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RESOLUTION NO. 2011-08

A RESOLUTION OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO THE ART-IN-PUBLIC PLACES (AIPP) PROGRAM, ACCEPTING THE RECOMMENDATION FROM THE AIPP ADVISORY BOARD TO APPROVE THE PUBLIC ART WORK ENTITLED "BALANCE OF LIFE" AS DESIGNED BY JOSHUA WIENER TO MEET THE AIPP REQUIREMENTS FOR THE TRAFFIC ROUNDABOUT, LOCATED AT THE INTERSECTION OF SW 168 STREET AND SW 87TH AVENUE; AUTHORIZING THE VILLAGE MANAGER TO ISSUE A PURCHASE ORDER AND APPROVE EXPENDITURE OF FUNDS FROM THE ART-IN-PUBLIC PLACES FUND IN AN AMOUNT NOT TO EXCEED \$50,000; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, on October 1st, 2007, the Mayor and Village Council established the Art-in-Public-Places Program (AIPP) via Resolution 07-05, designed to promote the general welfare by encouraging pride in the community, increasing property values, enhancing the quality of life through artistic opportunities, uniting the community through shared cultural experiences, and creating a cultural legacy for future generations through the collection and exhibition of high-quality art pieces that reflect diverse styles, chronicling history through the collection of artifacts, documents and memorabilia; and,

WHEREAS, as part of the program, an advisory board was created to oversee the public education, and curatorial aspects of the program; and,

WHEREAS, a public call was issued through a Request for Qualifications (RFQ) to artists. The Village was fortunate to receive numerous submissions from artists from across the country. The top four candidates were selected to design a proposal incorporating an artistic art element to the obelisk and fountain located at the roundabout in which each artist(s) received a stipend in the amount of \$1000 for their designs; and,

WHEREAS, the Board reviewed and scored the design proposal submitted, and selected Joshua Wiener's design proposal entitled "Balance of Life" dated stamped received January 3rd, 2011 to be installed at the new roundabout, located at the intersection of SW 168 Street and SW 87th Avenue; and

WHEREAS, the AIPP Board has determined that the proposed public artwork meets the general criteria of the AIPP program pursuant to Section 30-160.5 "Selections of Works of Art" in that the proposed public artwork is found to be appropriate to the site and the surrounding neighborhood and that it is not intrusive in nature; and,

WHEREAS, The Advisory Board finds the proposed location to be highly visible and accessible to pedestrian, visitors and that it reflects the cultural ethnic diversity of the Village and South Florida; and,

1 **WHEREAS**, at the direction of the Mayor and Village Council the Advisory Board was
2 asked to bring forth the top three (3) proposals from different artist; and,
3

- 4 1. Joshua Wiener
- 5 2. Augustina Droze and Rebecca Thompson
- 6 3. Stephanie Jaffe Werner
- 7

8 **WHEREAS**, the proposed artwork will be the Village's third public art installation.
9

10 **NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND VILLAGE**
11 **COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, AS FOLLOWS:**
12

13 **Section 1.** The Mayor and Village Council hereby accepts the recommendation of the
14 Art-in-Public-Places Advisory Board to approve the design proposal for the public artwork entitled
15 "Balance of Life" as designed by Joshua Wiener dated stamped received January 3rd, 2011, to be
16 installed at the new roundabout located at the intersection of SW 168 Street and SW 87th Avenue, in
17 accordance with the provisions of the AIPP Ordinance with the following conditions:
18

- 19 1. That a plaque or equivalent form of permanent signage acknowledging the artist, other
20 design professionals involved in the project and the Village of Palmetto Bay must be sited in
21 a publicly accessible location near the art work. The physical dimensions of the plaque
22 should allow for the utmost legibility of the information contained on it, and should vary
23 appropriately with the scale of the artwork and the site. It should not, however, intrude on
24 the physical artwork. The plaque should include:
25

26 Name of Artist(s)
27 Title of Art Work
28 Date of Art Work Completion
29 AIPP Advisory Board
30 Village of Palmetto Bay Art-in-Public Places Collection
31

32 Final plaque layout shall be subject to the Department of Planning and Zoning approval.
33

- 34 2. That the proposed public artwork shall comply with the requirements of all other applicable
35 departments/agencies as part of the Village of Palmetto Bay building permit submittal
36 process.
37

38 **Section 2.** The Village Manager is authorized to enter into an agreement with the
39 selected artist to provide for the execution and installation of the proposed artwork at the
40 new roundabout in an amount not to exceed \$50,000. The standard Professional Artist
41 Services Agreement between the Village of Palmetto Bay's Art in Public Places Program and
42 the selected artist is provided in Exhibit 1.
43

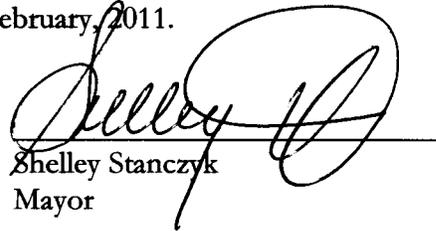
44 **Section 3.** This resolution shall take effect immediately upon approval.
45

1 **PASSED and ADOPTED** this 7th day of February, 2011.

2
3 Attest:

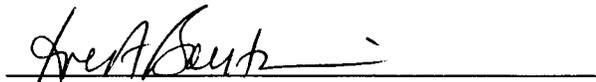


4 Meghan Alexander
5 Village Clerk



Shelley Stanczyk
Mayor

6
7
8 APPROVED AS TO FORM:

9
10
11 

12
13 Eve A. Boutsis,
14 Village Attorney

15
16
17 **FINAL VOTE AT ADOPTION:**

18 Council Member Patrick Fiore YES

19 Council Member Howard Tendrich YES

20 Council Member Joan Lindsay YES

21 Vice-Mayor Brain W. Pariser YES

22 Mayor Shelley Stanczyk YES



**PROFESSIONAL ARTIST SERVICES AGREEMENT
BETWEEN
VILLAGE OF PALMETTO BAY'S ART IN PUBLIC PLACES PROGRAM
AND
JOSHUA WIENER**

This Professional Artist Services Agreement For Artist Services Under The Village's Art In Public Places Program, is made and entered into this 7 day of February, 2011, by and between the Village of Palmetto Bay, and **Joshua Wiener**, hereinafter referred to as the "Artist".

