

AGREEMENT

THIS AGREEMENT is made and entered into this ____ day of _____, 2014 between the City of Coral Gables (hereinafter referred to as "City"), having its principal address at: City of Coral Gables Finance Department/ Procurement Division, 405 Biltmore Way, Coral Gables, Florida 33134, and Cooper, Robertson & Partners, LLP, a New York Limited Liability Partnership (hereinafter referred to as "Consultant") (License # AA26001134), having its principal office at: _____ as follows:

RECITALS

A. **WHEREAS**, the City issued a Request for Qualifications ("RFQ") No. 2014.09.24 on September 24, 2014, for the provision of Architectural and Engineering Services for the development of contract plans, specifications, construction estimates and to provide design engineering services during construction for the Miracle Mile and Giralda Avenue Streetscape Project ("Project"). The Consultant's Submission of Qualifications ("Qualifications"), in response thereto, was selected as one of the most qualified for the provision of said Services (as defined herein). The RFQ and Qualifications are sometimes referred to herein, collectively, as the Solicitation Documents, and are by this reference expressly incorporated into and made a part of this Agreement as if set forth in full; and

B. **WHEREAS**, City selected Consultant in accordance with Section 287.055, Florida Statutes, (Consultants' Competitive Negotiation Act), and the applicable provisions of the City of Coral Gables Procurement Ordinance, to provide the professional services as described herein authorized the City Manager to negotiate this Agreement; and

C. **WHEREAS**, the City, through action of the City Commission, by Resolution No. _____, adopted _____, has authorized the City Manager to execute this Agreement

WITNESSETH, that City and Consultant, for the considerations herein set forth, agree as follows:

ARTICLE 1 **DEFINITIONS**

1.1 "Actual Construction Cost" means the construction cost during the performance of the Construction Administration Services.

1.2 "Additional Services" means any Services defined as such in written documentation, secured in compliance with Florida Statutes and City Code.

1.3 "Attachments" mean the attachments to this Agreement which are expressly incorporated by reference and made a part of this Agreement as if set forth in full.

1.4 "Base Fee" means the amount of compensation mutually agreed upon for the completion of Base Services.

1.5 "Base Services" means those services designated as such in this Agreement, including the Attachments hereto.

1.6 "City Commission" means the legislative body of City of Coral Gables.

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1.7 “City” means City of Coral Gables, Florida, a Florida municipal corporation, the public agency which is a party hereto and for which this Agreement is to be performed. In all respects hereunder, City's performance is pursuant to City's position as the owner of the Project. In the event City exercises its regulatory authority as a governmental body, the exercise of such regulatory authority and the enforcement of any rules, regulations, codes, laws and ordinances shall be deemed to have occurred pursuant to City's authority as a governmental body and shall not be attributable in any manner to City as a party to this Agreement. For the purposes of this Agreement, "City" without modification shall mean City Manager or Public Works Director, as applicable.

1.8 “Consultant” means the individual, partnership, corporation, association, joint venture, limited liability partnership, or any combination thereof, of properly registered professional architects, landscape architects and/or engineers, which has entered into this Agreement to provide professional services to City.

1.9 “Contractor” means an individual, partnership, corporation, association, joint venture, or any combination thereof, which has entered into a contract with City for construction of the Project. Contractor may also be referred to as “Construction Manager at Risk” or “CMAR”.

1.10 “Project Manager” means the representative of the City’s Public Work’s department who will be responsible for administrating the Project.

1.11 “Force Majeure” means an event as interpreted under Florida Statutes.

1.12 “Hourly Rates” means the effective direct expense to Consultant and/or Sub-consultant, on an hourly rate basis, for employees in the specified professions and job categories assigned to provide services under this Agreement that justify and form the basis for professional fees regardless of actual manner of compensation.

1.13 “Inspector” means an employee of City or of a consulting firm hired by City and assigned by City to make observations of work performed by a Contractor.

1.14 “Project” means the Miracle Mile and Giralda Avenue Streetscape Project which is described in the RFQ but which is generally consisting of a civic promenade with extensive gardens and incorporation of public art and incorporation of improvements to Biltmore Way and Merrick Park in from of Coral Gables City Hall.

1.15 “Notice To Proceed” means a duly authorized written letter or directive issued by the Project Manager or directing that Consultant to begin work on the Project.

1.16 “Pre-Construction Contractor” means an entity hired to provide cost, scheduling, constructability reviews and other services.

1.17 “Project Manager” means the representative of the City’s Public Work’s department who will be responsible for administrating the Project.

1.18 “Professional Services” or “Services” means those services as provided in this Agreement and those services within the scope of the practice of architecture, professional engineering, landscape architecture, or registered surveying and mapping, as applicable, as defined by the laws of the State of Florida, or those performed by any architect' professional engineer, landscape architect, or registered surveyor or mapper in connection with his or her professional employment or practice. Services shall include all deliverables, documentation, attendance at meetings and other requirements of

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Consultant as provided in this Agreement. Services shall include the services and deliverables of all Sub-consultants hired by Consultant.

