



AGENDA REPORT

Meeting Date: September 1, 2015
Item Number: D-13
To: Honorable Mayor & City Council
From: Nancy Hunt-Coffey, Assistant Director of Community Services
Subject: AN AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS AND ROSA LOWINGER & ASSOCIATES, FOR CONSERVATION TREATMENT AND MAINTENANCE OF OUTDOOR PUBLIC ART; AND APPROVAL OF A PURCHASE ORDER AND APPROPRIATION OF FUNDS FOR A TOTAL NOT-TO-EXCEED AMOUNT OF \$94,205 FROM THE FINE ART FUND

Attachments: 1. Agreement

RECOMMENDATION

Staff recommends that the City Council approve the Agreement between the City of Beverly Hills and Rosa Lowinger & Associates for conservation, treatment and maintenance of outdoor public art, and approve a Purchase Order in the amount not-to-exceed \$94,205 for restoration of Joan Brown's *Center Obelisk*, Yayoi Kusama's *Hymn of Life*, as well as the annual maintenance for the City's art collection. This funding would come from the Fine Art Fund, which is reserved for use on the City's art collection.

INTRODUCTION

Based on feedback from the Fine Art Commission, staff conducted a Request for Proposal (RFP) for art maintenance and conservation services in November 2011. Rosa Lowinger & Associates (RLA) was unanimously selected as the firm to provide the services. Since that time RLA has restored and conserved the City's art collection professionally and in a timely fashion.

DISCUSSION

The conservation/restoration goals of the Fine Art Commission for fiscal year 15-16 are to: restore Kusama's *Hymn of Life*; restore Joan Brown's *Center Obelisk*; and provide annual maintenance and cleaning for all City owned public art. The total cost to perform these services is \$94,205. It should be noted that of this total, the cost to restore the Kusama piece is estimated to be \$38,300. Staff expects that some of this restoration

work will be performed by the fabricator at no cost to the City, as part of the warranty on the piece. As a result, it is likely that the actual cost from RLA to restore the Kusama will be less than was estimated. Additionally, staff sought out a second estimate for the work on the Kusama from another restoration firm, to ensure that the cost was in line with what other vendors would charge. The cost for this work was \$40,028, so it appears that the estimate from RLA is in line with what other restoration companies would charge to repair the piece.

FISCAL IMPACT

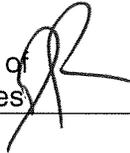
The total cost for this agreement is not-to-exceed \$94,205. Funding for this agreement would come from the Fine Art Fund, which is reserved for use on the City's art collection. City Council is asked to approve the agreement and purchase order with Rosa Lowinger and Associates, and to appropriate the funds required to execute the agreement as follows:

Amount	From	To
\$94,205	180300000 Fine Art Fund Balance	18004004-850600 Fine Art Purchases

CONCLUSION

Staff recommends that City Council approve the agreement between the City of Beverly Hills and Rosa Lowinger & Associates for conservation, treatment and maintenance of outdoor public art, and approve an appropriation and a purchase order in the amount not-to-exceed \$94,205 for restoration of Joan Brown's *Center Obelisk*, Yayoi Kusama's *Hymn of Life*, as well as the annual maintenance for the City's art collection.

Don Rhoads, Director of
Administrative Services



Nancy Hunt-Coffey
Approved By

Attachment 1

AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS AND ROSA
LOWINGER & ASSOCIATES, FOR CONSERVATION TREATMENT AND
MAINTENANCE OF OUTDOOR PUBLIC ART

NAME OF CONTRACTOR: Rosa Lowinger & Associates

RESPONSIBLE PRINCIPAL OF CONTRACTOR: Rosa Lowinger, Principal, Conservator

CONTRACTOR'S ADDRESS: 5418 Packard Street
Los Angeles, CA 90019

CITY'S ADDRESS: City of Beverly Hills
455 N. Rexford Drive
Beverly Hills, CA 90210
Attention: Steve Zoet, Director of Community Services

COMMENCEMENT DATE: August 1, 2015

TERMINATION DATE: June 30, 2016, unless extended pursuant to Section 2
of this Agreement

CONSIDERATION: FY 15-16 Not to exceed: \$84,205 Fixed fee and
\$10,000 Contingency

FY 16-17 Not to exceed: \$49,500

FY 17-18 Not to exceed: \$49,500

Total not to exceed: \$193,205, based on the rates set
forth in Exhibit B

AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS AND ROSA
LOWINGER & ASSOCIATES, FOR CONSERVATION TREATMENT AND
MAINTENANCE OF OUTDOOR PUBLIC ART

THIS AGREEMENT is made by and between the City of Beverly Hills (hereinafter called "CITY"), and Rosa Lowinger & Associates, (hereinafter called "CONTRACTOR").

