way (crossing Biltmore Way) and at LeJeune Road and Coral Way (crossing Coral Way on the westbound, south crosswalk) (collectively the "Site"), such location being more particularly described in **Exhibit "B"** attached hereto and made a part hereof. For purposes of this Agreement, the term "Artwork" shall mean an exclusive Artist-designed schematic composition consisting in a series of pictorial elements presented in a specifically arranged pattern to give it visual expression in harmony with the artist's intentions.

2.2 Equipment and Supplies. Except as otherwise provided in Section 4.1 of this Agreement, Service Provider shall furnish all supplies, materials and equipment as necessary for the fabrication and installation of the Artwork, either directly or through qualified subcontractors, including, but not limited to materials, tools, equipment, personnel, and all other items incidental to producing a complete and acceptable Work, and undertake the installation and integration of the Artwork at the Site.

2.3 Subcontractors. The Service Provider may subcontract and/or assign portions of the Work to additional parties not previously identified by Service Provider, but the Service Provider will still be held ultimately responsible for all portions of the Work and the City shall have no liability whatsoever, whether financial or otherwise, with regard to same.

2.4 Third Party Vendors. In the event that the services of the Service Provider are integrated into, combined, or otherwise coordinated with services by third parties employed by City and not within the control of Service Provider, the Service Provider shall not be responsible for such third party services.

2.5 Duty to Report Discrepancies. If any part of the Service Provider's Work depends upon proper execution or results from the work of the City or a third party responsible to the City, the Service Provider 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 Service Provider, prior to proceeding with the Service Provider's Work. The City shall immediately take such actions as necessary in accordance with this Agreement to solve the discrepancy.

Article 3. Service Provider's Covenants and Obligations

3.1 Project Management. The Service Provider shall perform the Service Provider's services and administer any project authorized pursuant to this Agreement, each exhibit referred to and attached to this Agreement and any amendments or revisions thereto. The Service Provider shall provide and/or coordinate the services necessary and reasonably inferable for the complete performance of the Work pursuant to this Agreement.

3.2 Period of Installation. The Service Provider shall begin the Work after the execution of this Agreement and payment of the first fee installment pursuant Section 5.1(a), at a time mutually agreed upon by the Service Provider and the City. Notwithstanding the foregoing, the Service Provider shall begin the Work no later than November 1, 2019 provided entry to the Site has been granted to Service Provider by the City pursuant Section 4.3 of this Agreement. Unless otherwise agreed by the parties, the Service Provider hereby covenants to complete the installation of the Artwork for delivery to the City no later than December 31, 2019 (the "Delivery Date").

3.3 Preservation of the Artwork.

(a) The Service Provider shall be responsible during the Term of this Agreement (as defined in Section 6.1 below) for the preservation and conservation of the Artwork as provided for and in the manner set forth in Section 3.3(b) herein.

(b) Commencing one (1) year after the Delivery Date and continuing on or about the same date each following year of the ten (10) year period of this Agreement, and provided the City has paid the Service Provider at least 50% of the Annual Fixed Price for the specific year, the Service Provider shall perform the cleaning of the Artwork and removal of any mild atmospheric soil and dirt by application of medium pressure water (the "Preservation Activities"). On that occasion, the Service Provider will conduct an inspection of the Artwork and reapply a new paint surface coating to the Artwork that will restore the Artwork to its original design (the "Restoration Treatment") at no additional cost to the City, provided deterioration shown by the Artwork is due to normal wear and tear and not as a result of the events described in Section 9.1 of this Agreement. The Service Provider warrants the quality of the Work, Preservation Activities, and Restoration Treatment for a period of up to one (1)

year after each reapplication of a new paint surface coating.

(c) If the Artwork is not preserved by Service Provider in the manner set forth in Section 3.3(b) above, the City may notify the Service Provider in writing of the need to perform Preservation Activities and/or the Restoration Treatment. The Service Provider will perform the Preservation Activities and/or the Restoration Treatment necessary in the manner set forth in Section 3.3(b). If, after forty-five (45) days from the date of City's notification to the Service Provider of the need to perform Preservation Activities and/or the Restoration Treatment, the Service Provider has not performed the Preservation Activities and/or the Restoration Treatment necessary for compliance with this provision, the City may, at its option and notwithstanding anything contained herein, terminate this Agreement.

3.4 Excluded Services. The Preservation Activities and/or the Restoration Treatment do not include restoration or repairs to the Artwork for sustained injury or decay as a result of the events described in Section 9.1 of this Agreement.

3.5 Initial Painting. The Service Provider agrees to provisionally paint the Artwork within the edge lines of the Crosswalk as described in "**Exhibit A-1**" (unless the City initially requests that the Artwork be painted as described in Exhibit A). Thereafter, upon City's request, the Service Provider will re-paint the Artwork in full as described in **Exhibit A**, at an additional cost to the City, to be mutually agreed upon by both parties. If the City and the Service Provider are unable to agree on a price to re-paint the Artwork, the Service Provider shall have no obligation to re-paint the Artwork, but the next annual Restoration Treatment shall include painting the Artwork in full as described in **Exhibit A**.

3.6 Additional Services. In the event that the City needs the Service Provider to assume additional repair and restoration responsibilities not included in the Preservation Activities, including but not limited to the re-painting activities described in Section 3.5 above, the City and the Service Provider will negotiate for additional services ("Additional Services"). Prior to commencing any Additional Service, Service Provider shall prepare and submit for acceptance by the City a proposal (the "Additional Services Proposal"), which shall describe in detail the nature or scope of the Additional Services to be rendered, the basis upon which Service Provider has determined that such services are Additional Services, and the maximum amount of fees and reimbursable expenses for which Service Provider is prepared to perform such Additional Services, together with a proposed schedule for the performances of such Additional Services. Any Additional Services shall be authorized or confirmed in writing by the City and the Service Provider shall be entitled to Additional Compensation pursuant Section 5.2 of this Agreement.

3.7 Representative: Service Provider shall designate a primary contact as its authorized representative with respect to all matters pertaining to this Agreement (the "Project Manager"). The designated representative shall act on behalf of Service Provider with respect to all phases of the Work and shall be available as required for the benefit of any Work and the City.

3.8 Standard of Care. Service Provider agrees to use its best professional efforts, skill, judgment, and abilities to perform the Work in an expeditious and timely manner as is consistent with professional standards of care and the orderly progress of any project authorized pursuant to this Agreement. Service Provider shall at all times provide a sufficient number of qualified personnel to accomplish the Work within the time limits set forth in each schedule.

Article 4

City's Covenants and Obligations

4.1 Licenses and Permits. The City acknowledges that it shall be responsible for ensuring that the installation of the Artwork complies at all times with all policies, procedures and directives of the City of Coral Gables and Miami-Dade County, and thus, the City hereby agrees that it shall be solely responsible for obtaining any required licenses, consents, and building permits from the Miami-Dade Transportation and Public Works Department. In addition, the City hereby agrees to develop a traffic plan and provide the necessary equipment, such as signage and barricades on the dates scheduled by Service Provider for the Work to be performed and to prevent City-caused delays in Service Provider's completion of the Work. In no event shall the Service Provider be responsible or liable for failure to comply with public right-of-way licenses or any other permits issued by the City or County for the location of the Artwork or for any crosswalk marking insufficiencies or inadequacies; failure to comply with safety guidelines or standards for pedestrians; penalties, fines, costs, or expenses of whatever kind; claims or actions of any nature whatsoever, including inability to use the Crosswalks, which arise out of, or in connection with the Artwork, whether such actions arise in or are claimed to arise in contract, tort or statute.

4.2 Representative. The City shall designate one of its agents to serve as its primary contact with respect to this Agreement and to act as its authorized representative with respect to matters pertaining to this Agreement.

4.3 Entry on Site. The City shall be solely responsible for all cost and expense for preparation of the Site before installation of the Artwork, and employ the labor services of any third parties as needed for the cleaning and preparation of the Crosswalks so that Service Provider may start performing services pursuant to this Agreement. The City shall give prompt written notice to Service Provider whenever the City becomes aware of any development that affects the scope or timing of the Work

4.4 Special Information. The City shall provide Service Provider, upon reasonable request, but without warranty or representation by City of any kind, and to the extent in City's possession, any background materials and information on matters affecting the Site. In addition, the City shall furnish, to the extent in City's possession, boundary, easement, right-of-way, topographic and utility surveys; plans and specifications, as needed, and special data and

conditions relevant to the Site.

4.5 Time for Response. The City shall furnish the required information and render approvals as soon as reasonably practical for the orderly progress of the Work, and the City shall: (i) give written notice to Service Provider within a reasonable time after the discovery of any failure, defect, or damage; (ii) give prompt written notice to Service Provider whenever the City becomes aware of any development that affects the scope or timing of the Work; and/or (iii) respond promptly to any reasonable requests from Service Provider for instructions, information, or approvals required to provide the services.

4.6 Time for Processing Payments. The City shall pay any undisputed amounts when due under this Agreement no later than thirty (30) days after receipt of the invoice from the Service Provider.

4.7 Cooperation. The City shall cooperate with Service Provider in its performance of the Work and provide access to the Site, the City's premises, employees, contractors, and equipment as reasonably requested to enable Service Provider to accomplish the Work.

4.8 Extensions. The City shall grant a reasonable extension of time to Service Provider after the Delivery Date in the event that there is a delay on the part of the City in performing its obligations hereunder; or in making the Site available to Service Provider for proceeding with the Work.

4.9 The City shall reasonably assure that the Artwork is properly maintained, taking into account the recommendations of Service Provider, as set forth in **Exhibit "C"**.

Article 5 Compensation for Work

5.1 Payment. In consideration for the provision of the services herein (not including Additional Services) City shall pay the Service Provider each year during the Term (as defined below) an annual fee of Eighteen Thousand and 00/100 Dollars (\$18,000.00) (the "Annual Fixed Price") in accordance with the terms of this Agreement, and as follows:

(a) The first Annual Fixed Price shall be paid by the City to the Service Provider in two (2) installments of Nine Thousand and 00/100 (\$9,000) each. The first such installment shall be paid to the Service Provider following the execution of this Agreement and no later than thirty (30) days after receipt of the invoice from the Service Provider. The second installment shall

be paid by the City promptly following the Delivery Date and no later than thirty (30) days after receipt of the invoice from the Service Provider.

(b) Commencing on January 2020, and continuing on each following year of the ten (10) year period of this Agreement, the City shall pay the Annual Fixed Price in two (2) installments of Nine Thousand Dollars and 00/100 (\$9,000.00) each, due and payable no later than thirty (30) days after receipt of the invoice by the City from the Service Provider, as follows: the first in January of each and every year, and the second, upon completion of the Annual Preservation Activities for that year.

5.2 Payment for Additional Services. Unless otherwise provided in the Additional Services Proposal, Service Provider shall be compensated on an hourly rate basis or on a per-service fee basis (“Additional Compensation”) in accordance with Service Provider’s Additional Services Proposal. Service Provider shall proceed only after written acceptance by City of the Additional Services Proposal. Service Provider’s amount of fees and expenses shall be paid by the City in the following manner: (i) fifty per cent (50%) at least forty-five days in advance to the date in which performance of the Work is scheduled to commence; and (ii) fifty percent (50%) after the Work has been completed, within thirty (30) days of receipt by the City of an invoice from Service Provider.

5.3 Late Payments. Service Provider shall be entitled to suspend the provision of any Preservation Activities if the City fails to pay any undisputed amounts when due hereunder and such failure continues for thirty (30) days following written notice thereof.

5.4 Costs and Expenses. The City acknowledges that the Service Provider will perform all works and services identified in this Agreement, either directly or through qualified subcontractors. Service Provider shall pay, out of Service Provider’s fees, for all subcontractor services and costs associated with subcontractor’s services under this Agreement, either for the Preservation Activities or any Additional Services as the case may be. City is not responsible for any such subcontractor fees or costs unless otherwise specified herein or agreed to in writing.

Article 6

Term, Extension, and Termination

6.1 Term. This Agreement shall have a term of ten (10) years from the date of execution (the “Term”) by both parties, unless terminated earlier pursuant to the terms and provisions of this Agreement.

6.2 Extension. Upon the expiration of the Term or any renewal term, this Agreement shall

automatically renew for an additional ten (10) year period, unless, at least sixty (60) days prior to the renewal date, either party gives the other party written notice of its intent to terminate this Agreement. During any renewal term, the terms and conditions set forth in this Agreement shall remain in effect.

6.3 Termination by Service Provider. Notwithstanding anything to the contrary in Section 6.4 herein, Service Provider may terminate this Agreement before the expiration date of the Term or any renewal term, on written notice if City fails to pay any amount when due hereunder: (a) and such failure continues for forty-five (45) days after City's receipt of written notice of nonpayment; or (b) more than two (2) times in any 12 month period.

6.4 Termination by the City. The City may elect to terminate this Agreement for any reason before the expiration date of the Term or any renewal term upon sixty (60) days prior written notice to the Service Provider. Upon termination of this Agreement, the City shall have the right to contract with another service provider for the Preservation of the Artwork. In the event of termination under this Article, the Service Provider shall be fully discharged from any and all liabilities, duties and terms arising out of/or by virtue of this Agreement.