1.19 “Reimbursable Expenses” means those services authorized by City in addition to the Base and Additional Services and consist of actual, direct expenditures made by Consultant and the Subconsultant(s).

1.20 “Sub-Consultant” means a person or organization of properly registered professional architects, landscape architects, engineers, registered surveyor or mapper, and/or other professional specialty that has entered into a written agreement with Consultant to furnish specified professional services for the Project or task.

ARTICLE 2 **GENERAL PROVISIONS**

2.1 **Agreement Period.** The term of this Agreement shall commence upon execution of this Agreement and conclude upon final completion of the construction of the Project by Contractor, unless terminated earlier as provided in this Agreement.

2.1.1 Time is of the essence with respect to performance of this Agreement. Consultant shall perform its Services pursuant to the Schedule which is part of **Exhibit “C”**. The City shall approve Consultant’s deliverables on a rolling basis, meaning that there is no pause between phases for the City’s review. However, Consultant shall incorporate City’s changes and modifications as part of its Base Services into the current phase of design. A reasonable extension of the time for completion of various assignments, tasks or phases will be granted by City should there be a delay on the part of City in fulfilling its obligations under this Agreement as stated herein. Such extension of time shall not be cause for any claim by Consultant for extra compensation.

2.2. **Priority of Interpretation.** The City of Coral Gables Code and City resolutions take precedence over this Agreement and its exhibits. In the event of any conflict or inconsistency in the definition or interpretation of any word, responsibility, schedule, or the contents or description of any task, deliverable, service, or other work, or otherwise, between the Agreement and the exhibits, or between exhibits, such conflict or inconsistency shall be resolved by giving precedence first to the body of this Agreement, and then to the exhibits according to the following priority:

- a. City Resolution and applicable Code provisions;
- b. Consultant Scope of Services attached as **Exhibit “C”**
- c. City Request for Qualifications (RFQ)
- d. Professional’s Qualifications
- e. Other exhibits

2.3 **Background Investigation.** The Consultant agrees that all employees of Consultant and its subconsultants may be subject to an annual background investigation.

2.4 **Polygraph Examination.** The Consultant agrees to submit to polygraph examinations at the request of the City.

2.5 **Drug Free Workplace.** All Consultants, their employees, agents and sub consultants shall comply with the City's Drug Free Work Place Policy at Consultant’s expense. The City may require that the Professional and/or their employees, agents and sub consultants performing services for the City submit to a yearly medical and drug screen examination, at Professional’s expense.

2.6 **Confidential Information.** The Consultant agrees that any information received by the Consultant for the City and in providing services in accordance with this Agreement which is not publicly available, shall not be revealed to any other persons, firm or organizations, unless incident to the proper performance of Consultant's obligations hereunder, or in the course of judicial or legislative proceedings where such information has been properly subpoenaed, any non-public information concerning the services to be rendered by Consultant hereunder, and Consultant shall require all of its employees, agents, and Sub-consultants to comply with the provisions of this Paragraph.

ARTICLE 3

SCOPE OF SERVICES

3.1 **Scope of Base Services.** Consultant agrees to provide the Services as specifically described and under the terms set forth in this Agreement, including scope of services outlined in Exhibit "C" and those set forth in the RFQ attached as Exhibit "A" ("Base Services"). Consultant's Base Services include the services of the Sub-consultants identified in **Exhibit "C"**.

3.2 **Additional Services.** Additional Services may be provided after execution of this Agreement, without invalidating the Agreement as provided in **Exhibit "C"**. Specifically, and without limitation, the City may request Construction Administration Services from Consultant which shall be negotiated as an Additional Service at rates mutually agreed upon by the Parties. Except for services required due to the fault of the Consultant, any Additional Services provided shall be by mutual agreement of the parties and at rates not to exceed those for Base Services as more fully described in **Exhibit "C"**.

3.2.1 Extensive value engineering shall be an Additional Service, but basic value engineering including but not limited to review and analysis of proposals from the City or other members of the Project team shall be part of Base Services.

3.2.2 Until such time as the Construction Documents are permitted for construction by the authorities having jurisdiction, as part of Consultant's Base Services, Consultant shall modify the deliverables, including, but not limited to all drawings, plans and specifications to incorporate the City's reasonable comments and changes. However, significant design changes after approval of a particular phase of design may be subject to Additional Services, upon written approval from City. Significant design changes include, but are not limited to, moving proposed structures or activities, adding structures or activities, or materially increasing the footprint of proposed structures/activities. In the event the City requests changes which the Consultant, in good faith, believes is a "significant design change" as provided herein, and entitles the Consultant to Additional Services, Consultant shall notify the City of the anticipated Additional Services in writing within two (2) days of receipt of the requested change. City shall provide written direction to the Consultant before Consultant commences with the requested Change. If Consultant fails to notify the City as provided herein, Consultant waives any claim for Additional Services.

ARTICLE 4

COMPENSATION

4.1 **Base Services.** In full consideration of the Services of Consultant hereunder, the Consultant shall be paid an amount not to exceed One Million Seven Hundred Fifty-Three Thousand Four Hundred and Fifty Dollars (\$1,753,450) as provided in **Exhibit "C"**.