WITNESSETH:

WHEREAS, the Village is now implementing a public art program as set forth in Ordinance 07-21, allocating certain funds for the acquisition of art works for public places and authorizing the Art-in-Public Places Trust to approve the selection of artists and make payments for the design, execution and installation of works of art; and,

WHEREAS, funds for art have been allocated in accordance with Ordinance 07-25 from the Art-in-Public Places Fund; and procedures duly adopted by the Village; and,

WHEREAS, the Artist was selected by the Art-in-Public Places Advisory Board through procedures duly adopted, by the Village approving a Proposal Contract with the Artist as set forth herein; and,

WHEREAS, both parties wish the integrity and clarity of the Artist's ideas in the work of art to be maintained,

NOW THEREFORE, in consideration of the mutual covenants of the parties set forth in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and the ability of the artist to participate in the Village's Art in Public Places Program pursuant to Ordinance 30-160, the artist agree as follows:

Section 1. Definitions. The words and terms as used in this Agreement shall have the following meanings unless some other meaning is plainly and clearly set forth:

"**Artist**" shall mean Joshua Wiener.

"**Board**" shall mean Village of Palmetto Bay's Art-in-Public Places Advisory Board.

"**Consultants**" shall mean design, engineering or other professional consultants contracted by the Village with which the "Artist" may be required to interact for purposes of completing the "Services" as described in this Agreement.

"Construction Manager" shall mean Edward Silva, AIA the entity appointed by the Village for the construction of the project with which the "Artist" may be required to interact for purposes of completing the "Services" as described in this Agreement.

"Director" shall mean the Director of the Department of Planning and Zoning of the Village of Palmetto Bay.

"Proposal" shall mean the artwork suggested by the Artist and its visual/written documentation.

"Services" shall mean the Scope of Services described in Article I of this Agreement.

"Subcontractor" shall mean any entity retained by the Artist for activities other than the creative and artistic portions of the work.

"Village" shall mean Village of Palmetto Bay, Florida.

Section 2. Scope of Work.

2.1 The Artist has already received a professional artist services agreement, in which the artist was to develop and submit to the Village a design proposal incorporating an artistic element to the existing obelisk and fountain located at the junction of Richmond Drive and Galloway Road in Palmetto Bay, Florida (the "premises").

2.2 The artwork is being installed at the premises is a part of the Village's Art in Public Places Program (AIPP).

2.3. Artist affirms that s/he has created the referenced art work, and expressly waives the rights that may be waived under applicable state and federal laws relating to granting to the Village an unlimited, perpetual, non-exclusive, royalty-free, irrevocable license to reproduce and distribute two-dimensional reproductions of the artwork for Village-related purposes, and grant to the Village the exclusive irrevocable ownership rights in any trademark, service mark, or trade dress rights regarding the artwork.

2.4. The Artist I warrants that no one else has a legal owner of any right, title and interest in the artwork, including all related intellectual property interests such as trademarks and the copyright, and that the artist has the full right and authority to enter this agreement and ability to grant the rights granted in this agreement.

2.5. The artist understands that Village Council approval of the artwork shall be deemed to be a grant of the artist for authorization by third-parties to review and reproduce documents provided by the artist to the Village which are deemed to be public records pursuant to the public records laws of the state. The Village shall also have the option of referring to the name and title of the artist and artwork in reproductions.

2.6. The Artist expressly release and hold harmless the parties listed below: The Village Council, AIPP Board Members, and Village staff, from liability for all damages to or from the reproduction of the art work as provided herein. This provision shall survive the termination of this agreement.

2.7. The Village, and the artist shall create a maintenance schedule and coordinate any needed repairs of the art piece due to damage – whether from the elements, time, graffiti, or other source of damage to the piece. Maintenance shall comply with the terms and conditions of Ordinance 30-160.14.

2.8. The provisions of Section One is binding on the artist, his/her heirs, legal representatives, successors, subcontractors, vendors, and assigns. The provisions of this agreement will continue in full force and effect even after the termination of the AIPP program.

2.9. The Artist shall furnish all labor, materials, equipment, machinery, tools, apparatus, and transportation and perform all of the work shown in Exhibit 1 and shall do everything required by this contract and any other contract documents.

2.10. The Contract time shall start to run on the commencement date of the Notice to Proceed and work shall commence within five (5) days of the Notice to Proceed.

2.11. Before undertaking each part of the Work, the Artist shall carefully study and compare the Contract Documents and check and verify pertinent figures shown thereon and all applicable field measurements. The Artist shall promptly report in writing to the Building and Capital Improvements Director any conflict, error, or discrepancy which the Artist may discover and shall obtain a written interpretation or clarification from the Building and Capital Improvements Director before proceeding with any Work affected thereby.

2.12. A preconstruction conference attended by the Artist, the Building and Capital Improvements Director and others as appropriate will be held to discuss the Work in accordance with the applicable procedures specified in the General Requirements. At least seven (7) days before the first Pre-Construction Meeting, a conference attended by the Artist, the Building Official, and others as appropriate, the Artist will submit the following documents, if required, for the Building Official's review: Construction Schedule, Schedule of Values, MOT Plan (if applicable), Staging Plan, Mobilization Plan, submitted in accordance with the General Requirements.

2.13 Ownership Of Instruments Of Service. Upon completion of the Services, all designs and other data, including the model, developed by the Artist and delivered to the Board for the purpose of this Agreement, shall become the property of the Village. All data as described herein shall be delivered to the Director prior to completion of the Agreement and final payment to the Artist. The Village does not intend to own the copyright of the Work.

2.14 Warranty Of Originality. The Artist warrants that the tangible objects it delivers to the Village in the performance of this Agreement shall be the result of the artistic efforts of the Artist and that, unless otherwise stipulated, the Work shall be unique and an edition of one.

2.15 Publicity And News Releases. The Artist shall not during the performance of this Agreement disseminate publicity or news releases regarding this project or the Services without prior written approval of the Director.

Section 3. Contract Sum

3.1 The Village shall pay the Artist for the faithful performance of the contract, in lawful money of the United States, and subject to addition and deductions as provided in the contract documents.