6.5 Default. The following shall be "Events of Default" by the Service Provider:

(a) The Service Provider has breached any portion of this Agreement, and the Service Provider does not cure such breach within any applicable cure periods hereunder after receipt of written notice of such breach.

(b) The Service provider fails to timely provide and/or satisfactorily perform any task, deliverable, services or other work required under this Agreement and has not cured said breach within thirty (30) calendar days.

(c) The Service Provider shall be deemed insolvent, including if it has ceased to pay its debts for at least thirty (30) days in the ordinary course of business, whether or not a petition has been filed under the Federal Bankruptcy Code and whether or not the Service Provider is insolvent within the meaning of such laws.

(d) If there has been a filing of a voluntary or involuntary petition regarding the Service Provider under the Federal Bankruptcy Code.

(e) If there has been an appointment of a receiver or trustee for the Service Provider; and

(f) If there has been an execution by the Service Provider of a general assignment for the benefit of creditors.

6.6 No Waiver. Failure of the City to declare any default immediately upon occurrence thereof, or delay in taking any action in connection therewith, shall not waive such default, but the City shall have the right to declare any such default at any time and take such action as might be lawful or authorized hereunder, in law and/or in equity. No waiver of any term, provision, condition or covenant of this Agreement by either party, or the failure of either party to insist upon strict performance of one or more covenants or conditions of this Agreement shall be deemed to imply or constitute a further waiver by said party of any other term, provision, condition or covenant of this Agreement.

6.7 City's Remedies. Upon the occurrence and continuation of any Event of Default that remains uncured beyond any applicable cure periods, the City shall have the right to immediately terminate this Agreement.

Article 7 Installation Guidelines

7.1 Installation Specifications. The Service Provider shall install and/or repair the Artwork, as the case may be, by precisely following Atelier's instructions set forth in **Exhibit "C"** attached hereto and made a part hereof, and the location guidelines in **Exhibit "B"**, unless otherwise approved by Atelier and the City in writing.

7.2 Performance Dates. The City acknowledges that the painting and coating treatment of the Crosswalks must be performed during daylight and under dry weather conditions. Service Provider shall use reasonable efforts to meet any performance dates specified in each and any order confirmation, but any such dates shall be estimates only, since the final performance dates will depend on the various events not under Service Provider's control such as the weather, the conditions of the roads in the Site, the prompt availability of materials, permits, licenses, among others.

7.3 Notice and Schedule of Installation. Prior to commencing the installation of the Artwork, the Service Provider shall provide the City with a detailed schedule of the installation process, including an anticipated Delivery Date and the dates and times the Service Provider intends to install the Artwork. The City shall make all arrangements and take all steps necessary pursuant City's obligations as set forth in Article 4 of this Agreement.

7.4 Cost of Materials. The Service Provider shall be responsible for providing, at its cost, all materials necessary to perform the Work.

Article 8 Removal of Artwork

8.1 Removal. The City may, at its sole and absolute discretion, decide to remove the Artwork at any time at City's cost and expense. Nonetheless, the City shall give notice of such decision to the Service Provider within ten (10) days after removal of the Artwork has taken place. At all times, the Service Provider shall be entitled to immediate payment by the City of any payment installment due of the Annual Fixed Price for that year as of the date of the removal.

Article 9 Restoration Treatment due to Extraordinary Deterioration

9.1 In the event the Crosswalks are damaged or defaced or otherwise experience extraordinary erosion, wear and tear, whether due to vandalism, force majeure, exposure to extraordinary elements (e.g. oil spills, heavy fork lift traffic or increase in traffic fluctuation, chemical wash-downs, etc.) the City shall make, or cause to be made, within a reasonable time after receipt of Service Provider's written notice, the necessary restoration and/or repairs to the Crosswalks. Any Restoration Treatment and/or repairs by Service Provider for extraordinary damage, deface or otherwise shall be deemed Additional Services as defined in Section 3.6 of this Agreement, and therefore, all fees, costs and expenses shall be the sole responsibility of the City pursuant to Sections 5.2 and 5.4 of this Agreement. Notwithstanding the foregoing, the Service Provider and the City agree to work together in good faith so that to the extent possible, any restoration and/or repairs necessary to address any of the foregoing conditions can be scheduled to coincide with and incorporated into the annual Preservation Activities and Restoration Activities to minimize or eliminate any additional fees, costs, and expenses incurred by the City.

Article 10 Risk of Loss or Damage

10.1 The Artwork shall be deemed to be in custody of the City from the Delivery Date to the City by Service Provider. As of the Delivery Date the City shall be responsible for the safekeeping of the Artwork and assumes all risk of loss or damage to the Artwork in its possession.

Article 11 Insurance and Indemnification

11.1 Insurance. The Service Provider shall obtain Commercial General Liability Insurance,

protecting the Service Provider, and their respective servants, agents or employees against damages arising from bodily injury (including death) and from claims for property damage which may arise while performing the Work directly or indirectly out of the operations of the Service Provider, and its 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 dollars (\$1,000,000) per occurrence adding the City as an additional insured on a primary and non-contributory basis with a waiver of subrogation in favor of the City.

11.2 Independent Contractors Insurance. For services performed by third parties as independent contractors under the supervision of Service provider pursuant to Section 2.3 of this Agreement, the Service Provider shall furnish the corresponding third party's Certificates of Insurance as set forth in Section 11.1 prior to the commencement of any Work hereunder.

11.3 Indemnification.

(a) Indemnification by Service Provider. The Service Provider hereby agrees to defend, hold harmless, and indemnify the City, and any of its elected or appointed officers, for any losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind the City incurs, and reasonable attorneys' fees in connection with the Artwork caused by the actions of the Service Provider, its officers, employees, or agents, affiliates, successors, and assigns or any person under its control insofar as permitted by law, or arising out of or in connection with any third-party claim, suit, action, or proceeding relating to any actual or alleged breach by the Service Provider of its representations, warranties, covenants, or other obligations hereunder.

(b) Indemnification by City. The City hereby agrees to defend, hold harmless and indemnify Atelier and its officers, directors, employees, agents, affiliates, successors, and assigns from and against any losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, the Service Provider incurs, including but not limited to claims and actions pursuant to Section 4.1 of this Agreement, and reasonable attorneys' fees in connection with the Artwork caused by the actions of the City, its elected or appointed officers, or agents, or any person under its control insofar as permitted by law, or arising out of or in connection with any third-party claim, suit, action, or proceeding relating to any actual or alleged breach by the City of its representations, warranties, covenants, or other obligations hereunder, including but not limited to failure to obtain any required permits.

(c) No Waiver. Nothing in this Agreement shall be considered to increase or otherwise waive any limits of liability, or to waive any immunity, established by Florida Statutes § 768.28, any

other sections of the Florida Statutes, case law, or any other source of law.

Article 12 **Intellectual Property**

12.1 License Agreement. The City, its permitted successors and/or assigns, has been granted a perpetual, royalty-free, non-exclusive, non-transferable, and non-sublicensable right and license in the Artwork, pursuant to that certain limited Copyright License Agreement that is being executed concurrently with the execution of this Agreement.

Article 13 **Miscellaneous Provisions**

13.1 Limitation of Liability.

(a) In the event the Agreement is terminated pursuant to Section 6.4 of this Agreement, Service Provider shall within forty-five (45) days after the effective date of termination, refund to City the pro rata portion of any fees paid in advance by the City for any Work not yet completed by the Service Provider up to and including the date of termination.

(b) IN NO EVENT SHALL ONE PARTY TO THIS AGREEMENT BE LIABLE TO THE OTHER PARTY OR TO ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE, OR PROFIT, OR FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGE WAS FORESEEABLE AND WHETHER OR NOT SERVICE PROVIDER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

(c) IN NO EVENT SHALL SERVICE PROVIDER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT, OR OTHERWISE, EXCEED TWO (2) TIMES THE AGGREGATE AMOUNTS PAID OR PAYABLE TO SERVICE PROVIDER PURSUANT TO THIS AGREEMENT IN THE QUARTERLY PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM.

13.2 No Assignment. Except as explicitly set forth in Section 2.3 herein, this Agreement cannot be, directly or indirectly, assigned, transferred, or pledged, without the City's prior written consent.

13.3 Modification and Amendments. This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement.

13.4 Invalidity of Provision. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision, to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and each term and provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by law.

13.5 Governing Law; Venue. The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of Florida, without regard to its conflict of laws principles. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in Miami-Dade County.

13.6 Headings. All article and section headings and captions contained in this Agreement are for reference only and shall not be considered in construing this Agreement.

13.7 Entire Agreement. This Agreement together with the Exhibits constitutes the sole and entire agreement of the parties with respect to the subject matter of this Agreement, and supersedes all other oral or written provisions.

13.8 Counterparts. This Agreement may be executed in multiple counterparts and signatures may be exchanged by facsimile or electronically, each of which shall be deemed to be an original document, and all of which together shall constitute one and the same document.

13.9 Relationship of the Parties. Nothing contained in the Agreement shall be construed as creating any agency, partnership, or other form of joint enterprise between the parties. The relationship between the parties shall at all times be that of independent contractors. Neither party shall have authority to contract for or bind the other in any manner whatsoever. The Agreement confers no rights upon either party except those expressly granted herein.

13.10 Holidays. It is hereby agreed and declared that whenever a notice or performance under the terms of this Agreement is to be made or given on a Saturday or Sunday or on a legal holiday observed in the City, it shall be postponed to the next following business day.

13.11 Exhibits. Each Exhibit referred to and attached to this Agreement is an essential part

of this Agreement. The Exhibits and any amendments or revisions thereto, even if not physically attached hereto, shall be treated as if they are part of this Agreement and incorporated herein. The Exhibits referred to and attached to this Agreement are as follows:

Exhibit A – Artwork

Exhibit A-1 – Initial design painting.

Exhibit B – Location

Exhibit C - Atelier's instructions and recommendations.

13.12 Force Majeure. The Service Provider shall have no responsibility or liability for delay, failure, loss or damage in connection with this Agreement if the Service Provider's availability or Work is prevented by acts of God, labor unrest, terrorist acts or threats of terrorism, shortage of supplies, strikes, orders or other interventions by governmental authorities or any other causes that are beyond the Service Provider's control. Service Provider may request, and the City may grant, reasonable extensions of time to perform the Work if any such event prevents Service Provider from timely complying with its obligations to perform such Work. Failure to fulfill contractual obligations due to conditions due to force majeure shall not be considered a breach of contract.

13.13 Florida Public Records Law. Records subject to the provisions of Public Records Law, Florida Statutes Chapter 119, shall be kept and maintained in accordance with such Statute. The Service Provider 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. The Service Provider 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, the Service Provider 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 SERVICE PROVIDER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE SERVICE PROVIDER'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.

13.14 Waiver to Trial by Jury. THE PARTIES TO THIS AGREEMENT HEREBY AGREE TO EXHAUST ALL ADMINISTRATIVE REMEDIES BEFORE FILING A LAWSUIT IN

CIVIL COURT TO RESOLVE THE DISPUTE. THE CITY AND THE SERVICE PROVIDER HEREBY KNOWINGLY, IRREVOCABLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT EITHER MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY ACTION, PROCEEDING OR COUNTERCLAIM BASED UPON THIS AGREEMENT, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THE LOT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN), OR ACTIONS OF ANY PARTY.

13.15 Successors and Assigns. This Agreement binds and benefits the Parties and their respective permitted successors and assigns.

13.16 Sovereign Immunity. Notwithstanding anything to the contrary herein, the Service Provider and the City acknowledge that the Florida Doctrine of Sovereign Immunity limits all claims against the City other than claims arising out of this Agreement. The term "this Agreement" means this document, and other terms and conditions which are included in the exhibits and documents that are expressly incorporated by reference herein, as well as any amendments thereto. Specifically, the Service Provider 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 or any other existing agreement between the City and the Service Provider, or in accordance with Florida Statutes Chapter 768.28. Nothing in this Agreement is intended to increase or otherwise waive any limits of liability, or to waive any immunity as set forth in the Florida Constitution and Florida Statutes Chapter 768.28.

13.17 Attorney Fees. In the event either party commences legal proceedings for the enforcement of this Agreement, the prevailing party shall be entitled to recovery of its attorney's fees, litigation expenses, and court costs incurred in the action brought thereon. Attorney's fees and litigation expenses shall include without limitation costs of preparation and discovery and retaining expert witnesses, and such fees and expenses shall be payable whether or not the litigation proceeds to final judgment. "Prevailing party" shall be defined as the party with a net monetary recovery, a defendant in whose favor a dismissal is entered, a defendant where neither plaintiff nor defendant obtains any relief, and a defendant as against those plaintiffs who do not recover any relief against that defendant. When any party recovers other than monetary relief and in situations other than as specified herein, the prevailing party shall be as determined by the court.

13.18 Notices. Notices or other communications required by this Agreement will be sufficiently made or given if mailed by certified First Class United States mail, postage pre-paid, or by commercial carrier (e.g., FedEx, UPS, etc.) when the carrier maintains receipt or record of delivery, addressed to the address stated below, or to the last address specified in

writing by the intended recipient.