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4.2 **Reimbursable Expenses.** All reimbursable expenses including, but not limited to, travel expenses, copy and communication costs, printing costs and other similar costs are included in the Base Services.

4.3 **Payments.** Consistent with the breakdown of Base Fees provided in **Exhibit "C"**, Consultant shall submit invoices based on the percentage of completion of the Services. The City shall make payment of undisputed amounts within thirty (30) days after receipt of an acceptable invoice, which shall be accompanied by sufficient supporting documentation and contain sufficient detail, to allow a proper audit of expenditures, should City require one to be performed. Each request for payment shall be accompanied by a Release of Lien in accordance with Florida Statutes. If Consultant is entitled to reimbursement of travel expenses, then all bills for travel expenses shall be submitted in accordance with Section 112.061, Florida Statutes.

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

ARTICLE 5 **PERFORMANCE**

5.1 The Services to be performed hereunder shall be performed by Consultant's own staff and the Sub-consultants identified in this Agreement, unless otherwise approved in writing by City. Said approval shall not be construed as constituting an agreement between City and said other person(s) or firm.

5.2 City may make written request to Consultant for the prompt removal and replacement of any personnel employed or retained by Consultant, or any Sub-consultants, or any personnel of any such Subconsultants engaged by Consultant to provide and perform Services pursuant to the requirements of this Agreement. Consultant shall respond to City within five (5) working days of receipt of such request with either the removal and replacement of such personnel or written justification as to why that may not occur. All decisions involving personnel will be made by Consultant.

5.3 **Consultant's Key Staff.** The parties acknowledge that Consultant was selected by City, in part, on the basis of qualifications of particular staff identified in Consultant's response to City's solicitation, hereinafter referred to as "Key Personnel". Consultant shall ensure that Key Personnel as detailed in **Exhibit "B"** are available for Services hereunder as long as said Key Personnel are in Consultant's or Sub-consultant's employ. Consultant will obtain prior written approval of the City to change Key Personnel. Consultant shall provide the City with such information as necessary to determine the suitability of proposed new Key Personnel. The City will act reasonably in evaluating Key Personnel qualifications.

5.4 **Errors and Omissions.** Consultant shall be responsible to promptly make corrections to Consultant's Services are found to contain discrepancies, errors or omissions. To the extent that such discrepancies, errors or omissions are the fault of Consultant, costs associated with corrections of Consultant's Services, and delays and/or costs of the construction work resulting from, loss of use, increased costs of construction, cost for correction or replacement of construction work already

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performed, and damages associated with the Contractor's Services or the work of other Project participants, resulting from such discrepancies, errors or omissions shall be borne by Consultant.

5.5 **Nonconforming Work.** Consultant shall promptly give notice to City of any defective or nonconforming work of the Contractor or any other Project participant whenever discovered by Consultant and whether before or after the date of Substantial Completion of the Contractor's work. All work is to be in compliance with all applicable laws, codes and ordinances.

5.6 **Meetings.** During design, Consultant shall schedule meetings with City and other members of the project team as provided in **Exhibit "C"**. At such meetings, Consultant will discuss schedule, budget, scope and any specific design issues needing attention. Consultant shall keep meeting minutes and action item lists for all such meetings. Special meetings may be required on a more frequent basis to address specific design issues.

5.7 The City shall provide Consultant with land surveys, stormwater study and geotechnical reports within thirty (30) days of the Notice to Proceed.

ARTICLE 6 SUB-CONSULTANTS

6.1 A Sub-consultant is a person or organization of properly registered professional architects, landscape architects, engineers, registered surveyors or mapper, and/or other qualified professional that has, with the consent of the City (if not previously authorized by **Exhibit "C"**), entered into a written agreement with Consultant to furnish Professional Services under this Agreement. Those Sub-consultants referenced in **Exhibit "C"** are part of Consultant's Base Services.

6.2 In the event City requests the services of additional Sub-consultants or the Consultant becomes aware of the need for additional Sub-consultants, upon written authorization from the City, Consultant shall enter into a written agreement with such Sub-consultant for the price authorized by the City. Consultant shall be compensated in the amount to be negotiated and agreed to by the Parties for the management of such additional Sub-consultants.

6.3 All services provided by the Sub-consultants shall be performed pursuant to appropriate written agreements between Consultant and the Sub-consultants, which shall contain provisions that preserve and protect the rights of City under this Agreement.

6.3.1 Nothing contained in this Agreement shall create any contractual or business relationship between City and the Sub-consultants. Consultant acknowledges that Sub-consultants are entirely under its direction, control, supervision, retention and/or discharge.

6.4 Consultant shall not change any Sub-consultants listed in **Exhibit "C"** or otherwise approved by the Project Manager, without prior written approval by the Project Manager, in response to a written request from Consultant stating the reasons for any proposed substitution. Such approval shall not be unreasonably withheld, conditioned, or delayed by the Project Manager.