3.2 Based upon the price shown in the Proposal heretofore submitted to the Village by the Artist, a copy of said Proposal being part of these contract documents, the aggregate amount of this contract is the lump sum of \$50,000. The Village shall also pay for permits, if applicable, in addition to the amount to Artist. The Village shall pay the selected Artist(s) a Fixed Fee for construction of the conceptual/schematic design services previously obtained. THE FIXED FEE SHALL CONSTITUTE FULL COMPENSATION FOR ALL SERVICES AND MATERIALS TO BE PERFORMED AND FURNISHED BY THE ARTIST UNDER THIS AGREEMENT, INCLUDING THE ARTIST'S FEE, ANY SUBCONTRACTED WORK, VENDORS, TRAVEL EXPENSES, AND/OR ANY RELATED OVERHEAD EXPENSES. The Artist's Fee includes one (1) working meeting for purposes of conducting site visit and/or meeting with the Project's Design Team and the Village as may be deemed appropriate to complete the Services outlined in this agreement, and one (1) meeting to present the final art piece before the Mayor and Village Council. The Village shall be the owner of the Artist Proposal and shall be entitled to reproduce and distribute the final artwork.

3.3 The Village shall pay the Artist the Fixed Fee for the art piece for the Project site in an amount of \$50,000 upon completion of the services, receipt of the artist's invoice, and verification and approval by the Village Manager, in accordance with the progress payment schedule below or as indicated in Exhibit 1 page 30 attached hereto.

3.4 Application For Progress Payment.

a. Unless otherwise prescribed by law, on the 25th of each month, or other agreed upon date, the Artist shall submit to the Building and Capital Improvements Director for review, an Application for Payment filled out and signed by the Artist covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract/Agreement Documents.

b. The Application for Payment shall identify, as a subtotal, the amount of the Artist's Total Earnings to Date, plus the Value of Materials Stored at the Site

which have not yet been incorporated in the Work, and less a deductive adjustment for materials installed which were not previously incorporated in the Work, but for which payment was allowed under the provisions for payment for Materials Stored at the Site, but not yet incorporated in the Work.

c. The Net Payment Due to the Artist shall be the above-mentioned subtotal from which shall be deducted the amount of retainage specified herein, and the total amount of all previous payments made to the Artist. From each progress payment made prior to the time Substantial Completion of the Work has been reached, the Village shall retain eight percent (8%), if required, of the amount otherwise due after deduction of any amounts as provided in this Agreement. If the Village chooses to use this retainage provision:

1. at the time the Work is fifty percent (50%) complete and thereafter, the Village may choose to withhold no more retainage and pay the Artist the full amount of what is due on account of subsequent progress payments;
2. once each early finishing trade Subcontractor has completed its work and that work has been accepted by the Village, the Village may release final retention on such work;
3. in lieu of retainage, the Artist may furnish securities, acceptable to the Village, to be held by the Village. The interest on such securities shall accrue to the Artist;
4. the Village may, in its sole discretion, reduce the amount to be retained at any time.

d. The Value of Materials Stored at the Site shall be an amount equal to the specified percent of the value of such materials as set forth in the Supplementary Conditions. Said amount shall be based upon the value of all acceptable materials and equipment not incorporated in the Work but delivered and suitably stored at the site or at another location agreed to in writing; provided, each such individual item has a value of more than \$5,000 and will become a permanent part of the Work. The Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that the Artist has received the materials and equipment free and clear of all liens, charges, security interests, and encumbrances (which are hereinafter in these General Conditions referred to as "Liens") and evidence that the materials and equipment are covered by appropriate property insurance and other arrangements to protect the Village's interest therein, all of which will be satisfactory to the Village.

3.5 Artist's Warranty Of Title. The Artist warrants and guarantees that title to all Work, materials, and equipment covered by an Application for Payment, whether

incorporated in the Work or not, will pass to the Village no later than the time of final payment free and clear of all liens.

3.6 Review Of Applications For Progress Payment.

a. The Building and Capital Improvements Director will, within seven (7) days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to the Village, or return the Application to the Artist indicating in writing the Building Official's reasons for refusing to recommend payment. In the later case, the Artist may make the necessary corrections and resubmit the Application. Thirty days after presentation of the Application for Payment with the Building Official's recommendation, the amount recommended will (subject to all the conditions of this Contract/Agreement) become due and when due will be paid by the Village to the Artist.

b. The Village may refuse to make payment of the full amount recommended by the Building and Capital Improvements Director because claims have been made against the Village on account of the Artist's performance of the Work or Liens have been filed in connection with the Work or there are other items entitling the Village to a credit against the amount recommended, but the Village must give the Artist written notice within seven (7) days (with a copy to the Building Official) stating the reasons for such action.

3.7 Partial Utilization.

a. The Village shall have the right to utilize or place into service any item of equipment or other usable portion of the Work prior to completion of the Work. Whenever the Village plans to exercise said right, the Artist will be notified in writing by the Village, identifying the specific portion or portions of the Work to be so utilized or otherwise placed into service.

b. It shall be understood by the Artist that until such written notification is issued, all responsibility for care and maintenance of all items or portions of the Work to be partially utilized shall be borne by the Artist. Upon issuance of said written notice of partial utilization, the Village will accept responsibility for the protection and maintenance of all such items or portions of the Work described in the written notice.

c. The Artist shall retain full responsibility for satisfactory completion of the Work, regardless of whether a portion thereof has been partially utilized by the Village and the Artist's one year correction period shall commence only after the date of Substantial Completion for the Work.

3.8 Substantial Completion. When the Artist considers the Work ready for its intended use the Artist shall notify the Village and the Building and Capital

Improvements Director in writing that the Work is substantially complete and request that the Building and Capital Improvements Director prepare a Certificate of Substantial Completion/Notice of Completion. Within a reasonable time thereafter, the Village, the Artist, and the Building and Capital Improvements Director shall make an inspection of the Work to determine the status of completion. If the Building and Capital Improvements Director does not consider the Work substantially complete, the Building and Capital Improvements Director will notify the Artist in writing giving the reasons therefor. If the Building and Capital Improvements Director considers the Work substantially complete, the Building and Capital Improvements Director will prepare and deliver to the Village for its execution and recordation the Certificate of Substantial Completion/Notice of Completion signed by the Building and Capital Improvements Director and Artist, which shall fix the date of Substantial Completion. As applicable, there shall be attached to the Certificate/Notice a list of items to be completed or corrected before final payment.