RECITALS

A. CITY desires to have certain services and/or goods provided as set forth in Exhibit A (the "Scope of Work"), attached hereto and incorporated herein.

B. CONTRACTOR represents that it is qualified and able to perform the Scope of Works.

NOW, THEREFORE, the parties agree as follows:

Section 1. CONTRACTOR's Scope of Work. CONTRACTOR shall perform the Scope of Work described in Exhibit A in a manner satisfactory to CITY and consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions. City shall have the right to order, in writing, changes in the Scope of Work. Any changes in the Scope of Work by CONTRACTOR must be made in writing and approved by both parties. The cost of any change in the Scope of Work must be agreed to by both parties in writing.

Section 2. Time of Performance.

CONTRACTOR shall commence its services under this Agreement upon receipt of a written notice to proceed from CITY. CONTRACTOR shall complete the performance of services by the Termination Date set forth above. The City Manager or his designee may extend the time of performance in writing for two additional one-year terms or such other term not to exceed two years from the date of termination pursuant to the same terms and conditions of the Agreement.

Section 3. Compensation.

(a) Compensation

CITY agrees to compensate CONTRACTOR for the services and/or goods provides under this Agreement, and CONTRACTOR agrees to accept in full satisfaction for such services, a sum not to exceed the Consideration set forth above and more particularly described in Exhibit B, attached hereto and incorporated herein.

(b) Expenses

The amount set forth in paragraph A shall include reimbursement for all actual and necessary expenditures reasonably incurred in the performance of this Agreement (including,

but not limited to, all labor, materials, delivery, tax, assembly, and installation, as applicable). There shall be no claims for additional compensation for reimbursable expenses.

(c) **Additional Services.** City may from time to time require CONTRACTOR to perform additional services not included in the Scope of Services. Such requests for additional services shall be made by City in writing and agreed upon by both parties in writing.

Section 4. Method of Payment. Unless otherwise provided for herein, CONTRACTOR shall submit to City a detailed invoice, on a monthly basis or less frequently, for the services performed pursuant to this Agreement. Each invoice shall itemize the services rendered during the billing period and the amount due. Within 30 days of receipt of each invoice, CITY shall pay all undisputed amounts included on the invoice. CITY shall pay CONTRACTOR said Consideration in accordance with the Schedule of Rates set forth in Exhibit B, attached hereto and incorporated herein.

Section 5. Independent Contractor. CONTRACTOR is and shall at all times remain, as to CITY, a wholly independent contractor. Neither CITY nor any of its agents shall have control over the conduct of CONTRACTOR or any of CONTRACTOR's employees, except as herein set forth. CONTRACTOR shall not, at any time, or in any manner, represent that it or any of its agents or employees are in any manner agents or employees of CITY.

Section 6. Assignment. This Agreement shall not be assigned in whole or in part, by CONTRACTOR without the prior written approval of CITY. Any attempt by CONTRACTOR to so assign this Agreement or any rights, duties or obligations arising hereunder shall be void and of no effect.

Section 7. Responsible Principal(s)

(a) CONTRACTOR's Responsible Principal set forth above shall be principally responsible for CONTRACTOR's obligations under this Agreement and shall serve as principal liaison between CITY and CONTRACTOR. Designation of another Responsible by CONTRACTOR shall not be made without prior written consent of CITY.

(b) CITY's Responsible Principal shall be the City Manager or his designee set forth above who shall administer the terms of the Agreement on behalf of CITY.

Section 8. Personnel. CONTRACTOR represents that it has, or shall secure at its own expense, all personnel required to perform CONTRACTOR's Scope of Work under this Agreement. All personnel engaged in the work shall be qualified to perform such Scope of Work.

Section 9. Permits and Licenses. CONTRACTOR shall obtain and maintain during the Agreement term all necessary licenses, permits and certificates required by law for the provision of services under this Agreement, including a business license.

Section 10. Interests of CONTRACTOR. CONTRACTOR affirms that it presently has no interest and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of the Scope of Work contemplated by this Agreement. No person having any such interest shall be employed by or be associated with CONTRACTOR.

Section 11. Insurance.