ARTICLE 7 DEFAULT

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7.1 If Consultant fails to comply with any term or condition of this Agreement, or fails to perform any of its obligations hereunder, then Consultant shall be in default. Upon the occurrence of a default hereunder, City, in addition to all remedies available to it by law, may immediately, upon written notice to Consultant, terminate this Agreement whereupon all payments, advances, or other compensation paid by City to Consultant while Consultant was in default shall be immediately returned to City. Consultant understands and agrees that termination of this Agreement under this section shall not release Consultant from any obligation accruing prior to the effective date of termination.

7.2 In the event of termination due to default of Consultant, in addition to the foregoing, Consultant shall be liable to City for reasonable and immitigable costs and expenses incurred by City in the procurement of the Services. In the event of default, City may also suspend or withhold reimbursements from Consultant until such time as the actions giving rise to default have been cured.

7.3 City shall provide written notice to Consultant as to a finding of default, and Consultant shall take all necessary action to cure said default within fifteen (15) days of receipt of said notice. Failure to cure the default in the stipulated timeframe may result in City terminating this Agreement. City may, in their sole discretion, extend in writing the timeframe for curing said default.

7.4 If any such failure on the part of Consultant is due to a condition of force majeure as that term is interpreted under Florida law, then City may allow an extension of time reasonably commensurate with the cause of such failure to perform or cure. If Consultant is delayed in performing any obligation under this Agreement due to a force majeure condition, then Consultant shall request a time extension from City within five (5) business days of said force majeure occurrence. Any time extension shall be subject to mutual agreement and shall not be cause for any claim by Consultant for extra compensation unless Additional Services are required.

ARTICLE 8 **TERMINATION OF AGREEMENT**

8.1 **City's Right to Terminate.** City has the right to terminate this Agreement for any reason or no reason, upon ten (10) days' written notice. Upon termination of this Agreement, all charts, sketches, studies, drawings, and other documents related to the Services authorized under this Agreement, whether finished or not, must be turned over to City, both in hard copy and in electronic form. If the termination is without cause, the Consultant shall be paid in accordance with provisions of this Agreement for Services performed, provided that said documentation is turned over to City within ten (10) business days of termination. Failure to timely deliver the documentation shall be cause to withhold any payments due without recourse by Consultant until all documentation is delivered to City.

8.1.2 Consultant shall have no recourse or remedy from a termination made by City except to retain the fees already disbursed or owing as compensation for the Services that were performed in complete compliance with the Agreement, as full and final settlement of any claim, action, demand, cost, charge or entitlement it may have, or will have against City, its officials or employees.

8.2 **Consultant's Right to Terminate.** Consultant shall have the right to terminate this agreement, in writing, following nonpayment of undisputed amounts by the City, if such nonpayment has not been corrected within sixty (60) days from the date of City's receipt of a written notice from Consultant.

8.3 **Termination due to Undisclosed Lobbyist or Agent.** Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for

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Consultant to solicit or secure this Agreement and that he or she has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for Consultant any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of this provision, City shall have the right to terminate the Agreement without compensation.

ARTICLE 9 **DOCUMENTS AND RECORDS**

9.1 **Ownership of Documents.** All tracings, plans, drawings, specifications, maps, computer files, models and/or reports prepared or obtained under this Agreement, as well as all data collected, together with summaries and charts derived therefrom, will be considered "work for hire" as such phrase is defined in Section 101 of Title 17 of the United States Code (Public Law 94-533) and all title, ownership and copyright privileges are and at all times shall be the property of City without restriction or limitation on their use, and will be made available, on request, to City at any time during the performance of such services and/or upon completion or termination of this Agreement. Consultant and its Sub-consultants' electronic CADD (Computer Assisted Design and Drafting) files, tapes, disks, and similar items remain the property of City. Consultant will provide these electronic items upon the request of City or upon completion/termination of this Agreement. Consultant shall provide documents to others at the direction of City consistent in content and format with nominal document production as determined by City. City understands that the use and conversion of Electronic Data to an alternate format may not be accomplished without the potential for introduction of anomalies or errors and that changes or modifications by anyone other than Consultant may result in adverse consequences that Consultant can neither predict nor control. Accordingly, City agrees that Consultant shall not be liable for and hereby waives all claims arising out of or connected with (a) the use, modification or misuse by City of such Electronic Data; or (b) the decline of accuracy or readability of the Electronic Data due to storage conditions, the passage of time, or otherwise; or (c) any use of said electronic data by any third parties receiving the electronic data from City.

9.1.1 Consultant will not be liable for use by City of plans, documents, studies, or other data for any purpose other than that intended by the terms and conditions of this Agreement, including the maintenance of the Project. Consultant shall not copyright any material and products or patent any invention developed under this Agreement. City shall have the right to inspect the Consultant's Services and deliverables at anytime. Consultant shall be permitted to retain copies, including reproducible copies, solely for information and reference in connection with City's use and occupancy of the Project. Consultant retains the right to utilize the drawings for promotional and marketing purposes.