3.9 Final Application For Payment. After the Artist has completed all correction Work referred above and delivered all maintenance and operating instructions, schedules, guarantees, Bonds, certificates of inspection, marked-up record documents (as provided in the General Requirements) and other documents, all as required by the Contract/Agreement Documents, and after the Building and Capital Improvements Director has indicated that the Work is acceptable, the Artist may make application for final payment following the procedure for progress payments. The final Application for Payment shall be accompanied by all documentation called for in the Contract/Agreement Documents, together with complete and legally effective releases or waivers (satisfactory to the Village) of all liens arising out of or filed in connection with the Work.

3.10 Final Payment And Acceptance. If, on the basis of the Building Official's observation of the Work during construction and final inspection, and the Building Official's review of the final Application for Payment and accompanying documentation, all as required by the Contract/Agreement Documents, the Building and Capital Improvements Director is satisfied that the Work has been completed and the Artist's other obligations under the Contract/Agreement Documents have been fulfilled, the Building and Capital Improvements Director will, within fourteen (14) days after receipt of the final Application for Payment, indicate in writing the Building Official's recommendation of payment and present the Application to the Village for payment.

After acceptance of the Work by the Village's governing body, the Village will make final payment to the Artist of the amount remaining after deducting all prior payments and all amounts to be kept or retained under the provisions of the Contract/Agreement Documents, including the following items:

- a. Liquidated damages, as applicable.
- b. Two times the value of outstanding items of correction Work or punch list items indicated on the Certificate of Substantial Completion/Notice of Completion as being yet uncompleted or uncorrected, as applicable. All

such Work shall be completed or corrected to the satisfaction of the Village within the time stated on the Certificate of Substantial Completion/Notice of Completion, otherwise the Artist does hereby waive any and all claims to all monies withheld by the Village to cover the value of all such uncompleted or uncorrected items.

3.11 Release Of Retainage And Other Deductions.

- a. After executing the necessary documents to initiate the lien period, and not more than forty-five (45) days thereafter (based on a 30-day lien filing period and 15-day processing time), the Village will release to the Artist the retainage funds withheld pursuant to the Agreement, less any deductions to cover pending claims against the Village as provided above.
- b. After filing of the necessary documents to initiate the lien period, the Artist shall have thirty (30) days to complete any outstanding items of correction Work remaining to be completed or corrected as listed on a final punch list made a part of the Certificate of Substantial Completion/Notice of Completion. Upon expiration of the 45 days, referred to in subsection 4.4.9b. above, the amounts withheld pursuant to the provisions of Paragraph 4.4.9b. herein, for all remaining Work items will be returned to the Artist; provided, that said Work has been completed or corrected to the satisfaction of the Village within said thirty (30) days. Otherwise, the Artist does hereby waive any and all claims for all monies withheld by the Village under the Contract/Agreement to cover two (2) times the value of such remaining uncompleted or uncorrected items.

3.12 Artist's Continuing Obligation. The Artist's obligation to perform and complete the Work in accordance with the Contract/Agreement Documents shall be absolute. Neither recommendation of any progress or final payment by the Building Official, nor the issuance of a Certificate of Substantial Completion/Notice of Completion, nor any payment by the Village to the Artist under the Contract/Agreement Documents, nor any use or occupancy of the Work or any part thereof by the Village, nor any act of acceptance by the Village nor any failure to do so, nor any review of a Shop Drawing or sample submittal, will constitute an acceptance of Work not in accordance with the Contract/Agreement Documents or a release of the Artist's obligation to perform the Work in accordance with the Contract/Agreement Documents.

3.13 Final Payment Terminates Liability Of Village. Final payment is defined as the last progress payment made to the Artist for earned funds, less retainage as applicable, less deductions listed above. The acceptance by the Artist of the final payment shall be a release of the Village and its agents from all claims of liability to the Artist for anything done or furnished for, or relating to, the Work or for any act or neglect of the Village or of any person relating to or affecting the Work, except demands against the Village for the remainder, if any, of the amounts kept or retained under this agreement; and

excepting pending, unresolved claims filed prior to the date of the Certificate of Substantial Completion/Notice of Completion.

Section 4. Contractor's Acceptance Of Conditions

4.1 The Artist hereby agrees that he/she has carefully examined the sites for the work to be performed and has fully satisfied himself/herself that such sites are correct and suitable ones for the work to be performed and he/she assumes full responsibility therefore. The provisions of this agreement shall control any inconsistent provisions contained in the specifications.

4.2 It is distinctly understood and agreed that the passing, approval and/or acceptance of any part of the work material by the Village, its Engineer, or by any agent or representative as in compliance with the terms of this agreement and/or any other document covering said work, shall not operate as a waiver by the Village of strict compliance with the terms of this agreement; and the Village may require the Artist and/or his/her insurer to repair, replace, restore and/or make to comply strictly and in all things with this agreement and all of said work and/or services which within a period of one year from and after the date of the padding, approval, and/or acceptance of requirements of attached Exhibit 1. This provision shall not apply to materials or equipment normally expected to deteriorate or wear out and become subject to normal repair and replacement before their condition is discovered. The Artist shall not be required to do normal maintenance work under the guarantee provisions. Failure on the part of the Artist and/or his/her insurer, immediately after Notice to either, to repair or replace any such defective materials and workmanship shall entitle the Village, if it sees fit, to replace or repair the same and recover the reasonable cost of such replacement and/or repair from the Artist and/or his insurer, who shall in any event be jointly and severally liable to the Village for all damage, loss, and expense caused to the Village by reason of the Artist's breach of this agreement and/or his/her failure to comply strictly and in all things with this agreement.

4.3 The Contract/Agreement Documents comprise the entire agreement between the Village and the Artist concerning the Work. The Contract/Agreement Documents are complementary; what is called for by one is as binding as if called for by all. The Contract/Agreement Documents will be construed in accordance with the law of the place of the Project.

4.4 It is the intent of the Contract/Agreement Documents to describe the Work, functionally complete, to be constructed in accordance with the Contract/Agreement Documents. Any Work, materials, or equipment that may reasonably be inferred from the Contract/Agreement Documents as being required to produce the intended result shall be supplied whether or not specifically called for. When words which have a well-known technical or trade meaning are used to describe Work, materials, or equipment such words shall be interpreted in accordance with that meaning. Reference to standard specifications, manuals, or codes of any technical society, organization, or association, or to the Laws or Regulations of any governmental authority, whether such reference be

specific or by implication, shall mean the latest standard specification, manual, code, or Laws or Regulations in effect at the time of opening of Bids, except as may be otherwise specifically stated. However, no provision of any referenced standard specification, manual, or code (whether or not specifically incorporated by reference in the Contract/Agreement Documents) shall be effective to change the duties and responsibilities of the Village, the Artist, or the Building and Capital Improvements Director or any of their consultants, agents, or employees from those set forth in the Contract/Agreement Documents.