(a) CONTRACTOR shall at all times during the term of this Agreement carry, maintain, and keep in full force and effect, insurance as follows:

(1) A policy or policies of Comprehensive General Liability Insurance, with minimum limits of Two Million Dollars (\$2,000,000) for each occurrence, combined single limit, against any personal injury, death, loss or damage resulting from the wrongful or negligent acts by CONTRACTOR.

(2) A policy or policies of Comprehensive Vehicle Liability Insurance covering personal injury and property damage, with minimum limits of One Million Dollars (\$1,000,000) per occurrence combined single limit, covering any vehicle utilized by CONTRACTOR in performing the Scope of Work required by this Agreement.

(3) Workers' compensation insurance as required by the State of California.

(b) CONTRACTOR shall require each of its sub-contractors to maintain insurance coverage which meets all of the requirements of this Agreement.

(c) The policy or policies required by this Agreement shall be issued by an insurer admitted in the State of California and with a rating of at least a B+;VII in the latest edition of Best's Insurance Guide.

(d) CONTRACTOR agrees that if it does not keep the aforesaid insurance in full force and effect CITY may either immediately terminate this Agreement or, if insurance is available at a reasonable cost, CITY may take out the necessary insurance and pay, at CONTRACTOR's expense, the premium thereon.

(e) At all times during the term of this Agreement, CONTRACTOR shall maintain on file with the City Clerk a certificate or certificates of insurance on the form set forth in Exhibit C, attached hereto and incorporated herein, showing that the aforesaid policies are in effect in the required amounts. CONTRACTOR shall, prior to commencement of work under this Agreement, file with the City Clerk such certificate or certificates. The general and auto liability insurance shall contain an endorsement naming the CITY as an additional insured. All of the policies required under this Agreement shall contain an endorsement providing that the policies cannot be canceled or reduced except on thirty (30) days prior written notice to CITY, and specifically stating that the coverage contained in the policies affords insurance pursuant to the terms and conditions as set forth in this Agreement.

(f) The insurance provided by CONTRACTOR shall be primary to any coverage available to CITY. The policies of insurance required by this Agreement shall include provisions for waiver of subrogation.

(g) Any deductibles or self-insured retentions must be declared to and approved by CITY. At the option of CITY, CONTRACTOR shall either reduce or eliminate the deductibles or self-insured retentions with respect to CITY, or CONTRACTOR shall procure a bond guaranteeing payment of losses and expenses.

Section 12. Indemnification. CONTRACTOR agrees to indemnify, hold harmless and defend CITY, City Council and each member thereof, and every officer, employee and agent of CITY, from any claim, liability or financial loss (including, without limitation, attorneys fees and costs) arising from any intentional, reckless, negligent, or otherwise wrongful acts, errors or omissions of CONTRACTOR or any person employed by CONTRACTOR in the performance of this Agreement.

Section 13. Termination.

(a) CITY shall have the right to terminate this Agreement for any reason or for no reason upon five calendar days' written notice to CONTRACTOR. CONTRACTOR agrees to cease all work under this Agreement on or before the effective date of such notice.

(b) In the event of termination or cancellation of this Agreement by CITY, due to no fault or failure of performance by CONTRACTOR, CONTRACTOR shall be paid based on the percentage of work satisfactorily performed at the time of termination. In no event shall CONTRACTOR be entitled to receive more than the amount that would be paid to CONTRACTOR for the full performance of the services required by this Agreement. CONTRACTOR shall have no other claim against CITY by reason of such termination, including any claim for compensation.

Section 14. CITY's Responsibility. CITY shall provide CONTRACTOR with all pertinent data, documents, and other requested information as is available for the proper performance of CONTRACTOR's Scope of Work.

Section 15. Information and Documents. All data, information, documents and drawings prepared for CITY and required to be furnished to CITY in connection with this Agreement shall become the property of CITY, and CITY may use all or any portion of the work submitted by CONTRACTOR and compensated by CITY pursuant to this Agreement as CITY deems appropriate.

Section 16. Records and Inspections. CONTRACTOR shall maintain full and accurate records with respect to all matters covered under this Agreement for a period of 3 years. City shall have access, without charge, during normal business hours to such records, and the right to examine and audit the same and to make copies and transcripts therefrom, and to inspect all program data, documents, proceedings and activities.

Section 17. Changes in the Scope of Work. The CITY shall have the right to order, in writing, changes in the scope of work or the services to be performed. Any changes in the scope of work requested by CONTRACTOR must be made in writing and approved by both parties.