9.1.2 **Delivery upon Request or Cancellation.** Failure of Consultant to promptly deliver all such documents to the City within ten (10) days of cancellation, or within ten (10) days of request by City, shall be just cause for City to withhold payment of any fees due Consultant until Consultant delivers all such documents. Consultant shall have no recourse from these requirements.

9.1.3 The City shall be authorized to use re-use of Consultant's plans and specifications, including construction drawings, at City's sole option, and by virtue of signing this Agreement Consultant agrees to such reuse in accordance with this provision without the necessity of further approvals, compensation, fees or documents being required and without recourse for such re-use. Consultant will not be liable for use by City of plans, documents, studies, or other data for any purpose other than intended by the terms and conditions of this Agreement.

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9.1.4 Consultant shall require all of its employees, agents, and Sub-consultants to comply with the provisions of this Article.

9.2 Consultant will keep adequate records and supporting documentation, which concern or reflect its Services hereunder. Records subject to the provisions of Public Record law, Florida Statutes Chapter 119, shall be kept in accordance with statute. Otherwise, the records and documentation will be retained by Consultant for a minimum of three (3) years from the date of termination of this Agreement or the date the Project is completed, whichever is later. City, or any duly authorized agents or representatives of City, shall have the right to audit, inspect, and copy all such records and documentation as often as they deem necessary during the period of this Agreement and during the three (3) year period noted above; provided, however such activity shall be conducted only during normal business hours.

9.3 While the City does not warrant the accuracy of any existing documentation relative to the existing facility, Consultant shall have the right to rely on all existing documentation provided by the City except such information as the City and Consultant agree shall be field verified. Consultant shall notify City, in writing, of any errors in existing documentation as soon as such error is discovered. In no way shall City be liable for existing field conditions.

ARTICLE 10 **INDEMNIFICATION**

10.1 Consultant shall hold harmless, indemnify and defend City, its officials and employees from any and all claims, losses and causes of actions which arise out of the performance of this Agreement as a result of any act of negligence or negligent omission, recklessness, or intentionally wrongful conduct of Consultant or its Sub-consultants. Consultant shall pay all claims and losses of any nature whatsoever in connection therewith and shall defend all Project related suits, in the name of City when applicable, and shall pay all costs, including without limitation reasonable attorney's and appellate attorney's fees, and judgments which may issue thereon. Consultants obligation under this Article shall not be limited in any way by the agreed upon compensation, or Consultant's limit of, or lack of, sufficient insurance protection and shall only apply to the full extent that it is caused by the negligent act or omission, recklessness or intentional wrongful conduct of Consultant, its agents, servants, representatives or Sub-consultants. Any failure of Consultant to comply with the terms of this provision shall be deemed a material breach of this Agreement and may subject Consultant to debarment from consideration for future award of city contracts pursuant to Section 2-952(4) of the City of Coral Gables Code of Ordinances.

10.2 In any and all claims against the City or any of its consultants, agents, or employees by any employee of Consultant, any Sub-consultant, any person or organization directly or indirectly employed by any of them to perform or furnish any of the work or anyone for whose acts any of them may be liable, the indemnification obligation under the above paragraph shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Consultant or any such sub consultant or other person or organization under workers' or workman's compensation acts, disability benefit acts, or other employee benefit acts. Moreover, nothing in this Indemnification and Hold Harmless provision shall be considered to increase or otherwise waive any limits of liability, or to waive any immunity, established by Florida Statutes, case law, or any other source of law.

10.3 The parties intend that these provisions shall be construed to be in compliance with Fla. Stat. §726.08. The indemnification obligations of this Agreement and in particular this Article 10 shall survive termination or completion of this Agreement.

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10.4 **Standard of Care.** Consultant shall exercise the same degree of care, skill, and diligence in the performance of the services as is ordinarily provided by a comparable professional under similar circumstances and the Consultant shall, at no additional cost to the City, re-perform services which fail to satisfy the foregoing standard of care.

ARTICLE 11 **INSURANCE**

11.1 Without limiting Consultant's indemnification of the City, and during the term of this Agreement, Consultant shall provide and maintain at its own expense the below described programs of insurance. Such programs and evidence of insurance shall be satisfactory to the City and shall be primary to and not contributing with any other insurance or self-insurance program maintained by the City. Certificates or other evidence of coverage shall be delivered to:

City of Coral
Gables Insurance
Compliance PO
Box 12010 -CE
Hemet, CA 92546-
8010

Such certificates or other evidence of coverage shall be delivered prior to commencing performance under this Agreement, and shall specifically identify this Agreement, and shall contain the express condition that the City is to be given advance written notice by receipted delivery at least thirty (30) days in advance of any cancellation, non-renewal or material change of the insurance policy.