4.5 If, during the performance of the Work, the Artist finds a conflict, error, or discrepancy in the Contract/Agreement Documents, the Artist shall so report to the Building and Capital Improvements Director in writing at once and before proceeding with the Work affected thereby, shall obtain a written interpretation, clarification, or correction from the Building Official.

4.6 Neither the Artist, nor any Subcontractor or Supplier, nor any other person or organization performing any of the Work under a Contract/Agreement with the Village shall have or acquire any title to or ownership rights in any of the Drawings, Technical Specifications, or other documents used on the Work, and they shall not reuse any of them on the extensions of the Project or any other project without written consent.

4.7 Availability Of Lands. The Village shall furnish, as indicated in the Contract/Agreement Documents, the lands upon which the Work is to be performed, rights-of-way and easements for access thereto, and such other lands which are designated for the use of the Artist. Easements for permanent structures or permanent changes in existing facilities will be obtained and paid for by the Village, unless otherwise provided in the Contract/Agreement Documents. Nothing contained in the Contract/Agreement Documents shall be interpreted as giving the Artist exclusive occupancy of the lands or rights-of-way provided. The Artist shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment; provided, that the Artist shall not enter upon nor use any property not under the control of the Village until a written temporary construction easement agreement has been executed by the Artist and the property Village, and a copy of said easement furnished to the Building and Capital Improvements Director prior to said use; and, neither the Village nor the Building and Capital Improvements Director shall be liable for any claims or damages resulting from the Artist's unauthorized trespass or use of any such properties.

4.8 Differing Site Conditions. The Artist shall notify the Building and Capital Improvements Director in writing of the following unforeseen conditions, hereinafter called differing site conditions, promptly upon their discovery (but in no event later than fourteen (14) days) and before they are disturbed:

- a. Subsurface or latent physical conditions at the site of the Work differing materially from those indicated, described, or delineated in the Contract/Agreement Documents including; and

- b. Unknown physical conditions at the site of the Work of an unusual nature differing materially from those ordinarily encountered and generally recognized as inherent in Work of the character provided for in the Contract/Agreement.

The Building and Capital Improvements Director will review the pertinent conditions, determine the necessity of obtaining additional explorations or tests with respect thereto and advise the Village in writing of the Building Official's findings and conclusions. The Artist's failure to give notice of differing site conditions within fourteen (14) days of their discovery or before they are disturbed shall constitute a waiver of all claims in connection therewith, whether direct or consequential in nature.

4.9 Unless otherwise provided in the Summary of Work, the Artist shall obtain all construction permits and licenses from the agencies having jurisdiction, including the furnishing of insurance and bonds if required by such agencies. The enforcement of such requirements under this Contract/Agreement shall not be made the basis for claims for additional compensation. If Artist fails the regulatory inspections, Artist shall pay for the re-inspection fees necessary for the prosecution of the Work. Artist shall not commence any work without the appropriate permit. Copy of the respective permits shall be submitted to the Building and Capital Improvements Director prior to commencement of Work.

4.10 The Artist shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Contract/Agreement Documents for use in the performance of the Work and if to the actual knowledge of the Village or the Building and Capital Improvements Director its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by the Village in the Contract/Agreement Documents. The Artist shall indemnify, defend and hold harmless the Village and the Building and Capital Improvements Director and anyone directly or indirectly employed by either of them from and against all claims, damages, losses, and expenses (including attorneys' fees and court costs) arising out of any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract/Agreement Documents, and shall defend all such claims in connection with any alleged infringement of such rights.

4.11 Laws And Regulations. The Artist shall observe and comply with all federal, state, and local laws, ordinances, codes, orders, and regulations which in any manner affect those engaged or employed on the Work, the materials used in the Work, or the conduct of the Work. If any discrepancy or inconsistency should be discovered in this Contract/Agreement in relation to any such law, ordinance, code, order, or regulation, the Artist shall report the same in writing to the Building Official. The Artist shall indemnify, defend, and hold harmless the Village, the Building Official, and their

officers, agents, and employees against all claims or liability arising from violation of any such law, ordinance, code, order, or regulation, whether by Artist or by its employees or subcontractors. Any particular law or regulation specified or referred to elsewhere in the Contract/Agreement Documents shall not in any way limit the obligation of the Artist to comply with all other provisions of federal, state, and local laws and regulations. Where an individual State act on occupational safety and health standards has been approved by Federal authority, then the provisions of said State act shall control.

4.12 Taxes. The Artist shall pay all sales, consumer, use, and other similar taxes required to be paid by the Artist in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work.

4.13 Use Of Premises. The Artist shall confine construction equipment, the storage of materials and equipment, and the operations of workers to (1) the Project site, (2) the land and areas identified in and permitted by the Contract/Agreement Documents, and (3) the other land and areas permitted by Laws and Regulations, rights-of-way, permits, and easements. The Artist shall assume full responsibility for any damage to any such land or area, or to the Village or occupant thereof or of any land or areas contiguous thereto, resulting from the performance of the Work. Should any claim be made against the Village or the Building and Capital Improvements Director by any such Village or occupant because of the performance of the Work, the Artist shall promptly attempt to settle with such other party by agreement or otherwise resolve the claim through litigation. The Artist shall, to the fullest extent permitted by Laws and Regulations, indemnify, defend, and hold the Village and the Building and Capital Improvements Director harmless from and against all claims, damages, losses, and expenses (including, but not limited to, fees of Building Official, engineers, attorneys, and other professionals, and court costs) arising directly, indirectly, or consequentially out of any action, legal or equitable, brought by any such other party against the Village or the Building and Capital Improvements Director to the extent based on a claim arising out of the Artist's performance of the Work.

4.14 Safety And Protection. the Artist shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. The Artist shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:

- a. all employees on the Work and other persons and organizations who may be affected thereby;
- b. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the site; and
- c. other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, mechanical equipment, electronics, instrumentation, and utilities not designated for removal, relocation, or replacement in the course of construction.