Notice to Service Provider:

Notice to City:

With copy:

With copy:

Logistics Fine Arts Attn:

_____ 311 NW 28th Street,
Miami, Florida 33127

City of Coral Gables

405 Biltmore Way

Coral Gables, Florida 33134

Attn: Dona Spain

Phone: 305-460-5204

E-mail: piglesias@coralgables.com

City of Coral Gables

405 Biltmore Way

Coral Gables, Florida 33134 Attn: Miriam

Soler Ramos, Esq. Email:

mramos@coralgables.com

Holland & Knight, LLP

701 Brickell Avenue, Suite 3300 Miami,
Florida 33131

Attn: Vivian de las Cuevas-Diaz, Esq.

Email: Vivian.Cuevas@hkclaw.com Fax

Number: (305) 789-7799

[Signature Page Follows]

[Signature Page to Artwork Installation and Preservation Agreement]

IN WITNESS WHEREOF, the parties hereto have signed, sealed and delivered this Agreement
at Miami-Dade County, Florida, as of the day and year first above written.

WITNESS:

By: _____ Name: _____
By: _____ Name: _____

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

ATELIER: Approved as to its contents.
ATELIER CRUZ-DIEZ, a Limited Liability Company

By: _____
Name: Carlos Cruz Delgado
Title: _____

SERVICE PROVIDER:

LOGISTICS FINE ARTS, a Florida limited liability company

By: _____
Name: José Ramon Moreno
Title: _____

**Sale of Art and Copyright Limited License Agreement
City of Coral Gables and Atelier Cruz-Diez**

This Sale of Art and Copyright Limited License Agreement (the "Agreement"), made and entered into this ___ day of _____, 2019, by and between the **City of Coral Gables**, a municipal corporation, existing under the laws of the State of Florida (hereinafter called "City"), and **Atelier Cruz-Diez**, a limited liability company registered with the register of commerce and companies of Paris under number 483 363 248 R.C.S. Paris, France (hereinafter called "Atelier"), having its registered office located at 38-40, rue Stephenson, 75018 Paris, France.

WHEREAS, pursuant to Resolution Nos. 2018-151 and 2019-_____ adopted by the City Commission on May 22, 2018 and on _____, respectively, the City wishes to acquire from the Artist (as defined below) the Artwork (as defined below) and to obtain a license to the Artwork for the uses described herein, the purpose of which is to enhance the community and to promote, reinforce the growth of arts and culture within the City;

WHEREAS, Atelier represents master Carlos Cruz-Diez (the "Artist"), who is the creator and owner of the Artwork and is also the artistic heritage manager of the Artist with full rights to sell, transfer, convey and grant license on behalf of the Artist;

NOW, THEREFORE, in consideration of the mutual covenants, terms, and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Sale of Artwork.

(a) Artwork. Subject to the terms and conditions of this Agreement, Atelier does hereby sell, transfer, and convey to the City and its heirs, executors, administrators, successors, and assigns forever, an exclusive Artist-designed schematic composition consisting in a series of pictorial elements presented in a specifically arranged pattern to give it visual expression in harmony with the artist's intentions (the "Artwork") more particularly described in **Exhibit "A"** attached hereto and made a part of this Agreement. City acknowledges and agrees that shades and colors of the Artwork are not exclusive.

(b) Location. The Artwork shall be permanently fixed on the City's crosswalks (the "Crosswalks") located next to the Coral Gables City Hall at LeJeune Road and Biltmore Way (crossing Biltmore Way) and at LeJeune Road and Coral Way (crossing Coral Way on the westbound, south crosswalk), as described in **Exhibit "B"** attached hereto and made a

part hereof.

(c) No Intellectual Property Rights Transfer. This sale is does not comprise the right, privilege, exclusivity or entitlement to the colors used in the Artwork, nor the transfer has the effect of transferring to the City the Artist's material and intellectual property rights to the Artwork

2. Grant of Limited License. Subject to the terms and conditions of this Agreement, Atelier hereby grants to the City a fully paid up, perpetual, royalty-free, non-exclusive, non-transferable, and non-sublicensable right and license for non-commercial uses (not for resale, download, distribution, or any commercial use of any kind) to reproduce, publicly perform, display, transmit, and distribute visual content of the Artwork through all print and digital media now known or hereinafter developed, as part of the City's own non-profit advertising campaigns (the "Permitted Uses") as described in Article 4 of this Agreement.

3. Reservation of Rights.

3.1 Atelier and/or the Artist expressly reserves all copyright, trade dress and trademark rights in and to the images, displays, transmissions and the prints published by City pursuant the grant of rights herein. No advertising, publicity and promotional use by Atelier and/or the Artist of the Artwork in any medium or manner will be deemed to interfere with the limited permissions made to the City by Atelier herein.

3.2 The City acknowledges and agrees that nothing in this Agreement limits or restricts the Artist's copyrights and trademarks in the Artwork in any way.

4. Usage of the Artwork. Notwithstanding any other provision to the contrary contained in this Agreement, the Permitted Uses of the Artwork shall be deemed to include non-commercial and not-for-profit photographic reproductions, displays and images of or relating to the City's municipal purposes: (i) in promotional brochures, greeting cards, posters, calendars and pamphlets pertaining to the City and any other similarly descriptive materials; (ii) in catalogues, slides, photos, videos and films; (iii) in books, art magazines, advertisements, articles and news sections of newspapers and other periodicals; (iv) over the Internet in web sites in connection with the City. For any other uses not explicitly listed in the Permitted Uses, the City shall first obtain express consent in writing of Atelier for the commercial or non-commercial reproduction and distribution of goods and materials containing engravings, inscriptions, or ink impressions of the Artwork, such as textiles, magnets, imitations, still images, mugs, stationery, wall-art, toys, hats, and other similar materials.

5. Intellectual Property

5.1 Copyright Notices. The City shall ensure that its use of the Artwork is marked with the appropriate copyright notice specified by Atelier in a reasonably prominent position in the order and manner provided by Atelier, and abide by the copyright laws and what are considered to be sound practices for copyright notice provisions in the State of Florida. Further, the City shall not use any copyright notices that conflict with, confuse, or negate the notices Atelier provides and requires hereunder. The Artist's signature and/or copyright notice as they appear on the Artwork shall not be removed or concealed.

5.2 Attribution. The City shall provide Artist with the following credit, including any applicable copyright notice, in the Artwork:

©Carlos Cruz Diez, *Induction Chromatique Coral Gables, 2017* ©ADAGP PARIS 20XX

Other than such credit, the City has no right to use the Artist's name or any trademarks, logos, and the name and likeness or any other intellectual property rights of the Artist. The City acknowledges that compliance with this Section 5.2 is a material term of this Agreement.

5.3 Integrity. The Artwork is an original work of visual art containing copyrightable subject matter for which copyright protection exists under the Copyright Act, 17 U.S.C. § 101, the Visual Artists Rights Act of 1990, 17 U.S.C. §§ 106A and 113(d) and all other local, state, federal or international laws that convey rights of the same nature as those conveyed under 17 U.S.C. § 106A. 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.

5.4 Moral Rights. The City hereby acknowledges the Moral Rights of the Artist (as defined below). "Moral Rights" mean any rights to claim authorship of the Artwork or to prevent the modification of the Artwork, or to withdraw from circulation or control the publication or distribution of the Artwork, and any similar right, existing under judicial or statutory law of any country in the world, or under any treaty, regardless of whether or not such right is denominated or generally referred to as a "moral right."

5.5 Quality and Control Provisions. At all times the City must comply with the Artwork proportions, artistic features, directions and technical specifications provided by Atelier. The Artwork shall be of the same configuration and dimensions as the design rendition in **Exhibit "A"** unless otherwise specifically approved by Atelier in writing. Atelier and the Artist acknowledge that the City will initially paint the design of the Artwork within the

edge lines of the Crosswalk, and upon City's request, the City shall re-paint the Artwork in full as described in **Exhibit "A."**

5.6 Modifications and Removal.

(a) The City shall not translate, recast, edit, alter, damage, or modify the Artwork in any way whatsoever, unless first approved in writing by the Artist and/or Atelier. If any alteration of any kind occurs after receipt by the City without the Artist's or Atelier's written consent, whether intentional or accidental and whether done by the City or others, the Artwork shall no longer be represented to be the work of the Artist.

(b) The City may, at its sole and absolute discretion, decide to completely remove the Artwork at any time at City's cost and expense, but shall not install the Artwork in a different location. The City shall give notice of such decision to the Artist and/or Atelier within ten (10) days after removal of the Artwork has taken place.

6. Maintenance. The City, at its sole cost and expense, shall undertake reasonable efforts to ensure that the Artwork is properly maintained by precisely following the Artist's instructions and recommendations set forth in the books provided by Atelier pursuant Article 10 herein and in **Exhibit "C"** attached hereto and made a part hereof.

7. Restoration and Repairs. Given the Artwork's specific color palette, the City shall seek Atelier's prior written approval for all repairs and restorations to the Artwork, which shall not be unreasonably withheld, conditioned or delayed. City acknowledges and agrees that Logistics Fine Arts, LLC is Atelier' authorized representative in the United States qualified to carry out assessments of quality and control of all repairs and restorations to the Artwork, including but not limited to, conducting visual inspections on-site, recommend, propose and instruct technical corrections as necessary to the Artwork for further approval by Atelier. Atelier hereby acknowledges and consents to that certain Artwork Installation and Preservation Agreement that the City and Logistics Fine Arts, LLC are executing contemporaneously with the signing and delivery of this Agreement.

8. Payment. As consideration in full for the sale of the Artwork and the limited license of rights granted herein, the City shall pay Atelier a one-time lump sum non-recoupable fee in the amount of one hundred eighty thousand dollars (\$180,000.00) upon execution of this Agreement, and check shall be payable to the order of Logistics Fine Arts, LLC. The compensation payable to Atelier in connection with this project is solely in consideration of professional design services and the limited license of rights specified elsewhere in this Agreement.

9. Ownership and Protection of the Artwork.

9.1 Acknowledgment of Ownership. The parties acknowledge that (a) the artistic design of the Artwork shall not be deemed a “work for hire”; (b) neither this Agreement, nor any act, omission, or statement by Atelier or the City, conveys any copyrights to the City in the Artwork, or to any element or portion thereof; and (c) City shall not, directly or indirectly, create or permit the creation of derivative works based on the Artwork nor adapt the Artwork or any elements thereof for any use not stated in the Permitted Uses, without prior notice to and agreement with Atelier and/or the Artist, nor without negotiating in good faith reasonable additional compensation to Atelier in connection with such additional use or derivative work.

9.2 Custody and Possession. The City shall, at its sole expense, maintain the Artwork within the City’s possession, custody, or control under first-class conditions, taking into account ordinary wear and tear, and shall take all necessary actions to protect all copyright and other rights in the Artwork, including but not limited to, complying with all the specifications by Atelier as set out in **Exhibits “A” and “C”** to protect and safeguard the Artwork. The Artworks will be deemed to be in custody of the City from the date of delivery to the City by Atelier and/or its agents.

9.3 Risk of Loss or Damage. The City assumes all risk of loss or damage to the Artwork in its possession.

9.4 Notification. 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 immediately notify Atelier in writing with reasonable detail of any: (i) actual, suspected, or threatened infringement of the Artwork; (ii) actual, suspected, or threatened claim that use of the Artwork infringes the rights of any third party; or (iii) any other actual, suspected, or threatened claim to which the Artwork may be subject.

10. Portfolio. Atelier is providing the City with a portfolio that includes:

- (a) Certificate of Authenticity issued by the Cruz-Diez Art Foundation.
- (b) Specific plan of *Induction Chromatique Coral Gables, 2017*;
- (c) One set of books with information about the Artwork, archives, credentials and the Artist’s art Parcours; and
- (d) One set of books with the instructions for painting, installing, maintain and preserving the Artwork.

11. Representations and Warranties.

11.1 Mutual Representations and Warranties. Each party represents and warrants to the other party that:

- (a) it is duly organized, validly existing, and in good standing as a corporation or other entity as represented herein under the laws of its jurisdiction of incorporation or organization;
- (b) it has the full right, power, and authority to enter into this Agreement and to perform its obligations hereunder;
- (c) the execution of this Agreement by its representative whose signature is set forth at the end hereof has been duly authorized by all necessary corporate or organizational action of the party; and,
- (d) when executed and delivered by such party, this Agreement will constitute the legal, valid, and binding obligation of such party, enforceable against such party in accordance with its terms.

11.2 Atelier's Representations and Warranties. Atelier represents and warrants, solely to and for the benefit of the City, that it owns and therefore has the right to license the Artwork in connection with the City's uses permitted hereunder in the State of Florida. Atelier further warrants said Artwork to be free and clear of all encumbrances, liens, security agreements, claims, demands, and charges of every kind whatsoever and will warrant and defend the title to said Artwork against any and all persons whomsoever.

11.3 City's Representations and Warranties. The City represents and warrants that:

- (a) the City will not engage or participate in any activity or course of action that could diminish or tarnish the image or reputation of the Artist or Atelier; and
- (b) the City's use of the Artwork will not infringe, misappropriate, or otherwise violate the United States intellectual property or other rights of any third party or violate any applicable regulation or law.