11.2 The Consultant shall maintain during the terms, except as noted, of this Agreement the following insurance:

- .1 **Professional Liability and/or Error and Omissions Insurance** with a limit of liability no less than \$5,000,000 per occurrence with a deductible per claim, if any, not to exceed 5% of the limit of liability providing for all sums which the Consultant shall become legally obligated to pay as damages for claims arising out of the services performed by the Consultant, Sub-consultant or any person employed, contracted and/or subcontracted in connection with this Agreement. This insurance shall be maintained for three (3) years after the completion of any Services covered by this Agreement;
- .2 Comprehensive general liability insurance with broad form endorsement or equivalent, including automobile liability, completed operations and products liability, contractual liability, severability of interests with cross liability provision, and personal injury and property damage liability with limits no less than \$5,000,000 in the aggregate. Said policy or policies shall name City as additional insured on a primary and non-contributory basis and shall reflect the hold harmless provision contained herein. Such comprehensive general liability shall be written on an occurrence basis;
- .3 Worker's Compensation Insurance for all employees of Consultant as required by Florida Statutes Section 440, and employer's liability insurance with limits not less than, \$1,000,000;

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- .4 Automobile Liability insurance covering all owned, non-owned and hired vehicles used in connection with the performance of the work in an amount not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage;
- .5 Other (or increased amounts of) insurance which City shall from time to time deem advisable or appropriate. Such new or additional insurance to be effective as of the sooner of ninety (90) days after notice thereof or the next annual renewal of any policy being increased (as applicable).

11.3 All policies shall contain waiver of subrogation against City where applicable, and shall expressly provide that such policy or policies are primary over any other collective insurance the City may have.

11.4 All of the above insurance is to be placed with insurance companies with an A.M. Best or equivalent rating of "A-", "VI" or better, qualified to do business under laws of the State of Florida.

11.5 The City shall be named as an additional insured on a primary and non-contributory basis under such policies, including completed operations, except Professional Liability and Worker's Compensation. Additional insured coverage shall be on ISO form CG 20 10 and CG 20 37 (or their equivalents). Said policies shall contain a "severability of interest or "cross liability" clause without obligation for premium payment of the City. The City reserves the right to request a copy of required policies for review.

11.6 All insurance policies shall provide for thirty (30) days [ten (10) days for non-payment of premium] advance written notice to City prior to cancellation, non-renewal or material change. Insurance policies cannot be restricted to a specific designated premises or be restricted to sole negligence. Should the insurance company refuse to provide notice of cancellation to the City, the Consultant shall be responsible to immediately provide said notice of cancellation or material change to the City of Coral Gables Risk Management Division by receipted delivery within 48 hours of receipt of said notice.

11.7 The Consultant shall furnish Certificates of Insurance to the Risk Management Division of the Human Resources Department prior to the commencement of operations or policy termination, which certificates shall clearly indicate that the City is named as and additional insured on a primary and non-contributory basis and that the Consultant has obtained insurance in the type, amount and classification required for strict compliance with this Article and that no material change, cancellation or non-renewal of this insurance shall be effective without thirty (30) [ten (10) days for non-payment of premium] days advance written notice to the City.

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

11.9 **Sub-Consultant Compliance.** Consultant shall ensure that all Sub-consultants maintain insurance appropriate for the services to be performed by Sub-consultant and adequate to protect the City's interests and as required by Florida law. The City may require increases in such insurance, at its sole discretion.

11.10 The City and its Risk Management Division reserves the right to require modifications, increases, or changes in the required insurance requirements, coverage, deductibles or other insurance obligations by providing a thirty (30) day written notice to Consultant. Consultant shall comply with such

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requests unless the insurance coverage is not then readily available in the national market, and may request additional compensation for reimbursement of any additional costs from City.

ARTICLE 12 **AUDIT RIGHTS**

12.1 City reserves the right to audit Consultant's accounts during the performance of this Agreement and for three (3) years after final payment under this Agreement. Consultant agrees to furnish copies of any records necessary, in the opinion of the City, to approve any requests for payment by Consultant.

12.2. The Consultant shall maintain accurate and complete financial records of its activities and operations relating to this Agreement in accordance with generally accepted accounting principles. Consultant shall maintain adequate records to justify all charges and costs incurred in performing the services for at least three (3) years after completion of this Agreement. Consultant shall also maintain accurate and complete employment and other records relating to its performance of this Agreement. Consultant agrees that City, or its authorized representatives, shall have access to and the right to examine, audit, excerpt, copy or transcribe any pertinent transaction, activity, or records relating to this Agreement. All financial records, timecards and other employment records, and proprietary data and information shall be kept and maintained by Consultant and made available to the City during the terms of this Agreement and for a period of three (3) years thereafter unless City's written permission is given to dispose of any such material prior to such time. All such materials shall be maintained by Consultant at a location in Miami-Dade County, Florida, provided that if any such material is located outside Miami-Dade County, then, at City's option Consultant shall pay City for travel, per diem, and other costs incurred by City to examine, audit, excerpt, copy or transcribe such material at such other location. The City shall have access to such books, records, and documents as required in this section for the purpose of inspection or audit during normal working business hours at the Consultant's place of business.

12.3 In the event that an audit is conducted by Consultant specifically regarding this Agreement by any Federal or State auditor, or by any auditor or accountant employed by Consultant, then Consultant shall file a copy of the audit report with the City's Auditor within thirty (30) days of Consultant's receipt thereof, unless otherwise provided by applicable Federal or State law. City shall make a reasonable effort to maintain the confidentiality of such audit report(s). Failure on the part of Consultant to comply with the provisions of this 9.3 shall constitute a material breach upon which the City may terminate or suspend this Agreement.