4.15 The Artist shall comply with all applicable Laws and Regulations (whether referred to herein or not) of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury, or loss and shall erect and maintain all necessary safeguards for such safety and protection. The Artist shall notify owners of adjacent property and utilities when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property.

4.16 Indemnification. To the fullest extent permitted by Laws and Regulations, the Artist shall indemnify, defend, and hold harmless the Village; and its officers, directors, agents, and employees, against and from all claims and liability arising under, by reason of or incidentally to the Contract/Agreement or any performance of the Work, but not from the sole negligence or willful misconduct of the Village. Such indemnification by the Artist shall include but not be limited to the following:

- a. Liability or claims resulting directly or indirectly from the negligence or carelessness of the Artist, its employees, or agents in the performance of the Work, or in guarding or maintaining the same, or from any improper materials, implements, or appliances used in its construction, or by or on account of any act or omission of the Artist, its employees, or agents;
- b. Liability or claims arising directly or indirectly from bodily injury, occupational sickness or disease, or death of the Artist's or Subcontractor's own employees engaged in the Work resulting in actions brought by or on behalf of such employees against the Village;
- c. Liability or claims arising directly or indirectly from or based on the violation of any law, ordinance, regulation, order, or decree, whether by the Artist, its employees, or agents;
- d. Liability or claims arising directly or indirectly from the use or manufacture by the Artist, its employees, or agents in the performance of this Contract/Agreement of any copyrighted or uncopyrighted composition, secret process, patented or unpatented invention, article, or appliance, unless otherwise specifically stipulated in this Contract/Agreement;
- e. Liability or claims arising directly or indirectly from the breach of any warranties, whether express or implied, made to the Village or any other parties by the Artist, its employees, or agents;
- f. Liabilities or claims arising directly or indirectly from the willful misconduct of the Artist, its employees, or agents; and,
- g. Liabilities or claims arising directly or indirectly from any breach of the obligations assumed herein by the Artist.

The Artist shall reimburse the Village for all costs and expenses, (including but not limited to fees and charges of Building Official, engineers, attorneys, and other professionals, and court costs) incurred by said Village, and the Building Official in enforcing the provisions of this Section. The indemnification obligation under this

section shall not be limited in any way by any limitation of the amount or type of damages, compensation, or benefits payable by or for the Artist or any such subcontractor or other person or organization under workers' compensation acts, disability benefit acts, or other employee benefit acts.

4.17 Assignment Of Contract/Agreement. The Artist shall not assign, sublet, sell, transfer, or otherwise dispose of the Contract/Agreement or any portion thereof, or its right, title, or interest therein, or obligations thereunder, without the written consent of the Village except as imposed by law. If the Artist violates this provision, the Contract/Agreement may be terminated at the option of the Village. In such event, the Village shall be relieved of all liability and obligations to the Artist and to its assignee or transferee, growing out of such termination.

4.18 Suspension Of Work. In connection with the Village's right to stop Work or suspend Work, see Section 8, which deal with the Village's right to terminate services of the Artist under certain circumstances.

Section 5. Partial And Final Payments. In accordance with the provisions fully set forth herein and subject to additions and deductions as provided, the Village shall pay the Artist as follows:

5.1 Within 30 days after receipt of the Artist's request for payment by the Village, the Village shall make payments to the Artist on the lump sum amount established by this agreement for all work that has been performed strictly in accordance with this agreement and until such work has been accepted by the Village.

5.2 Upon submittal by the Artist of evidence satisfactorily to the Village that all payrolls, material bills and other costs incurred by the Artist in connection with the work have been paid in full, and also, after all guarantees that may be required in the specifications have been furnished and are found to be acceptable by the Village, payment on the account of this agreement shall be made within thirty (30) days after completion by the Artist of all work covered by this agreement and acceptance of such work by the Village.

Section 6. Term/Termination

6.1 Term of Agreement. This agreement shall commence on the date this instrument is fully executed by all parties and shall continue in full force and effect, unless and until terminated pursuant to section 6.2 or other applicable sections of this agreement. The project shall specify the period of service agreed to by the Village and Artist for services to be rendered under the project agreement.

6.2 Termination For Convenience. The Village may terminate this agreement for convenience at any time by giving thirty (30) days notice in writing to the Artist. The Artist will be paid for the value of service performed pursuant to the schedule contained in the statement of work, up to and including the termination date. Artist will be

permitted to complete on-going investigations and shall be paid for all satisfactory work completed. The Village shall not be liable for future profits or losses. In the event that the Village improperly terminates the agreement for default under paragraph 6.3, the termination shall be deemed a termination for convenience under this paragraph. In such a case, the Artist shall have no claims against the Village except: (1) for the value of Work performed up to the date the Agreement is terminated; and, (2) for the cost of materials and equipment on hand, in transit, or on definite commitment, as of the date the Agreement is terminated, which would be needed in the Work and which meet the requirements of the Contract/Agreement Documents. The value of Work performed and the cost of materials and equipment delivered to the site, as mentioned above, shall be determined by the Building and Capital Improvements Director in accordance with the procedure prescribed for the making of the final application for payment.

6.3 Termination For Default. The Village party may terminate this agreement prior to the expiration of the initial term or any subsequent renewal term on account of a material breach of the agreement, which has not been cured within ten (10) days from the date of receipt of written notice of breach from the party seeking termination. Artist is entitled to terminate as provided below. Termination shall be effective as of the end of the notice period in the case of any uncured material breach. Artist may terminate this agreement prior to the expiration of the initial term or any subsequent renewal term upon not less than ten (10) days prior written notice to the Village in the event that Artist is unable to complete the services identified in section 2 due to causes beyond Artist's control. The Village shall have no liability to the Artist for future profits or losses in the event of termination for default. The rights and remedies of the Village provided in this provision shall not be exclusive and are in addition to any other rights and remedies provided by law or under this agreement. Should Artist provide the Village with written notice of cancellation of agreement, Artist will be required to refund a pro-rata share of the compensation identified in section 2. It shall be considered a default by the Artist whenever Artist shall: (1) declare bankruptcy, become insolvent, or assign its assets for the benefit of its creditors; (2) fail to provide materials or workmanship meeting the requirements of the Contract/Agreement Documents; (3) disregard or violate provisions of the Contract/Agreement Documents or Building Official's instructions; (4) fail to prosecute the Work according to the approved progress schedule; or, (5) fail to provide a qualified superintendent, competent workmen, or materials or equipment meeting the requirements of the Contract/Agreement Documents. If the Artist fails to remedy the conditions constituting default within the time allowed, the Village may then issue the Notice of Termination. In the event the Agreement is terminated in accordance with this Paragraph, the Village may take possession of the Work and may complete the Work by whatever method or means the Village may select. The cost of completing the Work shall be deducted from the balance which would have been due the Artist had the Agreement not been terminated and the Work completed in accordance with the Contract/Agreement Documents. If such cost exceeds the balance which would have been due, the Artist shall pay the excess amount to the Village. If such cost is less than the balance which would have been due, the Artist shall not have claim to the difference.