Section 18. Notice. Any notices, bills, invoices, etc. required by this Agreement shall be deemed received on (a) the day of delivery if delivered by hand during the receiving party's regular business hours or by facsimile before or during the receiving party's regular business hours; or (b) on the second business day following deposit in the United States mail, postage prepaid to the addresses set forth above, or to such other addresses as the parties may, from time to time, designate in writing pursuant to this section.

Section 19. Attorney's Fees. In the event that either party commences any legal action or proceeding to enforce or interpret the provisions of this Agreement, the prevailing party in such

action shall be entitled to reasonable attorney's fees, costs and necessary disbursements, in addition to such other relief as may be sought and awarded.

Section 20. Entire Agreement. This Agreement represents the entire integrated agreement between CITY and CONTRACTOR, and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by a written instrument signed by both CITY and CONTRACTOR.

Section 21. Exhibits; Precedence. All documents referenced as exhibits in this Agreement are hereby incorporated in this Agreement. In the event of any material discrepancy between the express provisions of this Agreement and the provisions of any document incorporated herein by reference, the provisions of this Agreement shall prevail.

Section 22. Governing Law. The interpretation and implementation of this Agreement shall be governed by the domestic law of the State of California.

Section 23. City Not Obligated to Third Parties. CITY shall not be obligated or liable under this Agreement to any party other than CONTRACTOR.

Section 24. Severability. Invalidation of any provision contained herein or the application thereof to any person or entity by judgment or court order shall in no way affect any of the other covenants, conditions, restrictions, or provisions hereof, or the application thereof to any other person or entity, and the same shall remain in full force and effect.

EXECUTED the _____ day of _____ 20____, at Beverly Hills, California.

CITY OF BEVERLY HILLS
A Municipal Corporation

JULIAN A. GOLD, M.D.
Mayor of the City of Beverly Hills, California

ATTEST:

_____(SEAL)
BYRON POPE
City Clerk

[Signatures continue]

CONTRACTOR: ROSA LOWINGER &
ASSOCIATES



ROSALOWINGER
Principal, Conservator

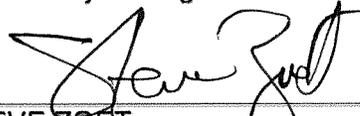
APPROVED AS TO FORM:



LAURENCE WIENER
City Attorney

APPROVED AS TO CONTENT:

MAHDI ALUZRI
Interim City Manager



STEVE ZOET
Director of Community Services



KARL KIRKMAN
Risk Manager

EXHIBIT A

Scope of Services

CONTRACTOR shall provide maintenance as described in this Exhibit on all nineteen (19) City-owned public outdoor sculptures listed in Exhibit B ("the Sculptures"). CONTRACTOR shall include one final conservation treatment and continued maintenance for the Sculptures.

A. STRATEGY:

CONTRACTOR shall obtain the prior survey documentation from the CITY and review such documentation prior to conducting a revised survey. Information on the care of the Sculptures shall also be reviewed, if available.

The Sculptures shall be examined in situ by CONTRACTOR. The Sculptures shall be photographed overall from each side. Condition details shall be taken by CONTRACTOR.

Following the onsite examination, an addendum to the original condition report will be prepared for the Sculptures. The addendum will be written in prose form and will describe the present condition of the Sculptures noting changes from the prior report, issues related to upgrading disaster protection, and issues about siting with particular attention to matters such as overhanging trees, proximity to sprinklers, and lack of proper lighting that are exacerbating noted conditions.

Proposed conservation treatments shall be outlined in writing for the Sculptures. Where no treatment is required, this will be noted.

A general report of 3-5 pages shall be written to accompany the revised individual condition reports. This document will summarize the findings. Included will be a prose summary of overall changes in the condition of the Sculptures, a prioritization of the outlined treatments, a general maintenance schedule for the Sculptures and a strategy for disaster mitigation and protection.

As part of this written report, CONTRACTOR shall provide the CITY with sample forms for recording damage and maintenance that is carried out by the CITY.

One hard copy of the report and one digital copy (on flash drive or DVD) of the report shall be submitted to the CITY. The hard copy will contain selected images. The Sculptures will be documented with approximately 10 clear, annotated images apiece. CITY may request that the report be submitted in a different manner.