12.4 **City Audit Settlements.** If, at any time during or after the term of this Agreement, representatives of the City conduct an audit of Consultant regarding the Services performed under this Agreement, and if such audit finds that City's dollar liability for any such Services is less than payments made by City to Consultant, then the difference shall be either repaid by Consultant to City by cash payment upon demand or, at the sole option of City, deducted from any amounts due to Consultant from City. If such audit finds that City's dollar liability for such Services is more than the payments made by City to Consultant then the difference shall be paid to Consultant by cash payment.

12.5 Failure on the part of Consultant to comply with the provisions of this Article 12 shall constitute a material breach upon which the City may terminate or suspend this Agreement.

ARTICLE 13 **SOVEREIGN IMMUNITY**

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

- .1 Claims based upon an alleged breach by the City of implied warranties or representations not specifically set forth in this Agreement, as the Parties stipulate that there are no such implied warranties or representations of the City. All obligations of the City are only as set forth in this Agreement.
- .2 Claims based upon negligence or any tort arising out of this Agreement.
- .3 Claims based upon alleged acts or inaction by any City employee or agent of the City.
- .4 Claims based upon an alleged waiver of any of the terms of this Agreement unless such waiver is in writing and signed by an authorized representative for the City and the Consultant.

ARTICLE 14

FLORIDA PUBLIC RECORDS LAW FLORIDA STATUTES CHAPTER 119, et seq.

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

ARTICLE 15

NON-DISCRIMINATION

15.1 **EEO and ADA:** The Consultant must be and remain in compliance with all local, state and federal Equal Employment Opportunity (EEO) and American Disabilities Act (ADA) requirements.

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

15.3 City Policy Regarding Conduct. All Consultant, their employees, agents and sub consultants must abide by the City's policies regarding conduct. Discrimination, harassment, and/or violations of City policies will not be tolerated and are grounds for termination of the Agreement without harm to the City or its employees.

ARTICLE 16
CONFLICT OF INTEREST

16.1 The Consultant represents that it has provided a list of all current clients subject to the jurisdiction of the City. Any potential or actual conflict between private interests and responsibilities under this Agreement shall be immediately disclosed to the City. The Consultant agrees that it will not enter into any agreements during the term of this Agreement to provide services for any person or corporation who applies for a permit or other development approval from the City. Upon request of the Consultant, and full disclosure of the nature and extent of the proposed representation, the City Manager or his designee shall have the authority to authorize such representation during the term of this Agreement.

ARTICLE 17
TRUTH-IN-NEGOTIATION CERTIFICATE

17.1 Execution of this Agreement by the Consultant shall act as the execution of a truth-in-negotiation certificate certifying that the wage rates and costs used to determine the compensation provided for in this Agreement are accurate, complete, and current as of the date of the Agreement.

17.2 The said rates and costs shall be adjusted to exclude any significant sums should the City determine that the rates and costs were increased due to inaccurate, incomplete, or noncurrent wage rates or due to inaccurate representations of fees paid to outside consultants. The City shall exercise its rights under this "Certificate" within one (1) year following payment.

ARTICLE 18
NOTICE

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

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

cc: City Attorney
405 Biltmore Way
Coral Gables, FL 33134

Notice as to the Consultant shall be to:

Alex Cooper
Cooper, Robertson & Partners
311 West 43rd Street
New York, New York 10036

ARTICLE 19
COMPLIANCE WITH LAWS

19.1 In performance of the services, the Consultant will comply with applicable regulatory requirements, the Florida Building Code (latest edition), all federal, state, special district, and local laws, rules, regulations, orders, codes, ordinances, criteria, and standards. It shall be the responsibility of the Consultant to obtain and maintain, at no cost to the City, any and all license and permits required to complete the services provided pursuant to this Agreement. Consultant shall prepare all plans, drawings and specifications in accordance with applicable laws, codes and ordinances.

19.2 Consultant is aware of the conflict of interest code of the City of Coral Gables, the Conflict of Interest and Code of Ethics of Miami-Dade County, Florida, Section 2-11.1 et seq., and the Ethics Laws of the State of Florida, and agrees that it shall fully comply in all respects with the terms of said laws.