11.4 Disclaimer of Representations and Warranties. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, ATELIER EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, WITH RESPECT TO THE LICENSED PROPERTY, INCLUDING ANY IMPLIED

WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, AND WARRANTIES THAT MAY ARISE OUT OF COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE, OR TRADE PRACTICE.

12. Indemnification.

12.1 Indemnification by City. The City shall indemnify, defend, and hold harmless Atelier and its officers, directors, employees, agents, affiliates, successors, and assigns from and against any losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys' fees and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers, arising out of or in connection with any third-party claim, suit, action, or proceeding relating to any actual or alleged breach by the City of its representations, warranties, covenants, or other obligations hereunder, or resulting directly or indirectly from the City's use of the Artwork, including but not limited to failure to obtain any required permits. Nothing in this Agreement shall be considered to increase or otherwise waive any limits of liability, or to waive any immunity, established by Florida Statutes § 768.28, any other sections of the Florida Statutes, case law, or any other source of law.

13. Artist's Affiliations. The Artist is a member of the ADAGP (*Société des Auteurs Dans les Arts Graphiques et Plastiques*), a French royalty collecting and distribution society in the field of graphic and visual arts. The Artist directed on an exclusive basis all of his economic rights in the artworks he produces to such society (reproduction rights, rights of public communication and collective rights).

14. No Termination on Breach of Warranty or Representation. Except as otherwise specifically provided in this Agreement, if either party has a good faith reason to believe that either party has breached a warranty or representation stated herein, the non-breaching party shall have the right to give written notice to the breaching party specifying in reasonable detail the basis for its good faith belief and the respects in which that party is in breach of its obligations under this Agreement. Upon receipt by the breaching party of such written notice, such breaching party shall have ninety (90) days to cure the noticed failure provided that the breaching party will verify the corrective measures to cure within thirty (30) days. In the event that such failure is reasonably incapable of cure within such ninety-day period, such period may be extended by the non-breaching party for a number of days reasonably necessary to effect the cure, and so long as such breaching party continues

diligently to take all such steps to cure the breach.

15. Termination of License.

In addition to any other rights and remedies provided by law or under this Agreement, Atelier may terminate the limited license granted under this Agreement by providing written notice if (i) City has materially breached the quality and control provisions specified in Section 5.5 herein in Atelier's reasonable discretion and the City fails to cure such material breach within ninety (90) days of receipt of notice from Atelier; (ii) or the City's use of the Copyrights exceeds the scope of the rights set forth herein and the City fails to cure such non-compliance within ninety (90) days of receipt of notice from Atelier. Upon such termination of license, Atelier also reserves the right to cancel the Certificate of Authenticity provided to the City.

16. Remedies

16.1 Equitable Relief by Atelier. Atelier acknowledges that a breach by Atelier of this Agreement may cause the City irreparable damages, for which an award of damages would not be adequate compensation, and agrees that, in the event of such breach or threatened breach, the City will be entitled to seek equitable relief, including a restraining order, injunctive relief, specific performance, and any other relief that may be available from any court, in addition to any other remedy to which the City may be entitled at law or in equity. Such remedies are not exclusive but are in addition to all other remedies available at law or in equity, subject to any express exclusions or limitations in this Agreement to the contrary.

16.2 Equitable Relief by City. The City acknowledges that a breach by the City of this Agreement may cause the Artist and/or Atelier irreparable damages, for which an award of damages would not be adequate compensation, and agrees that, in the event of such breach or threatened breach, Atelier will be entitled to seek equitable relief, including a restraining order, injunctive relief, specific performance, and any other relief that may be available from any court, in addition to any other remedy to which the Artist may be entitled at law or in equity. Such remedies are not exclusive but are in addition to all other remedies available at law or in equity, subject to any express exclusions or limitations in this Agreement to the contrary.

16.3 Limitation of Liability. NEITHER THE CITY, ARTIST NOR ATELIER WILL BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT FOR INDIRECT,

INCIDENTAL, CONSEQUENTIAL, LIQUIDATED, SPECIAL, OR EXEMPLARY DAMAGES OR PENALTIES, INCLUDING LOSSES OF BUSINESS, REVENUE, OR ANTICIPATED PROFITS, REGARDLESS OF WHETHER SUCH DAMAGE WAS FORESEEABLE AND WHETHER THE CITY, ARTIST, AND/OR ATELIER HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

17. General.

17.1 Notices. Each party shall give Notice in writing to the other either: (a) by e-mail with a required delivery receipt to sender, or (b) by letter sent by overnight mail, next day delivery, signature required. Notices delivered by e-mail shall be considered received as of the time and date stamp in the delivery receipt to sender. Notices delivered by overnight mail are deemed received as of the time and date in the signed receipt. Each party giving Notice shall address the Notice to the Parties at the addresses appearing below:

If to Atelier:

e-mail:

If to City of Coral Gables:

City Manager of Coral Gables

405 Biltmore Way

Coral Gables, Florida 33134

e-mail: _____

City Attorney of Coral Gables

405 Biltmore Way

Coral Gables, Florida 33134

17.2 Interpretation. For purposes of this Agreement, (a) the words “include,” “includes,” and “including” are deemed to be followed by the words “without limitation”; (b) all references to Atelier shall mean to include the Artist; and (c) the words “herein,” “hereof,” “hereby,” “hereto,” and “hereunder” refer to this Agreement as a whole. This Agreement is intended to be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted.

17.3 Headings. The article and section headings and captions of this Agreement and the table of contents preceding this Agreement are for convenience and reference only and in

no way define, limit, describe the scope or intent of this Agreement or any part thereof, or in any way affect this Agreement or construe any article, section, subsection, paragraph or provision hereof.

17.4 Entire Agreement and Modifications.

This Agreement, including and together with any related attachments, constitutes the sole and entire agreement of the parties with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter. No amendment or modification to this Agreement is effective unless it is in writing and signed by an authorized representative of each party.

17.5 Exhibits. Each Exhibit referred to and attached to this Agreement is an essential part of this Agreement. The Exhibits and any amendments or revisions thereto, even if not physically attached hereto, shall be treated as if they are part of this Agreement and incorporated herein. The Exhibits referred to and attached to this Agreement are as follows:

Exhibit A – Artwork

Exhibit B – Location

Exhibit C - Artist's instructions and recommendations.

17.6 Assignment. This Agreement cannot be transferred nor will it be inured to the benefit of the successors of Carlos Cruz-Diez, by either the application of the law or any other means, without the prior written consent of the City. The City shall not sub-license, re-sell, rent, lend, assign any of its rights, delegate, gift or otherwise transfer or distribute to any third-party the any of its obligations under this Agreement without the prior written consent of Atelier. Any purported assignment or delegation in violation of this Section is null and void. Atelier may freely assign or otherwise transfer any of its rights or delegate any of its obligations under this Agreement.

17.7 Force Majeure. Whenever a period of time is herein provided for performance of any act or thing, neither the City nor Atelier shall be liable or responsible for any delays due to Force Majeure. The term "Force Majeure" shall mean "Acts of God", hurricane, fire, civil disobedience, riots, rebellions, explosion, flood, storm, labor disputes (whether lawful or not), material or labor shortages, terrorist acts or threats of terrorism, or other interventions by any governmental or utility authority, or any other causes that are beyond the parties' control, but shall not mean financial inability. 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.

17.8 Severability. If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability will not affect the enforceability of any other term or provision of this Agreement, or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon a determination that any term or provision is invalid, illegal, or unenforceable, the parties shall negotiate in good faith to modify this Agreement to effect the original intent of the parties as closely as possible in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

17.9 Choice of Law; Venue and Waiver to Jury Trial.

(a) Choice of Law. This Agreement and all matters arising out of or relating to this Agreement, including tort and statutory claims are governed by the laws of the State of Florida, without giving effect to any conflict of laws provisions thereof that would result in the application of the laws of a different jurisdiction.

(b) Venue. Either party shall institute any legal suit, action, or proceeding arising out of or relating to this Agreement in the federal or state courts in each case located in Miami-Dade, Florida, and each party irrevocably submits to the exclusive jurisdiction of such courts in any legal suit, action, or proceeding.

17.10 Waiver to Trial by Jury. THE PARTIES TO THIS AGREEMENT HEREBY AGREE TO EXHAUST ALL ADMINISTRATIVE REMEDIES BEFORE FILING A LAWSUIT IN CIVIL COURT TO RESOLVE THE DISPUTE. THE CITY AND ATELIER HEREBY KNOWINGLY, IRREVOCABLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT EITHER MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY ACTION, PROCEEDING OR COUNTERCLAIM BASED UPON THIS AGREEMENT, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THE LOT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN), OR ACTIONS OF ANY PARTY.

17.11 Relationship of the Parties. The relationship between the parties is that of independent contractors. Nothing contained in this Agreement will be construed as creating any agency, partnership, joint venture, or other form of joint enterprise, employment, or fiduciary relationship between the parties, and neither party has authority to contract for or

bind the other party in any manner whatsoever.

17.12 Waiver. No waiver by any party of any of the provisions hereof will be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement will operate or be construed as a waiver thereof; nor will any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof, or the exercise of any other right, remedy, power, or privilege.

17.13 Attorneys' Fees. In the event that any claim, suit, action, or proceeding is instituted or commenced by either party hereto against the other party arising out of or related to this Agreement, the prevailing party will be entitled to recover its reasonable attorneys' fees and court costs from the non-prevailing party.

17.14 Counterparts. This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, email, or other means of electronic transmission is deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

17.15 Sovereign Immunity. Notwithstanding anything to the contrary herein, Atelier and the City acknowledge that the Florida Doctrine of Sovereign Immunity limits all claims against the City other than claims arising out of this Agreement. The term "this Agreement" means this document, and other terms and conditions which are included in the exhibits and documents that are expressly incorporated by reference herein, as well as any amendments thereto. Specifically, Atelier 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 or any other existing agreement between the City and Atelier, or in accordance with Florida Statutes Chapter 768.28. Nothing in this Agreement is intended to increase or otherwise waive any limits of liability, or to waive any immunity as set forth in the Florida Constitution and Florida Statutes Chapter 768.28.

17.16 Florida Public Records Law. Records subject to the provisions of Public Records Law, Florida Statutes Chapter 119, shall be kept and maintained in accordance with such Statute. Atelier 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. Atelier 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, Atelier 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 ATELIER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE ATELIER’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.

IN WITNESS WHEREOF, Atelier and the City have caused this Agreement to be executed as of the date first written above by their respective duly authorized officers.

City of Coral Gables, Florida

Atelier Cruz-Diez/Carlos Cruz Diez

By

Name:

Title:

_____ day of _____, 2019

_____ day of _____, 2019

ATTEST:

Witnesses:

Print Name _____

APPROVED AS TO FORM AND

LEGAL SUFFICIENCY

Signature

Print Name _____

Artwork Installation And Preservation Agreement

This Artwork Installation And Preservation Agreement (the "Agreement") is made this ___ day of _____, 2019, by and between the **City of Coral Gables**, a municipal corporation existing under the laws of the State of Florida (the "City"); and **Logistics Fine Arts, LLC**, a Florida limited liability company, with address at 311 NW 28 Street, Miami, FL 33127 (the "Service Provider").

WITNESSETH:

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 Nos. 2018-151 and 2019-260 adopted by the City Commission on May 22, 2018 and on August 27, 2019, respectively, the City wishes to acquire certain work of art (the "Artwork") created by Carlos Cruz- Diez (the "Artist"), to be fixed on two of the crosswalks located in front of the City Hall, and more particularly described in **Exhibit "A"** attached hereto and made a part hereof, the purpose of which is to enhance the community and to promote and reinforce the arts and culture in the City;

WHEREAS, pursuant to that certain Sale of Art and Copyright Limited License Agreement (the "License Agreement") contemporaneously executed with this Agreement, the City has acquired a perpetual, royalty-free, non-exclusive, non-transferable limited license to install, reproduce, publicly perform, display, transmit, and distribute visual content of the Artwork (as defined in Section 2.1 below) for non-commercial purposes as determined in the License Agreement;

WHEREAS, pursuant the License Agreement the City is required to install and repair the Artwork by precisely following Atelier's instructions set forth in **Exhibit "C"** attached hereto and made a part hereof;

WHEREAS, the Parties hereto desire to execute this agreement establishing the parties' rights and responsibilities with respect to the installation and preservation of the Artwork, as hereafter set forth.

NOW, THEREFORE, the City and the Service Provider, in consideration of the mutual covenants and agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, agree as follows:

Article 1 Incorporation of Recitals

1.1 Recitals. The foregoing recitals are true and correct and are hereby incorporated by reference.

Article 2 Scope of Work

2.1 Services. Service Provider shall perform all the work (the “Work”) described in this Agreement and **Exhibits “A” and “A-1”** in connection with the installation, fabrication, inspection, and preservation of the Artwork to be located next to the City Hall at LeJeune Road and Biltmore Way (crossing Biltmore Way) and at LeJeune Road and Coral Way (crossing Coral Way on the westbound, south crosswalk) (collectively the “Site”), such location being more particularly described in **Exhibit “B”** attached hereto and made a part hereof. For purposes of this Agreement, the term “Artwork” shall mean an exclusive Artist-designed schematic composition consisting in a series of pictorial elements presented in a specifically arranged pattern to give it visual expression in harmony with the artist's intentions.