EXHIBIT B

SCHEDULE OF PAYMENT AND RATES

TITLE OF ARTWORK AND MAINTENANCE COSTS:

1. Untitled Fletcher Benton	\$2,255
2. Conversation by Alex McPae	\$935
3. Cougar III by Gwynn Murrill	\$685
4. Erratic by Roxy Paine	\$795
5. Home by Charles Arnoldi	\$935
6. Hunter & Hounds by Henri Alfred Marie Jacquemart	\$880
7. Hymn of Life: Tulips by Yayoi Kusama	\$2,090
8. Monumental Torso of Walking Man by Auguste Rodin	\$575
9. Playground by Tony Smith	\$685
10. Sisyphus by Alexander Liberman	\$1,925
11. Sitting Figure on Short Bench, Magdalena Abokanowicz	\$575
12. Spiral of Life by Baile Oaks	\$1,175
13. Spiritual Flight by Elijah David Herschler	\$2,255
14. Drummer by Barry Flanagan	\$795
15. Torso by Robert Graham	\$795
16. Celluloid by Merrell Gage	\$3,850
17. Endless III by Jaume Plensa	\$1,870
18. Millard Sheets Mural	\$3,840
19. Obelisk by Jan Brown	N/A
Total:	\$26,915

CONSERVATION COST:

1. Obelisk by Jan Brown	\$18,990
2. Hymn of Life: Tulips	\$38,300

CONTINGENCY COSTS

Not to exceed: \$10,000

(Subject to pre-approval by CITY)

TOTAL COSTS

Not to exceed: \$94,205.00

CITY shall compensate CONTRACTOR for the satisfactory completion of services required by this Agreement based on the following rates:

Maintenance Treatments:

Total fixed fee for the maintenance of nineteen (19) sculptures, including labor, materials, and equipment rentals in an amount not to exceed \$26,915.00.

Conservation Treatments:

Total fixed fee for the conservation treatment of two (2) sculptures, including labor, materials, and equipment rental in the amount of \$57,290.00.

Contingency:

CITY shall compensate CONTRACTOR for contingency services outside the scope set forth in Exhibit A and subject to the prior written approval of CITY in an amount not to exceed \$10,000.00 at the hourly rates listed below.

Principal or Senior Conservator - \$125.00 per hour

Associate or Assistant Conservator - \$100.00 per hour

Chief or Senior Conservation Technician - \$80.00 per hour

Materials- Cost + 7%

EXHIBIT C

CERTIFICATE OF INSURANCE

This is to certify that the following endorsement is part of the policy(ies) described below :

NAMED INSURED _____ COMPANIES AFFORDING COVERAGE
 ADDRESS _____
 A.
 B.
 C.

COMPANY (A.B.C.)	COVERAGE	POLICY NUMBER	EXPIRATION DATE	B.I.	LIMITS P.D.	AGGREGATE
	AUTOMOBILE LIABILITY					
	GENERAL LIABILITY					
	PRODUCTS/COMPLETED OPERATIONS					
	BLANKET CONTRACTUAL					
	CONTRACTOR'S PROTECTIVE					
	PERSONAL INJURY					
	EXCESS LIABILITY					
	WORKER'S COMPENSATION					

It is hereby understood and agreed that the City of Beverly Hills, its City Council and each member thereof and every officer and employee of the City shall be named as joint and several assureds with respect to claims arising out of the following project or agreement:

It is further agreed that the following indemnity agreement between the City of Beverly Hills and the named insured is covered under the policy: Contractor agrees to indemnify, hold harmless and defend City, its City Council and each member thereof and every officer and employee of City from any and all liability or financial loss resulting from any suits, claims, losses or actions brought against and from all costs and expenses of litigation brought against City, its City Council and each member thereof and any officer or employee of City which results directly or indirectly from the wrongful or negligent actions of contractor's officers, employees, agents or others employed by Contractor while engaged by Contractor in the (performance of this agreement) construction of this project.

It is further agreed that the inclusion of more than one assured shall not operate to increase the limit of the company's liability and that insurer waives any right of contribution with insurance which may be available to the City of Beverly Hills.

In the event of cancellation or material change in the above coverage, the company will give 30 days written notice of cancellation or material change to the certificate holder.

Except to certify that the policy(ies) described above have the above endorsement attached, this certificate or verification of insurance is not an insurance policy and does not amend, extend or alter the coverage afforded by the policies listed herein. Notwithstanding any requirement, term, or condition of any contract or other document with respect to which this certificate or verification of insurance may be issued or may pertain, the insurance afforded by the policies described herein is subject to all the terms, exclusions and conditions of such policies.

DATE : _____ BY : _____

 Authorized Insurance Representative
 TITLE : _____
 AGENCY : _____ Address : _____