ARTICLE 20
MISCELLANEOUS

20.1 This Agreement, as it may be amended from time to time, represents the entire and integrated agreement between City and Consultant and supersedes all prior negotiations, representations or agreements, written or oral. This Agreement may not be amended, changed, modified, or otherwise altered in any respect, at any time after the execution hereof, except by a written document executed with the same formality and equal dignity herewith. Waiver by either party of a breach of any provision of this Agreement shall not be deemed to be a waiver of any other breach of any provision of this Agreement

20.2 **Successors and Assigns.** The performance of this Agreement shall not be transferred, pledged, sold, delegated or assigned, in whole or in part, by Consultant without the written consent of City, acting by and through its City Commission. It is understood that a sale of the majority of the stock or partnership shares of Consultant, a merger or bulk sale, an assignment for the benefit of creditors shall give the City a right to terminate this Agreement. Consultant's services are unique in nature and any transference without City approval shall be cause for City to cancel this Agreement. Consultant shall have no recourse from such cancellation. City may require bonding, other security, certified financial statements and tax returns from any proposed assignee and the execution of an Assignment/Assumption Agreement in a form satisfactory to City Attorney as a condition precedent to considering approval of an assignment. Consultant and City each binds one another, their partners, successors, legal representatives and authorized assigns to the other party of this Agreement and to the partners, successors, legal representatives and assigns of such party in respect to all covenants of this Agreement.

20.3 **Applicable Law & Venue.** This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any suit or action brought by any party, concerning this Agreement, or arising out of this Agreement shall be brought in Miami-Dade County, Florida. Each party shall bear its own attorney's fees except in actions arising out of Consultant's duties to indemnify City where Consultant shall pay City's reasonable attorney's fees.

20.4 **Dispute Resolution.** In an effort to engage in a cooperative effort to resolve conflict which may arise during the course of the design and/or construction of the Project, and/or following the completion of the Project the parties to this Agreement agree all disputes between them shall be submitted to non-binding mediation prior to the initiation of litigation, unless otherwise agreed in writing by the parties. A certified Mediator, who the parties find mutually acceptable, will conduct any mediation

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proceedings in Miami-Dade County, State of Florida. The parties will split the costs of a certified mediator on an equal basis. Consultant agrees to include such similar contract provisions with all Subconsultants retained for the Project, thereby providing for non-binding mediation as the primary mechanism for dispute resolution. **In an effort to expedite the conclusion of any litigation the parties voluntarily waive their right to jury trial or to file permissive counterclaims in any action arising under this Agreement.**

20.5 Preparation of this Agreement has been a joint effort. The language of this Agreement has been agreed to by both parties to express their mutual intent and no rule of strict construction shall be applied against either party hereto. The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. All personal pronouns used in this Agreement shall include the other gender, and the singular shall include the plural, and vice versa, unless the context otherwise requires. Terms such as "herein," "hereof," "hereunder," and "hereinafter" refer to this Agreement as a whole and not to any particular sentence, paragraph, or section where they appear, unless the context otherwise requires.

20.6 Whenever reference is made to a Section or Article of this Agreement, such reference is to the Section or Article as a whole, including all of the subsections of such Section, unless the reference is made to a particular subsection or subparagraph of such Section or Article.

20.7 Consultant has been procured and is being engaged to provide services to City as an independent contractor, and not as an agent or employee of City. This Agreement does not create a joint venture, partnership or other business enterprise between the parties. Consultant has no authority to bind City to any promise, debt, default, or undertaking of Consultant. Consultant further understands that Florida Workers' Compensation benefits available to employees of City are not available to Consultant, and agrees to provide workers' compensation insurance for any employee or agent of Consultant rendering services to City under this Agreement.

20.8 Funding for this Agreement is contingent upon the availability of funds and continued authorization for program activities and the Agreement is subject to amendment or termination due to lack of funds, reduction of funds and/or change in regulations, upon thirty (30) days notice.

20.9 The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

20.10 The invalidity, illegality, or unenforceability of any provision of this Agreement, or the occurrence of any event rendering any portion or provision of this Agreement void, shall in no way effect the validity or enforceability of any other portion or provision of the Agreement. Any void provision shall be deemed severed from the Agreement, and the balance of the Agreement shall be construed and enforced as if the Agreement did not contain the particular portion or provision held to be void. The parties further agree to reform the Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision.

20.11 **Business Interruption.** Consultant acknowledges and agrees that the construction of the Project will have impact existing businesses. Consultant shall work with the City, Preconstruction Contractor and local business, as requested by City in the design of the Project so as to be mindful of the local businesses, pedestrians and customers during the construction of the Project.

ARTICLE 21
EXHIBITS

21.1 The Exhibits to this Agreement which are incorporated into this Agreement:

Exhibit “A”

Exhibit “B”

Exhibit “C”

Exhibit “D”

RFQ

Consultant’s Statement of Qualifications

Scope of Services

Consultant’s Certificates of Insurance

Miracle Mile/Giralda Consultant Agreement

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

Approved as to Insurance:

AS TO CITY:

David J. Ruiz
Risk Management Division
Human Resources

Carmen Olazabal
Interim City Manager

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

ATTEST:

Glen Kephart
Public Works Director

Walter J. Foeman
City Clerk

Approved as to compliance with
Applicable Procurement Requirements:

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

Michael P. Pounds,
Chief Procurement Officer

Craig E. Leen
City Attorney

Approved as to Funds Appropriation:

Diana M. Gomez,
Finance Director

ATTEST:

AS TO CONSULTANT

Corporate Secretary

President

Print Name:

Print Name: _____

(SEAL)

(OR)

WITNESSES (2):

Print Name: _____

Print Name: _____