2.2 Equipment and Supplies. Except as otherwise provided in Section 4.1 of this Agreement, Service Provider shall furnish all supplies, materials and equipment as necessary for the fabrication and installation of the Artwork, either directly or through qualified subcontractors, including, but not limited to materials, tools, equipment, personnel, and all other items incidental to producing a complete and acceptable Work, and undertake the installation and integration of the Artwork at the Site.

2.3 Subcontractors. The Service Provider may subcontract and/or assign portions of the Work to additional parties not previously identified by Service Provider, but the Service Provider will still be held ultimately responsible for all portions of the Work and the City shall have no liability whatsoever, whether financial or otherwise, with regard to same.

2.4 Third Party Vendors. In the event that the services of the Service Provider are integrated into, combined, or otherwise coordinated with services by third parties employed by City and not within the control of Service Provider, the Service Provider shall not be responsible for such third party services.

2.5 Duty to Report Discrepancies. If any part of the Service Provider's Work depends upon proper execution or results from the work of the City or a third party responsible to the City, the Service Provider 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 Service Provider, prior to proceeding with the Service Provider's

Work. The City shall immediately take such actions as necessary in accordance with this Agreement to solve the discrepancy.

Article 3 Service Provider's Covenants and Obligations

3.1 Project Management. The Service Provider shall perform the Service Provider's services and administer any project authorized pursuant to this Agreement, each exhibit referred to and attached to this Agreement and any amendments or revisions thereto. The Service Provider shall provide and/or coordinate the services necessary and reasonably inferable for the complete performance of the Work pursuant to this Agreement.

3.2 Period of Installation. The Service Provider shall begin the Work after the Effective Date of this Agreement (as defined in Section 6.1 herein), and payment of the first fee installment pursuant Section 5.1(a), at a time mutually agreed upon by the Service Provider and the City. Notwithstanding the foregoing, the Service Provider shall begin the Work no later than forty-five (45) days from the date of City's payment of the first fee installment pursuant Section 5.1(a), provided entry to the Site has been granted to Service Provider by the City pursuant Section 4.3 of this Agreement. Unless otherwise agreed by the parties, the Service Provider hereby covenants to complete the installation of the Artwork for delivery to the City within sixty-days (60) of commencement of the Work (the "Delivery Date").

3.3 Preservation of the Artwork.

(a) The Service Provider shall be responsible during the Term of this Agreement (as defined in Section 6.1 below) for the preservation and conservation of the Artwork as provided for and in the manner set forth in Section 3.3(b) herein.

(b) Commencing one (1) year after the Delivery Date and continuing on or about the same date each following year of the ten (10) year period of this Agreement, and provided the City has paid the Service Provider at least fifty per cent (50%) of the Annual Fixed Price for the specific year, the Service Provider shall perform the cleaning of the Artwork and removal of any mild atmospheric soil and dirt by application of medium pressure water (the "Preservation Activities"). On that occasion, the Service Provider will conduct an inspection of the Artwork and reapply a new paint surface coating to the Artwork that will restore the Artwork to its original design (the "Restoration Treatment") at no additional cost to the City, provided deterioration shown by the Artwork is due to normal wear and tear and not as a result of the events described in Section 9.1 of this Agreement. Except if the Crosswalks are damaged or defaced or otherwise experience extraordinary erosion, or wear and tear as a result of the

events described in Section 9.1 of this Agreement, or exposure to extraordinary elements, the Service Provider warrants the quality of the Work, Preservation Activities, and Restoration Treatment for a period of up to one (1) year after each reapplication of a new paint surface coating. For the avoidance of doubt, extraordinary wear and tear or erosion shall not include deterioration as a result of the regular exposure to sun, rain, and traffic density and composition that is typical for the Crosswalk locations.

(c) If the Artwork is not preserved by Service Provider in the manner set forth in Section 3.3(b) above, the City may notify the Service Provider in writing of the need to perform Preservation Activities and/or the Restoration Treatment. The Service Provider will perform the Preservation Activities and/or the Restoration Treatment necessary in the manner set forth in Section 3.3(b). If, after forty-five (45) days from the date of City's notification to the Service Provider of the need to perform Preservation Activities and/or the Restoration Treatment, the Service Provider has not performed the Preservation Activities and/or the Restoration Treatment necessary for compliance with this provision, the City may, at its option and notwithstanding anything contained herein, terminate this Agreement.

3.4 Excluded Services. The Preservation Activities and/or the Restoration Treatment do not include restoration or repairs to the Artwork for sustained injury or decay as a result of the events described in Section 9.1 of this Agreement.

3.5 Initial Painting. The Service Provider agrees to provisionally paint the Artwork within the edge lines of the Crosswalk as described in "**Exhibit A-1**" (unless the City initially requests that the Artwork be painted as described in Exhibit A). Thereafter, upon City's request, the Service Provider will re-paint the Artwork in full as described in **Exhibit A**, at an additional cost to the City, to be mutually agreed upon by both parties. If the City and the Service Provider are unable to agree on a price to re-paint the Artwork, the Service Provider shall have no obligation to re-paint the Artwork, but the next annual Restoration Treatment shall include painting the Artwork in full as described in **Exhibit A**.

3.6 Additional Services. In the event that the City needs the Service Provider to assume additional repair and restoration responsibilities not included in the Preservation Activities, including but not limited to the re-painting activities described in Section 3.5 above, the City and the Service Provider will negotiate for additional services ("Additional Services"). Prior to commencing any Additional Service, Service Provider shall prepare and submit for acceptance by the City a proposal (the "Additional Services Proposal"), which shall describe in detail the nature or scope of the Additional Services to be rendered, the basis upon which Service Provider has determined that such services are Additional Services, and the maximum amount of fees and reimbursable expenses for which Service Provider is prepared to perform such Additional Services, together with a proposed schedule for the performances of such Additional Services. Any Additional Services shall be authorized or confirmed in writing by the City and the Service Provider shall be entitled to Additional Compensation pursuant Section 5.2 of this Agreement. Notwithstanding the foregoing, the Service Provider and the City agree to work together in

good faith so that to the extent possible, any repair and/or restoration activities to address any of the foregoing conditions can be scheduled to coincide with and incorporated into the annual Preservation Activities and Restoration Activities to minimize or eliminate any additional fees, costs, and expenses incurred by the City.

3.7 Representative: Service Provider shall designate a primary contact as its authorized representative with respect to all matters pertaining to this Agreement (the “Project Manager”). The designated representative shall act on behalf of Service Provider with respect to all phases of the Work and shall be available as required for the benefit of any Work and the City.

3.8 Standard of Care. Service Provider agrees to use its best professional efforts, skill, judgment, and abilities to perform the Work in an expeditious and timely manner as is consistent with professional standards of care and the orderly progress of any project authorized pursuant to this Agreement. Service Provider shall at all times provide a sufficient number of qualified personnel to accomplish the Work within the time limits set forth in each schedule.

Article 4 **City’s Covenants and Obligations**

4.1 Licenses and Permits. The City acknowledges that it shall be responsible for ensuring that the installation of the Artwork complies at all times with all policies, procedures and directives of the City of Coral Gables and Miami-Dade County, and thus, the City hereby agrees that it shall be solely responsible for obtaining any required licenses, consents, and building permits from the Miami-Dade Transportation and Public Works Department. In addition, the City hereby agrees to develop a traffic plan and provide the necessary equipment, such as signage and barricades on the dates scheduled by Service Provider for the Work to be performed and to prevent City-caused delays in Service Provider’s completion of the Work. In no event shall the Service Provider be responsible or liable for failure to comply with public right-of-way licenses or any other permits issued by the City or County for the location of the Artwork or for any crosswalk marking insufficiencies or inadequacies; failure to comply with safety guidelines or standards for pedestrians; penalties, fines, costs, or expenses of whatever kind; claims or actions of any nature whatsoever, including inability to use the Crosswalks, which arise out of, or in connection with the Artwork, whether such actions arise in or are claimed to arise in contract, tort or statute.

4.2 Representative. The City shall designate one of its agents to serve as its primary contact with respect to this Agreement and to act as its authorized representative with respect to matters pertaining to this Agreement.

4.3 Entry on Site. The City shall be solely responsible for all cost and expense for preparation of the Site before installation of the Artwork, and employ the labor services of any third parties as needed for the cleaning and preparation of the Crosswalks so that Service Provider may start

performing services pursuant to this Agreement. The City shall give prompt written notice to Service Provider whenever the City becomes aware of any development that affects the scope or timing of the Work. If the City initially requests that the Artwork be painted within the edge lines of the Crosswalks as set forth in Exhibit A-1, then preparation of the Site by the City shall include painting the asphalt black to cover the ephemeral artwork outside the edges of the provisional Artwork.

4.4 Special Information. The City shall provide Service Provider, upon reasonable request, but without warranty or representation by City of any kind, and to the extent in City's possession, any background materials and information on matters affecting the Site. In addition, the City shall furnish, to the extent in City's possession, boundary, easement, right-of-way, topographic and utility surveys; plans and specifications, as needed, and special data and conditions relevant to the Site.

4.5 Time for Response. The City shall furnish the required information and render approvals as soon as reasonably practical for the orderly progress of the Work, and the City shall: (i) give written notice to Service Provider within a reasonable time after the discovery of any failure, defect, or damage; (ii) give prompt written notice to Service Provider whenever the City becomes aware of any development that affects the scope or timing of the Work; and/or (iii) respond promptly to any reasonable requests from Service Provider for instructions, information, or approvals required to provide the services.

4.6 Time for Processing Payments. The City shall pay any undisputed amounts when due under this Agreement no later than thirty (30) days after receipt of the invoice from the Service Provider.

4.7 Cooperation. The City shall cooperate with Service Provider in its performance of the Work and provide access to the Site, the City's premises, employees, contractors, and equipment as reasonably requested to enable Service Provider to accomplish the Work.

4.8 Extensions. The City shall grant a reasonable extension of time to Service Provider after the Delivery Date in the event that there is a delay on the part of the City in performing its obligations hereunder; or in making the Site available to Service Provider for proceeding with the Work.

4.9 The City shall reasonably assure that the Artwork is properly maintained, taking into account the recommendations of Service Provider, as set forth in **Exhibit "C"**.

Article 5

Compensation for Work

5.1 Payment. In consideration for the provision of the services herein (not including Additional Services) City shall pay the Service Provider each year during the Term (as defined below) an annual fee of Eighteen Thousand and 00/100 Dollars (\$18,000.00) (the “Annual Fixed Price”) in accordance with the terms of this Agreement, and as follows:

(a) The first Annual Fixed Price shall be paid by the City to the Service Provider in two (2) installments of Nine Thousand and 00/100 (\$9,000) each. The first such installment shall be paid to the Service Provider following the execution of this Agreement and no later than thirty (30) days after receipt of the invoice from the Service Provider, provided that the City has received approval from Miami-Dade County, the Florida Department of Transportation, and/or the City of Coral Gables of the maintenance of traffic plan for the Work (the “Approvals”). The second installment shall be paid by the City promptly following the Delivery Date and no later than thirty (30) days after receipt of the invoice from the Service Provider. If, within ninety (90) days after execution of this Agreement the City has not obtained the Approvals, this Agreement shall be deemed immediately cancelled, terminated and of no further force and effect. The Parties, however, may at any time prior to the expiration of the ninety (90) days, by mutual written agreement, extend this Agreement for such additional periods as they may agree.

(b) Commencing on January 2020, and continuing on each following year of the ten (10) year period of this Agreement, the City shall pay the Annual Fixed Price in two (2) installments of Nine Thousand Dollars and 00/100 (\$9,000.00) each, due and payable no later than thirty (30) days after receipt of the invoice by the City from the Service Provider, as follows: the first in each and every year, upon receipt by the City of the Approvals, and the second, upon completion of the Annual Preservation Activities for that year. The Parties understand and agree that the Service Provider shall not be required to render any of the Preservation Activities or the Restoration Treatment, unless the City has paid the Service Provider fifty per cent (50%) of the Annual Fixed Price for the specific year at least forty-five (45) days in advance to the date in which performance of the Preservation Activities and/or the Restoration Treatment is scheduled to commence.

5.2 Payment for Additional Services. Unless otherwise provided in the Additional Services Proposal, Service Provider shall be compensated on an hourly rate basis or on a per-service fee basis (“Additional Compensation”) in accordance with Service Provider’s Additional Services Proposal. Service Provider shall proceed only after written acceptance by City of the Additional Services Proposal. Service Provider’s amount of fees and expenses shall be paid by the City in the following manner: (i) fifty per cent (50%) at least forty-five (45) days in advance to the date

in which performance of the Work is scheduled to commence; and (ii) fifty percent (50%) after the Work has been completed, within thirty (30) days of receipt by the City of an invoice from Service Provider.

5.3 Late Payments. Service Provider shall be entitled to suspend the provision of any Preservation Activities if the City fails to pay any undisputed amounts when due hereunder and such failure continues for thirty (30) days following written notice thereof.