6.4 Termination for Delay. If the project is suspended or the Artist's services are delayed by the Village for more than 90 consecutive days, the Artist may terminate this agreement by giving not less than 10 days written notice. The liability of the Village upon termination by the Artist for suspension or delay of this project shall be for the value of services performed pursuant to the schedule contained in the statement of work rendered by Artist to the time of termination by Artist. The Village shall not be liable for future profits or losses.

6.5 Termination for Lack of Funds. Notwithstanding any other provisions of the agreement, if the funds anticipated by the Village for the payment of work under this agreement are at any time not forthcoming, through the failure of the Village to appropriate funds, the failure of Miami-Dade County, the Florida Legislature, or the U.S. Congress to appropriate funds, or the refusal of the administrative branch of the federal or county government to release funds, or due to any other reason for the unavailability of funds in succeeding fiscal years, or the discontinuance or material alteration of the program under which funds are to be provided, the Village shall have the right to terminate the agreement without penalty by giving not less than 10 days written notice of the lack of available funding.

For any portion of the work that is funded by county, state, or federal appropriations or grants, the liability of the Village to Artist shall be limited to payment for services when payment is received by the Village from the county, state, or federal authority. The Village shall submit all required documents requesting payment within a reasonable time. The Village shall not be liable to Artist for work performed in the event that payment is not received by the Village from a county, state, or federal funding authority. This is a pay-when-paid clause.

6.6 Termination Of Agreement By Artist. The Artist may terminate the Agreement upon ten (10) days written notice to the Village, whenever: the Village should fail to pay the Artist any monies due him in accordance with the terms of the Contract/Agreement Documents and within 60 days after presentation to the Village by the Artist of a request therefor, unless within said 10-day period the Village shall have remedied the condition upon which the payment delay was based. In the event of such termination, the Artist shall have no claims against the Village except for those claims specifically enumerated, and as determined in accordance with the requirements of said paragraph.

Section 7. Warranties.

7.1 Warranty And Guarantee. The Artist warrants and guarantees to the Village and the Building and Capital Improvements Director that all Work will be in accordance with the Contract/Agreement Documents and will not be defective. Prompt notice of defects known to the Village or Building and Capital Improvements Director shall be given to the Artist. All defective Work, whether or not in place, may be rejected, corrected, or accepted as provided in this section.

7.2 One Year Correction Period.

a. If within one (1) after the date of Substantial Completion or such longer period of time as may be prescribed by Laws or Regulations or by the terms of any applicable special guarantee required by the Contract/Agreement Documents or by any specific provision of the Contract/Agreement Documents, any Work is found to be defective, the Artist shall promptly, without cost to the Village and in accordance with Village's written notification, either correct such defective Work, or, if it has been rejected by the Village, remove it from the site and replace it with non-defective Work. If the Artist does not promptly comply with the such notification, or in an emergency where delay would cause serious risk of loss or damage, the Village may have the defective Work corrected or the rejected Work removed and replaced, and all direct, indirect, and consequential costs and damages of such removal and replacement including but not limited to fees and charges of Building Official, engineers, attorneys and other professionals will be paid by the Artist.

b. Where defective Work (and damage to other Work resulting there from) has been corrected, removed or replaced under Paragraph 13.6, the correction period hereunder, with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

7.3 Acceptance Of Defective Work. If, instead of requiring correction or removal and replacement of defective Work, the Village prefers to accept the Work, the Village may do so. The Artist shall bear all direct, indirect, and consequential costs attributable to the Village's evaluation of and determination to accept such defective Work. If any such acceptance occurs prior to final payment, a Change Order will be issued incorporating the necessary revisions in the Contract/Agreement Documents with respect to the Work, and the Village shall be entitled to an appropriate decrease in the Contract/Agreement Price.

Section 8. Right To Withhold

8.1 If work under this agreement is not performed in accordance with the terms hereof, the Village has the right to withhold any payment due to the Artist, of any sums as the Village may deem sufficient to protect it against loss, or to ensure payment of claims, and, at its option, the Village may apply the sums in the manner as the Village may deem proper to secure itself or to satisfy the claims. The Village will provide Artist with 10 days prior written notice in the event that it elects to execute its right to withhold under this paragraph.

Section 9. Interest Payments

9.1 The Village shall make payment to Artist within 30 days of receipt of the original written invoice and sufficient backup documentation and acceptance of the work by the Village. Interest shall accrue on unpaid invoices as provided by section 218.74, Florida Statutes.

9.2 Artist shall not be entitled to any carrying charges or finance fees due to late payment by the Village.

Section 10. Survival Of Provisions

10.1 Any terms or conditions of either this agreement or any subsequent project agreement that require acts beyond the date of the term of either agreement, shall survive termination of the agreements, shall remain in full force and effect unless and until the terms or conditions are completed and shall be fully enforceable by either party.

Section 11. Ownership Of Documents/Deliverables

11.1 All finished or unfinished documents, including by not limited to, detailed reports, studies, plans, drawings, surveys, maps, models, photographs, specifications, digital files, and all other data prepared for the Village or furnished by the Artist pursuant to any project agreement, shall become the property of the Village, whether the project for which they are made is completed or not, and shall be delivered by Artist to the Village within five calendar days after receipt of written notice requesting delivery of said documents or digital files. The Artist shall have the right to keep one record set of the documents upon completion of the project, however, in no event shall the Artist, without the Village's prior written authorization, use, or permit to be used, any of the documents except for client or educational presentations or seminar use.

11.2 All subcontracts for the preparation of reports, studies, plans, drawings, specifications, digital files, or other data, entered into by the Artist for each specific project shall provide that all documents and rights obtained by virtue of the subcontracts shall become the property of the Village.