5.4 Costs and Expenses. The City acknowledges that the Service Provider will perform all works and services identified in this Agreement, either directly or through qualified subcontractors. Service Provider shall pay, out of Service Provider's fees, for all subcontractor services and costs associated with subcontractor's services under this Agreement, either for the Preservation Activities or any Additional Services as the case may be. City is not responsible for any such subcontractor fees or costs unless otherwise specified herein or agreed to in writing.

Article 6

Term, Extension, and Termination

6.1 Effective Date and Term. This Agreement shall become effective (the "Effective Date") upon the later of (a) the execution and delivery hereof by the Parties hereto and (b) confirmation of the conditions to effectiveness of the License Agreement pursuant Section 8 of the License Agreement. This Agreement shall have a term of ten (10) years from the Effective Date (the "Term"), unless terminated earlier pursuant to the terms and provisions of this Agreement.

6.2 Extension. Upon the expiration of the Term or any renewal term, this Agreement shall automatically renew for an additional ten (10) year period, unless, at least sixty (60) days prior to the renewal date, either party gives the other party written notice of its intent to terminate this Agreement. During any renewal term, the terms and conditions set forth in this Agreement shall remain in effect.

6.3 Termination by Service Provider. Notwithstanding anything to the contrary in Section 6.4 herein, Service Provider may terminate this Agreement before the expiration date of the Term or any renewal term, on written notice if City fails to pay any amount when due hereunder: (a) and such failure continues for forty-five (45) days after City's receipt of written notice of nonpayment; or (b) more than two (2) times in any 12 month period.

6.4 Termination by the City. The City may elect to terminate this Agreement for any reason before the expiration date of the Term or any renewal term upon sixty (60) days prior written notice to the Service Provider. Upon termination of this Agreement, the City shall have the right

to contract with another service provider for the Preservation of the Artwork. In the event of termination under this Article, the Service Provider shall be fully discharged from any and all liabilities, duties and terms arising out of/or by virtue of this Agreement.

6.5 Default. The following shall be “Events of Default” by the Service Provider:

(a) The Service Provider has breached any portion of this Agreement, and the Service Provider does not cure such breach within any applicable cure periods hereunder after receipt of written notice of such breach.

(b) The Service provider fails to timely provide and/or satisfactorily perform any task, deliverable, services or other work required under this Agreement and has not cured said breach within thirty (30) calendar days.

(c) The Service Provider shall be deemed insolvent, including if it has ceased to pay its debts for at least thirty (30) days in the ordinary course of business, whether or not a petition has been filed under the Federal Bankruptcy Code and whether or not the Service Provider is insolvent within the meaning of such laws.

(d) If there has been a filing of a voluntary or involuntary petition regarding the Service Provider under the Federal Bankruptcy Code.

(e) If there has been an appointment of a receiver or trustee for the Service Provider; and

(f) If there has been an execution by the Service Provider of a general assignment for the benefit of creditors.

6.6 No Waiver. Failure of the City to declare any default immediately upon occurrence thereof, or delay in taking any action in connection therewith, shall not waive such default, but the City shall have the right to declare any such default at any time and take such action as might be lawful or authorized hereunder, in law and/or in equity. No waiver of any term, provision, condition or covenant of this Agreement by either party, or the failure of either party to insist upon strict performance of one or more covenants or conditions of this Agreement shall be deemed to imply or constitute a further waiver by said party of any other term, provision, condition or covenant of this Agreement.

6.7 City’s Remedies. Upon the occurrence and continuation of any Event of Default that remains uncured beyond any applicable cure periods, the City shall have the right to immediately terminate this Agreement.

Article 7

Installation Guidelines

7.1 Installation Specifications. The Service Provider shall install and/or repair the Artwork, as the case may be, by precisely following Atelier's instructions set forth in **Exhibit "C"** attached hereto and made a part hereof, and the location guidelines in **Exhibit "B"**, unless otherwise approved by Atelier and the City in writing.

7.2 Performance Dates. The City acknowledges that the painting and coating treatment of the Crosswalks must be performed during daylight and under dry weather conditions. Service Provider shall use reasonable efforts to meet any performance dates specified in each and any order confirmation, but any such dates shall be estimates only, since the final performance dates will depend on the various events not under Service Provider's control such as the weather, the conditions of the roads in the Site, the prompt availability of materials, permits, licenses, among others.

7.3 Notice and Schedule of Installation. Prior to commencing the installation of the Artwork, the Service Provider shall provide the City with a detailed schedule of the installation process, including an anticipated Delivery Date and the dates and times the Service Provider intends to install the Artwork. The City shall make all arrangements and take all steps necessary pursuant City's obligations as set forth in Article 4 of this Agreement.

7.4 Cost of Materials. The Service Provider shall be responsible for providing, at its cost, all materials necessary to perform the Work.

Article 8

Removal of Artwork

8.1 Removal. The City may, at its sole and absolute discretion, decide to remove the Artwork at any time at City's cost and expense. Nonetheless, the City shall give notice of such decision to the Service Provider within ten (10) days after removal of the Artwork has taken place. At all times, the Service Provider shall be entitled to immediate payment by the City of any payment installment due of the Annual Fixed Price for that year as of the date of the removal.

Article 9

Restoration Treatment due to Extraordinary Deterioration

9.1 In the event the Crosswalks are damaged or defaced or otherwise experience extraordinary erosion, wear and tear, whether due to vandalism, force majeure, exposure to extraordinary elements (e.g. oil spills, heavy fork lift traffic or increase in traffic fluctuation,

pour drainage in the road bed, damage by vehicle collision or accident, pavement defects, chemical wash-downs, etc.) the City shall make, or cause to be made, within a reasonable time after receipt of Service Provider's written notice, the necessary restoration and/or repairs to the Crosswalks. Any Restoration Treatment and/or repairs by Service Provider for extraordinary damage, deface or otherwise shall be deemed Additional Services as defined in Section 3.6 of this Agreement, and therefore, all fees, costs and expenses shall be the sole responsibility of the City pursuant to Sections 5.2 and 5.4 of this Agreement. The Service Provider and the City agree to work together in good faith so that to the extent possible, the annual Preservation Activities and Restoration Activities under this Agreement can be scheduled to coincide with such Additional Services to minimize the Additional Compensation and other fees, costs, and expenses incurred by the City.

Article 10 Risk of Loss or Damage

10.1 The Artwork shall be deemed to be in custody of the City from the Delivery Date to the City by Service Provider. As of the Delivery Date the City shall be responsible for the safekeeping of the Artwork and assumes all risk of loss or damage to the Artwork in its possession.

Article 11 Insurance and Indemnification

11.1 Insurance. The Service Provider shall obtain Commercial General Liability Insurance, protecting the Service Provider, and their respective servants, agents or employees against damages arising from bodily injury (including death) and from claims for property damage which may arise while performing the Work directly or indirectly out of the operations of the Service Provider, and its 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 dollars (\$1,000,000) per occurrence adding the City as an additional insured on a primary and non-contributory basis with a waiver of subrogation in favor of the City.

11.2 Independent Contractors Insurance. For services performed by third parties as independent contractors under the supervision of Service provider pursuant to Section 2.3 of this Agreement, the Service Provider shall furnish the corresponding third party's Certificates of Insurance as set forth in Section 11.1 prior to the commencement of any Work hereunder.

11.3 Indemnification.

(a) Indemnification by Service Provider. The Service Provider hereby agrees to defend, hold harmless, and indemnify the City, and any of its elected or appointed officers, for any losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind the City incurs, and reasonable attorneys' fees in connection with the Artwork caused by the actions of the Service Provider, its officers, employees, or agents, affiliates, successors, and assigns or any person under its control insofar as permitted by law, or arising out of or in connection with any third-party claim, suit, action, or proceeding relating to any actual or alleged breach by the Service Provider of its representations, warranties, covenants, or other obligations hereunder.

(b) Indemnification by City. The City hereby agrees to defend, hold harmless and indemnify Atelier and its officers, directors, employees, agents, affiliates, successors, and assigns from and against any losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, the Service Provider incurs, including but not limited to claims and actions pursuant to Section 4.1 of this Agreement, and reasonable attorneys' fees in connection with the Artwork caused by the actions of the City, its elected or appointed officers, or agents, or any person under its control insofar as permitted by law, or arising out of or in connection with any third-party claim, suit, action, or proceeding relating to any actual or alleged breach by the City of its representations, warranties, covenants, or other obligations hereunder, including but not limited to failure to obtain any required permits.

(c) No Waiver. Nothing in this Agreement shall be considered to increase or otherwise waive any limits of liability, or to waive any immunity, established by Florida Statutes § 768.28, any other sections of the Florida Statutes, case law, or any other source of law.

Article 12 **Intellectual Property**

12.1 License Agreement. The City, its permitted successors and/or assigns, has been granted a perpetual, royalty-free, non-exclusive, non-transferable, and non-sublicensable right and license in the Artwork, pursuant to that certain limited Copyright License Agreement that is being executed concurrently with the execution of this Agreement.

Article 13 Miscellaneous Provisions

13.1 Limitation of Liability.

(a) In the event the Agreement is terminated pursuant to Section 6.4 of this Agreement, Service Provider shall within forty-five (45) days after the effective date of termination, refund to City the pro rata portion of any fees paid in advance by the City for any Work not yet completed by the Service Provider up to and including the date of termination.

(b) IN NO EVENT SHALL ONE PARTY TO THIS AGREEMENT BE LIABLE TO THE OTHER PARTY OR TO ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE, OR PROFIT, OR FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGE WAS FORESEEABLE AND WHETHER OR NOT SERVICE PROVIDER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

(c) IN NO EVENT SHALL SERVICE PROVIDER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT, OR OTHERWISE, EXCEED TWO (2) TIMES THE AGGREGATE AMOUNTS PAID OR PAYABLE TO SERVICE PROVIDER PURSUANT TO THIS AGREEMENT IN THE QUARTERLY PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM.

13.2 **No Assignment.** Except as explicitly set forth in Section 2.3 herein, this Agreement cannot be, directly or indirectly, assigned, transferred, or pledged, without the City's prior written consent.

13.3 **Modification and Amendments.** This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement.

13.4 **Invalidity of Provision.** If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision, to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and each term and provision of this Agreement shall be valid and be

enforceable to the fullest extent permitted by law.

13.5 Governing Law; Venue. The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of Florida, without regard to its conflict of laws principles. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in Miami-Dade County.

13.6 Headings. All article and section headings and captions contained in this Agreement are for reference only and shall not be considered in construing this Agreement.

13.7 Entire Agreement. This Agreement together with the Exhibits constitutes the sole and entire agreement of the parties with respect to the subject matter of this Agreement, and supersedes all other oral or written provisions.

13.8 Counterparts. This Agreement may be executed in multiple counterparts and signatures may be exchanged by facsimile or electronically, each of which shall be deemed to be an original document, and all of which together shall constitute one and the same document.

13.9 Relationship of the Parties. Nothing contained in the Agreement shall be construed as creating any agency, partnership, or other form of joint enterprise between the parties. The relationship between the parties shall at all times be that of independent contractors. Neither party shall have authority to contract for or bind the other in any manner whatsoever. The Agreement confers no rights upon either party except those expressly granted herein.

13.10 Holidays. It is hereby agreed and declared that whenever a notice or performance under the terms of this Agreement is to be made or given on a Saturday or Sunday or on a legal holiday observed in the City, it shall be postponed to the next following business day.

13.11 Exhibits. Each Exhibit referred to and attached to this Agreement is an essential part of this Agreement. The Exhibits and any amendments or revisions thereto, even if not physically attached hereto, shall be treated as if they are part of this Agreement and incorporated herein. The Exhibits referred to and attached to this Agreement are as follows:

Exhibit A – Artwork

Exhibit A-1 – Initial design painting.

Exhibit B – Location

Exhibit C - Atelier's instructions and recommendations.

13.12 Force Majeure. The Service Provider shall have no responsibility or liability for delay, failure, loss or damage in connection with this Agreement if the Service Provider's availability

or Work is prevented by acts of God, labor unrest, terrorist acts or threats of terrorism, shortage of supplies, strikes, orders or other interventions by governmental authorities or any other causes that are beyond the Service Provider's control. Service Provider may request, and the City may grant, reasonable extensions of time to perform the Work if any such event prevents Service Provider from timely complying with its obligations to perform such Work. Failure to fulfill contractual obligations due to conditions due to force majeure shall not be considered a breach of contract.

13.13 Florida Public Records Law. Records subject to the provisions of Public Records Law, Florida Statutes Chapter 119, shall be kept and maintained in accordance with such Statute. The Service Provider 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. The Service Provider 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, the Service Provider 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 SERVICE PROVIDER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE SERVICE PROVIDER'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.

13.14 Waiver to Trial by Jury. THE PARTIES TO THIS AGREEMENT HEREBY AGREE TO EXHAUST ALL ADMINISTRATIVE REMEDIES BEFORE FILING A LAWSUIT IN CIVIL COURT TO RESOLVE THE DISPUTE. THE CITY AND THE SERVICE PROVIDER HEREBY KNOWINGLY, IRREVOCABLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT EITHER MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY ACTION, PROCEEDING OR COUNTERCLAIM BASED UPON THIS AGREEMENT, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THE LOT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN), OR ACTIONS OF ANY PARTY.

13.15 Successors and Assigns. This Agreement binds and benefits the Parties and their respective permitted successors and assigns.

13.16 Sovereign Immunity. Notwithstanding anything to the contrary herein, the Service Provider and the City acknowledge that the Florida Doctrine of Sovereign Immunity limits all

claims against the City other than claims arising out of this Agreement. The term “this Agreement” means this document, and other terms and conditions which are included in the exhibits and documents that are expressly incorporated by reference herein, as well as any amendments thereto. Specifically, the Service Provider 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 or any other existing agreement between the City and the Service Provider, or in accordance with Florida Statutes Chapter 768.28. Nothing in this Agreement is intended to increase or otherwise waive any limits of liability, or to waive any immunity as set forth in the Florida Constitution and Florida Statutes Chapter 768.28.

13.17 Attorney Fees. In the event either party commences legal proceedings for the enforcement of this Agreement, the prevailing party shall be entitled to recovery of its attorney’s fees, litigation expenses, and court costs incurred in the action brought thereon. Attorney’s fees and litigation expenses shall include without limitation costs of preparation and discovery and retaining expert witnesses, and such fees and expenses shall be payable whether or not the litigation proceeds to final judgment. “Prevailing party” shall be defined as the party with a net monetary recovery, a defendant in whose favor a dismissal is entered, a defendant where neither plaintiff nor defendant obtains any relief, and a defendant as against those plaintiffs who do not recover any relief against that defendant. When any party recovers other than monetary relief and in situations other than as specified herein, the prevailing party shall be as determined by the court.

13.18 Notices. Notices or other communications required by this Agreement will be sufficiently made or given if mailed by certified First Class United States mail, postage pre-paid, or by commercial carrier (e.g., FedEx, UPS, etc.) when the carrier maintains receipt or record of delivery, addressed to the address stated below, or to the last address specified in writing by the intended recipient.

Notice to Service Provider:

Logistics Fine Arts
311 NW 28th Street
Miami, Florida 33127

Notice to City:

City of Coral Gables
405 Biltmore Way
Coral Gables, Florida 33134

Artwork Installation and Preservation Agreement
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Attn: Peter J. Iglesias
Phone: 305-460-5204
E-mail: piglesias@coralgables.com

With copy:

City of Coral Gables
405 Biltmore Way
Coral Gables, Florida 33134
Attn: Miriam Soler Ramos, Esq.
Email: mramos@coralgables.com

With copy:

Holland & Knight, LLP
701 Brickell Avenue, Suite 3300
Miami, Florida 33131
Attn: Vivian de las Cuevas-Diaz, Esq.
Email: Vivian.Cuevas@hklaw.com
Fax Number: (305) 789-7799

[Signature Page Follows]

[Signature Page to Artwork Installation and Preservation Agreement]

IN WITNESS WHEREOF, the parties hereto have signed, sealed and delivered this Agreement at Miami-Dade County, Florida, as of the day and year first above written.

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

ATELIER: Approved as to its contents.
ATELIER CRUZ-DIEZ, a Limited Liability Company

By: _____

Name: Carlos Cruz Delgado

Title: _____

SERVICE PROVIDER:

LOGISTICS FINE ARTS, a Florida limited liability company

By: _____

Name: José Ramon Moreno

Title: _____

WITNESS:

By: _____ Name: _____

By: _____ Name: _____

**Sale of Art and Copyright Limited License Agreement
City of Coral Gables and Atelier Cruz-Diez**

This Sale of Art and Copyright Limited License Agreement (the “Agreement”), made and entered into this ___ day of _____, 2019, by and between the **City of Coral Gables**, a municipal corporation, existing under the laws of the State of Florida (hereinafter called “City”), and **Atelier Cruz-Diez**, a limited liability company registered with the register of commerce and companies of Paris under number 483 363 248 R.C.S. Paris, France (hereinafter called “Atelier”), having its registered office located at 38-40, rue Stephenson, 75018 Paris, France.

WHEREAS, pursuant to Resolution Nos. 2018-151 and 2019-260 adopted by the City Commission on May 22, 2018 and on August 27, 2019, respectively, the City wishes to acquire from the Artist (as defined below) the Artwork (as defined below) and to obtain a license to the Artwork for the uses described herein, the purpose of which is to enhance the community and to promote, reinforce the growth of arts and culture within the City;

WHEREAS, Atelier represents master Carlos Cruz-Diez (the “Artist”), who is the creator and owner of the Artwork and is also the artistic heritage manager of the Artist with full rights to sell, transfer, convey and grant license on behalf of the Artist;

NOW, THEREFORE, in consideration of the mutual covenants, terms, and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Sale of Artwork.

(a) Artwork. Subject to the terms and conditions of this Agreement, Atelier does hereby sell, transfer, and convey to the City and its heirs, executors, administrators, successors, and assigns forever, an exclusive Artist-designed schematic composition consisting in a series of pictorial elements presented in a specifically arranged pattern to give it visual expression in harmony with the artist's intentions (the “Artwork”) more particularly described in **Exhibit “A”** attached hereto and made a part of this Agreement. City acknowledges and agrees that shades and colors of the Artwork are not exclusive.

(b) Location. The Artwork shall be permanently fixed on the City’s crosswalks (the “Crosswalks”) located next to the Coral Gables City Hall at LeJeune Road and Biltmore Way (crossing Biltmore Way) and at LeJeune Road and Coral Way (crossing Coral Way on the westbound, south crosswalk), as described in **Exhibit “B”** attached hereto and made a part

hereof.

(c) No Intellectual Property Rights Transfer. This sale does not comprise the right, privilege, exclusivity or entitlement to the colors used in the Artwork, nor the transfer has the effect of transferring to the City the Artist's material and intellectual property rights to the Artwork

2. Grant of Limited License. Subject to the terms and conditions of this Agreement, Atelier hereby grants to the City a fully paid up, perpetual, royalty-free, non-exclusive, non-transferable, and non-sublicensable right and license for non-commercial uses (not for resale, download, distribution, or any commercial use of any kind) to reproduce, publicly perform, display, transmit, and distribute visual content of the Artwork through all print and digital media now known or hereinafter developed, as part of the City's own non-profit advertising campaigns (the "Permitted Uses") as described in Article 4 of this Agreement.

3. Reservation of Rights.

3.1 Atelier and/or the Artist expressly reserves all copyright, trade dress and trademark rights in and to the images, displays, transmissions and the prints published by City pursuant to the grant of rights herein. No advertising, publicity and promotional use by Atelier and/or the Artist of the Artwork in any medium or manner will be deemed to interfere with the limited permissions made to the City by Atelier herein.

3.2 The City acknowledges and agrees that nothing in this Agreement limits or restricts the Artist's copyrights and trademarks in the Artwork in any way.

4. Usage of the Artwork. Notwithstanding any other provision to the contrary contained in this Agreement, the Permitted Uses of the Artwork shall be deemed to include non-commercial and not-for-profit photographic reproductions, displays and images of or relating to the City's municipal purposes: (i) in promotional brochures, greeting cards, posters, calendars and pamphlets pertaining to the City and any other similarly descriptive materials; (ii) in catalogues, slides, photos, videos and films; (iii) in books, art magazines, advertisements, articles and news sections of newspapers and other periodicals; (iv) over the Internet in web sites in connection with the City. For any other uses not explicitly listed in the Permitted Uses, the City shall first obtain express consent in writing of Atelier for the commercial or non-commercial reproduction and distribution of goods and materials containing engravings, inscriptions, or ink impressions of the Artwork, such as textiles, magnets, imitations, still images, mugs, stationery, wall-art, toys, hats, and other similar materials.

5. Intellectual Property

5.1 Copyright Notices. The City shall ensure that its use of the Artwork is marked with the appropriate copyright notice specified by Atelier in a reasonably prominent position in the order and manner provided by Atelier, and abide by the copyright laws and what are considered to be sound practices for copyright notice provisions in the State of Florida. Further, the City shall not use any copyright notices that conflict with, confuse, or negate the notices Atelier provides and requires hereunder. The Artist's signature and/or copyright notice as they appear on the Artwork shall not be removed or concealed.

5.2 Attribution. The City shall provide Artist with the following credit, including any applicable copyright notice, in the Artwork:

©Carlos Cruz Diez, *Induction Chromatique Coral Gables, 2017* ©ADAGP PARIS 20XX

Other than such credit, the City has no right to use the Artist's name or any trademarks, logos, and the name and likeness or any other intellectual property rights of the Artist. The City acknowledges that compliance with this Section 5.2 is a material term of this Agreement.

5.3 Integrity. The Artwork is an original work of visual art containing copyrightable subject matter for which copyright protection exists under the Copyright Act, 17 U.S.C. § 101, the Visual Artists Rights Act of 1990, 17 U.S.C. §§ 106A and 113(d) and all other local, state, federal or international laws that convey rights of the same nature as those conveyed under 17 U.S.C. § 106A. 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.

5.4 Moral Rights. The City hereby acknowledges the Moral Rights of the Artist (as defined below). "Moral Rights" mean any rights to claim authorship of the Artwork or to prevent the modification of the Artwork, or to withdraw from circulation or control the publication or distribution of the Artwork, and any similar right, existing under judicial or statutory law of any country in the world, or under any treaty, regardless of whether or not such right is denominated or generally referred to as a "moral right."

5.5 Quality and Control Provisions. At all times the City must comply with the Artwork proportions, artistic features, directions and technical specifications provided by Atelier. The Artwork shall be of the same configuration and dimensions as the design rendition in **Exhibit "A"** unless otherwise specifically approved by Atelier in writing. Atelier and the Artist acknowledge that the City will initially paint the design of the Artwork within the edge lines

of the Crosswalk, and upon City's request, the City shall re-paint the Artwork in full as described in **Exhibit "A."**

5.6 Modifications and Removal.

(a) The City shall not translate, recast, edit, alter, damage, or modify the Artwork in any way whatsoever, unless first approved in writing by the Artist and/or Atelier. If any alteration of any kind occurs after receipt by the City without the Artist's or Atelier's written consent, whether intentional or accidental and whether done by the City or others, the Artwork shall no longer be represented to be the work of the Artist.

(b) The City may, at its sole and absolute discretion, decide to completely remove the Artwork at any time at City's cost and expense, but shall not install the Artwork in a different location. The City shall give notice of such decision to the Artist and/or Atelier within ten (10) days after removal of the Artwork has taken place.

6. Maintenance. The City, at its sole cost and expense, shall undertake reasonable efforts to ensure that the Artwork is properly maintained by precisely following the Artist's instructions and recommendations set forth in the books provided by Atelier pursuant Article 10 herein and in **Exhibit "C"** attached hereto and made a part hereof.

7. Restoration and Repairs. Given the Artwork's specific color palette, the City shall seek Atelier's prior written approval for all repairs and restorations to the Artwork, which shall not be unreasonably withheld, conditioned or delayed. City acknowledges and agrees that Logistics Fine Arts, LLC is the sole Atelier' authorized representative in the United States qualified to carry out assessments of quality and control of all repairs and restorations to the Artwork, including but not limited to, conducting visual inspections on-site, recommend, propose and instruct technical corrections as necessary to the Artwork for further approval by Atelier. Atelier hereby acknowledges and consents to that certain Artwork Installation and Preservation Agreement that the City and Logistics Fine Arts, LLC are executing contemporaneously with the signing and delivery of this Agreement.

8. Payment. As consideration in full for the sale of the Artwork and the limited license of rights granted herein, the City shall pay Atelier a one-time lump sum non-recoupable fee (the "Fee") in the amount of one hundred eighty thousand dollars (\$180,000.00) upon execution of this Agreement and by check payable to the order of Logistics Fine Arts, LLC, but only after the City has received approval from Miami-Dade County, the Florida Department of Transportation, and/or the City of Coral Gables for the maintenance of traffic plan for the installation of the Artwork (the "Approvals"). This Agreement shall be effective as of the last date on which the following conditions have been satisfied: (a) Receipt by City of the

Approvals, and (b) payment of the Fee by City. If any of the foregoing conditions are not satisfied within ninety (90) days after execution of this Agreement, this Agreement shall be null and void *ab initio* and will have no force or effect. The Parties may, nonetheless, at any time prior to the expiration of the ninety (90) days, by mutual written consent, extend this Agreement for such additional periods as they may agree. The compensation payable to Atelier in connection with this project is solely in consideration of professional design services and the limited license of rights specified elsewhere in this Agreement.

9. Ownership and Protection of the Artwork.

9.1 Acknowledgment of Ownership. The parties acknowledge that (a) the artistic design of the Artwork shall not be deemed a “work for hire”; (b) neither this Agreement, nor any act, omission, or statement by Atelier or the City, conveys any copyrights to the City in the Artwork, or to any element or portion thereof; and (c) City shall not, directly or indirectly, create or permit the creation of derivative works based on the Artwork nor adapt the Artwork or any elements thereof for any use not stated in the Permitted Uses, without prior notice to and agreement with Atelier and/or the Artist, nor without negotiating in good faith reasonable additional compensation to Atelier in connection with such additional use or derivative work.

9.2 Custody and Possession. The City shall, at its sole expense, maintain the Artwork within the City’s possession, custody, or control under first-class conditions, taking into account ordinary wear and tear, and shall take all necessary actions to protect all copyright and other rights in the Artwork, including but not limited to, complying with all the specifications by Atelier as set out in **Exhibits “A”** and **“C”** to protect and safeguard the Artwork. The Artworks will be deemed to be in custody of the City from the date of delivery to the City by Atelier and/or its agents.

9.3 Risk of Loss or Damage. The City assumes all risk of loss or damage to the Artwork in its possession.

9.4 Notification. 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 immediately notify Atelier in writing with reasonable detail of any: (i) actual, suspected, or threatened infringement of the Artwork; (ii) actual, suspected, or threatened claim that use of the Artwork infringes the rights of any third party; or (iii) any other actual, suspected, or threatened claim to which the Artwork may be subject.

10. Portfolio. Atelier is providing the City with a portfolio that includes:

- (a) Certificate of Authenticity issued by the Cruz-Diez Art Foundation.
- (b) Specific plan of *Induction Chromatique Coral Gables, 2017*;
- (c) One set of books with information about the Artwork, archives, credentials and the Artist's art Parcours; and
- (d) One set of books with the instructions for painting, installing, maintain and preserving the Artwork.

11. Representations and Warranties.

11.1 Mutual Representations and Warranties. Each party represents and warrants to the other party that:

- (a) it is duly organized, validly existing, and in good standing as a corporation or other entity as represented herein under the laws of its jurisdiction of incorporation or organization;
- (b) it has the full right, power, and authority to enter into this Agreement and to perform its obligations hereunder;
- (c) the execution of this Agreement by its representative whose signature is set forth at the end hereof has been duly authorized by all necessary corporate or organizational action of the party; and,
- (d) when executed and delivered by such party, this Agreement will constitute the legal, valid, and binding obligation of such party, enforceable against such party in accordance with its terms.

11.2 Atelier's Representations and Warranties. Atelier represents and warrants, solely to and for the benefit of the City, that it owns and therefore has the right to license the Artwork in connection with the City's uses permitted hereunder in the State of Florida. Atelier further warrants said Artwork to be free and clear of all encumbrances, liens, security agreements, claims, demands, and charges of every kind whatsoever and will warrant and defend the title to said Artwork against any and all persons whomsoever.

11.3 City's Representations and Warranties. The City represents and warrants that:

- (a) the City will not engage or participate in any activity or course of action that could diminish or tarnish the image or reputation of the Artist or Atelier; and

(b) the City's use of the Artwork will not infringe, misappropriate, or otherwise violate the United States intellectual property or other rights of any third party or violate any applicable regulation or law.

11.4 Disclaimer of Representations and Warranties. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, ATELIER EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, WITH RESPECT TO THE LICENSED PROPERTY, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, AND WARRANTIES THAT MAY ARISE OUT OF COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE, OR TRADE PRACTICE.

12. Indemnification.

12.1 Indemnification by City. The City shall indemnify, defend, and hold harmless Atelier and its officers, directors, employees, agents, affiliates, successors, and assigns from and against any losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys' fees and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers, arising out of or in connection with any third-party claim, suit, action, or proceeding relating to any actual or alleged breach by the City of its representations, warranties, covenants, or other obligations hereunder, or resulting directly or indirectly from the City's use of the Artwork, including but not limited to failure to obtain any required permits. Nothing in this Agreement shall be considered to increase or otherwise waive any limits of liability, or to waive any immunity, established by Florida Statutes § 768.28, any other sections of the Florida Statutes, case law, or any other source of law.

13. Artist's Affiliations. The Artist is a member of the ADAGP (*Société des Auteurs Dans les Arts Graphiques et Plastiques*), a French royalty collecting and distribution society in the field of graphic and visual arts. The Artist directed on an exclusive basis all of his economic rights in the artworks he produces to such society (reproduction rights, rights of public communication and collective rights).

14. No Termination on Breach of Warranty or Representation. Except as otherwise specifically provided in this Agreement, if either party has a good faith reason to believe that either party has breached a warranty or representation stated herein, the non-breaching party shall have the right to give written notice to the breaching party specifying in reasonable

detail the basis for its good faith belief and the respects in which that party is in breach of its obligations under this Agreement. Upon receipt by the breaching party of such written notice, such breaching party shall have ninety (90) days to cure the noticed failure provided that the breaching party will verify the corrective measures to cure within thirty (30) days. In the event that such failure is reasonably incapable of cure within such ninety-day period, such period may be extended by the non-breaching party for a number of days reasonably necessary to effect the cure, and so long as such breaching party continues diligently to take all such steps to cure the breach.

15. Termination of License.

In addition to any other rights and remedies provided by law or under this Agreement, Atelier may terminate the limited license granted under this Agreement by providing written notice if (i) City has materially breached the quality and control provisions specified in Section 5.5 herein in Atelier's reasonable discretion and the City fails to cure such material breach within ninety (90) days of receipt of notice from Atelier; (ii) or the City's use of the Copyrights exceeds the scope of the rights set forth herein and the City fails to cure such non-compliance within ninety (90) days of receipt of notice from Atelier. Upon such termination of license, Atelier also reserves the right to cancel the Certificate of Authenticity provided to the City.

16. Remedies

16.1 Equitable Relief by Atelier. Atelier acknowledges that a breach by Atelier of this Agreement may cause the City irreparable damages, for which an award of damages would not be adequate compensation, and agrees that, in the event of such breach or threatened breach, the City will be entitled to seek equitable relief, including a restraining order, injunctive relief, specific performance, and any other relief that may be available from any court, in addition to any other remedy to which the City may be entitled at law or in equity. Such remedies are not exclusive but are in addition to all other remedies available at law or in equity, subject to any express exclusions or limitations in this Agreement to the contrary.

16.2 Equitable Relief by City. The City acknowledges that a breach by the City of this Agreement may cause the Artist and/or Atelier irreparable damages, for which an award of damages would not be adequate compensation, and agrees that, in the event of such breach or threatened breach, Atelier will be entitled to seek equitable relief, including a restraining order, injunctive relief, specific performance, and any other relief that may be available from

any court, in addition to any other remedy to which the Artist may be entitled at law or in equity. Such remedies are not exclusive but are in addition to all other remedies available at law or in equity, subject to any express exclusions or limitations in this Agreement to the contrary.

16.3 Limitation of Liability. NEITHER THE CITY, ARTIST NOR ATELIER WILL BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, LIQUIDATED, SPECIAL, OR EXEMPLARY DAMAGES OR PENALTIES, INCLUDING LOSSES OF BUSINESS, REVENUE, OR ANTICIPATED PROFITS, REGARDLESS OF WHETHER SUCH DAMAGE WAS FORESEEABLE AND WHETHER THE CITY, ARTIST, AND/OR ATELIER HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

17. General.

17.1 Notices. Each party shall give Notice in writing to the other either: (a) by e-mail with a required delivery receipt to sender, or (b) by letter sent by overnight mail, next day delivery, signature required. Notices delivered by e-mail shall be considered received as of the time and date stamp in the delivery receipt to sender. Notices delivered by overnight mail are deemed received as of the time and date in the signed receipt. Each party giving Notice shall address the Notice to the Parties at the addresses appearing below:

If to Atelier:

e-mail:

If to City of Coral Gables:

City Manager of Coral Gables
405 Biltmore Way
Coral Gables, Florida 33134
e-mail: piglesias@coralgables.com

City Attorney of Coral Gables
405 Biltmore Way
Coral Gables, Florida 33134
e-mail: mramos@coralgables.com

17.2 Interpretation. For purposes of this Agreement, (a) the words “include,” “includes,” and “including” are deemed to be followed by the words “without limitation”; (b) all

references to Atelier shall mean to include the Artist; and (c) the words “herein,” “hereof,” “hereby,” “hereto,” and “hereunder” refer to this Agreement as a whole. This Agreement is intended to be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted.

17.3 Headings. The article and section headings and captions of this Agreement and the table of contents preceding this Agreement are for convenience and reference only and in no way define, limit, describe the scope or intent of this Agreement or any part thereof, or in any way affect this Agreement or construe any article, section, subsection, paragraph or provision hereof.

17.4 Entire Agreement and Modifications.

This Agreement, including and together with any related attachments, constitutes the sole and entire agreement of the parties with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter. No amendment or modification to this Agreement is effective unless it is in writing and signed by an authorized representative of each party.

17.5 Exhibits. Each Exhibit referred to and attached to this Agreement is an essential part of this Agreement. The Exhibits and any amendments or revisions thereto, even if not physically attached hereto, shall be treated as if they are part of this Agreement and incorporated herein. The Exhibits referred to and attached to this Agreement are as follows:

Exhibit A – Artwork

Exhibit B – Location

Exhibit C - Artist’s instructions and recommendations.

17.6 Assignment. This Agreement cannot be transferred nor will it be inured to the benefit of the successors of Carlos Cruz-Diez, by either the application of the law or any other means, without the prior written consent of the City. The City shall not sub-license, re-sell, rent, lend, assign any of its rights, delegate, gift or otherwise transfer or distribute to any third-party the any of its obligations under this Agreement without the prior written consent of Atelier. Any purported assignment or delegation in violation of this Section is null and void. Atelier may freely assign or otherwise transfer any of its rights or delegate any of its obligations under this Agreement.

17.7 Force Majeure. Whenever a period of time is herein provided for performance of any act or thing, neither the City nor Atelier shall be liable or responsible for any delays due to

Force Majeure. The term "Force Majeure" shall mean "Acts of God", hurricane, fire, civil disobedience, riots, rebellions, explosion, flood, storm, labor disputes (whether lawful or not), material or labor shortages, terrorist acts or threats of terrorism, or other interventions by any governmental or utility authority, or any other causes that are beyond the parties' control, but shall not mean financial inability. 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.

17.8 Severability. If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability will not affect the enforceability of any other term or provision of this Agreement, or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon a determination that any term or provision is invalid, illegal, or unenforceable, the parties shall negotiate in good faith to modify this Agreement to effect the original intent of the parties as closely as possible in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

17.9 Choice of Law; Venue and Waiver to Jury Trial.

(a) Choice of Law. This Agreement and all matters arising out of or relating to this Agreement, including tort and statutory claims are governed by the laws of the State of Florida, without giving effect to any conflict of laws provisions thereof that would result in the application of the laws of a different jurisdiction.

(b) Venue. Either party shall institute any legal suit, action, or proceeding arising out of or relating to this Agreement in the federal or state courts in each case located in Miami-Dade, Florida, and each party irrevocably submits to the exclusive jurisdiction of such courts in any legal suit, action, or proceeding.

17.10 Waiver to Trial by Jury. THE PARTIES TO THIS AGREEMENT HEREBY AGREE TO EXHAUST ALL ADMINISTRATIVE REMEDIES BEFORE FILING A LAWSUIT IN CIVIL COURT TO RESOLVE THE DISPUTE. THE CITY AND ATELIER HEREBY KNOWINGLY, IRREVOCABLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT EITHER MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY ACTION, PROCEEDING OR COUNTERCLAIM BASED UPON THIS AGREEMENT, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THE LOT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN), OR ACTIONS OF ANY PARTY.

17.11 Relationship of the Parties. The relationship between the parties is that of independent contractors. Nothing contained in this Agreement will be construed as creating any agency, partnership, joint venture, or other form of joint enterprise, employment, or fiduciary relationship between the parties, and neither party has authority to contract for or bind the other party in any manner whatsoever.

17.12 Waiver. No waiver by any party of any of the provisions hereof will be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement will operate or be construed as a waiver thereof; nor will any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof, or the exercise of any other right, remedy, power, or privilege.

17.13 Attorneys' Fees. In the event that any claim, suit, action, or proceeding is instituted or commenced by either party hereto against the other party arising out of or related to this Agreement, the prevailing party will be entitled to recover its reasonable attorneys' fees and court costs from the non-prevailing party.

17.14 Counterparts. This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, email, or other means of electronic transmission is deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

17.15 Sovereign Immunity. Notwithstanding anything to the contrary herein, Atelier and the City acknowledge that the Florida Doctrine of Sovereign Immunity limits all claims against the City other than claims arising out of this Agreement. The term "this Agreement" means this document, and other terms and conditions which are included in the exhibits and documents that are expressly incorporated by reference herein, as well as any amendments thereto. Specifically, Atelier 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 or any other existing agreement between the City and Atelier, or in accordance with Florida Statutes Chapter 768.28. Nothing in this Agreement is intended to increase or otherwise waive any limits of liability, or to waive any immunity as set forth in the Florida Constitution and Florida Statutes Chapter 768.28.

17.16 Florida Public Records Law. Records subject to the provisions of Public Records Law, Florida Statutes Chapter 119, shall be kept and maintained in accordance with such Statute. Atelier 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. Atelier 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, Atelier 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 ATELIER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE ATELIER'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.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, Atelier and the City have caused this Agreement to be executed as of the date first written above by their respective duly authorized officers.

City of Coral Gables, Florida

Atelier Cruz-Diez/Carlos Cruz Diez

Peter J. Iglesias
City Manager

Name:
Title:

____ day of _____, 2019

____ day of _____, 2019

ATTEST:

Witnesses:

Billy Y. Urquia
City Clerk

Print Name _____

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

Signature
Print Name _____

Miriam Soler Ramos
City Attorney