11.3 All final plans and documents prepared by the Artist shall bear the endorsement and seal of a person duly registered as a professional engineer, Building Official, landscape Building Official, professional geologist, or land surveyor, as appropriate, in the State of Florida and date approved and/or sealed. Artist shall within three business days of ascertaining or determining that the registered professional engineer, landscape Building Official, professional geologist or land surveyor is no longer affiliated with Artist or barred from practicing under his/her license, shall notify Village of the event and obtain the services of another, duly qualified and registered professional.

Section 12. Records/Audits

12.1 Artist shall maintain and require subcontractors to maintain, complete and correct records, books, documents, papers, and accounts pertaining to the specific project. Such records, books, documents, papers, and accounts shall be available at all reasonable times for examination and audit by the Village manager or any authorized Village representative with reasonable notice and shall be kept for a period of three (3) years after the completion of each project agreement. Incomplete or incorrect entries in such records, books, documents, papers, or accounts will be grounds for disallowance by or reimbursement to the Village of any fees or expenses based upon such entries. Disallowed fees will be paid when incomplete or incorrect entries are remedied to the satisfaction of the Village.

12.2 The Artist shall comply with Chapter 119, Florida Statutes, as applicable. Refusal of the Artist to comply with these provisions shall be grounds for immediate termination for cause by the Village of this agreement or any project agreement.

Section 13. Independent Contractor

13.1 The Artist is an independent contractor under this agreement and any project agreements and nothing in this agreement shall create any association, partnership, or joint venture between the parties, or any employer-employee relationship. Personal services provided by the Artist shall be by employees of the Artist and subject to supervision by the Artist, and not as officers, employees, or agents of the Village, personnel policies, tax responsibilities, social security, health insurance, employee benefits, purchasing policies, and other similar administrative procedures applicable to services rendered under this agreement or any project agreements shall be those of the Artist.

Section 14. Assignment; Amendments

14.1 This agreement shall not be assigned, transferred or otherwise encumbered, under any circumstances, by Artist, without prior written consent of the Village.

14.2 No modification, amendment, or alteration in the terms or conditions of this agreement shall be effective unless contained in a written documents executed with the same formality as this agreement.

Section 15. Indemnification/Hold Harmless

15.1 The Village shall not be held liable or responsible for any claims which may result from acts, errors or omissions of the Artist or its subcontractors, suppliers or laborers. In reviewing, approving or rejecting any submissions or acts of the Artist, the Village in no way assumes responsibility or liability for the acts, errors or omissions of the Artist or subcontractors.

15.2 The Artist shall not commence work under this agreement until it has obtained all insurance required by the Village. The Artist shall defend, indemnify and

hold harmless from any and all claims, liability, losses, expenses and causes of action arising out of a negligent act, error, or omission or misconduct of the Artist, or the Artist's subcontractors, suppliers and laborers incident to the performance of the Artist's services under this agreement. The Artist shall pay all claims, losses, fines, penalties, costs and expenses of any nature whatsoever resulting from its intentional misconduct or negligence.

15.3 Pursuant to section 768.28, Florida Statutes, the Artist shall indemnify and hold harmless the Village and its officers and employees, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorney's fees, to the extent such liabilities, damages, losses, and costs are caused by the negligence, recklessness, or intentionally wrongful conduct of the Artist or any persons employed or utilized by the Artist in the performance of this or any project agreement.

Section 16. Insurance

16.1 The Artist shall secure and maintain throughout the duration of this agreement and any project agreement, insurance of such type and in such amounts necessary to protect its interest and the interest of the Village against hazards or risks of loss as specified below. The insurance coverage shall include a minimum of:

- a. Comprehensive General Liability Insurance: with broad form endorsement, including automotive liability, completed operations and products liability, contractual liability, severability of interest with cross liability and property damage liability with limits of \$50,000.00 combined single limit per occurrence for bodily injury and property damage. The policy or policies shall name Village as additional insured and shall reflect the hold harmless provision contained herein. Coverage must be afforded in a form not more restrictive than the latest edition of the Commercial General Liability Policy without restrictive endorsements, as filed by the Insurance Services Office, and must include: (1) Premises and/or Operations; (2) Independent contractors and Products and/or completed Operations; (3) Broad Form Property Damage, Personal Injury and a Contractual Liability Endorsement, including any hold harmless and/or indemnification agreement. This insurance shall be written in comprehensive form and shall protect the Artist against all claims arising from injuries to persons other than its employees or damage to property of the Village or others arising out of any act or omission of the Artist or its agents, employees, or subcontractors. The policy shall also include protection against claims insured by usual personal injury liability coverage, a "protective liability" endorsement to insure the contractual liability assumed by the Artist under the indemnification provisions in the General Conditions. To the extent that the Artist's Work, or Work under its direction, may require blasting, explosive conditions, or underground operations, the comprehensive general liability coverage shall contain no exclusion relative to blasting, explosion, collapse of buildings, or damage to underground structures.

- b. Workers' Compensation Insurance in compliance with Chapter 440, Florida Statutes, as presently written or hereafter amended, and applicable federal law. The policies must include Employer's Liability with minimum limits of \$500,000 per accident.
- c. Comprehensive Automobile Liability: This insurance shall be written in comprehensive form and shall protect the Artist against all claims for injuries to members of the public and damage to property of others arising from the use of motor vehicles, and shall cover operation on or off the site of all motor vehicles licensed for highway use, whether they are owned, nonowned, or hired.
- d. Subcontractor's Public Liability and Property Damage Insurance and Vehicle Liability Insurance: The Artist shall either require each of its subcontractors to procure and to maintain Subcontractor's Public Liability and Property Damage Insurance and Vehicle Liability Insurance of the type and in the amounts specified in the Supplementary Conditions or insure the activities of its subcontractors in the Artist's own policy, in like amount.

16.2 The policies shall contain waiver of subrogation against the Village where applicable and shall expressly provide that the policy or policies are primary over any other insurance that the Village may have. The Village reserves the right to request a copy of the required policies for review. All policies shall contain a "severability of interest" or "cross liability" clause without obligation for premium payment to the Village.

16.3 All of the insurance is to be placed with Best rated A-8 or better insurance companies qualified to do business under the laws of the State of Florida and have agents upon whom service of process may be made in the State of Florida.

16.3.1 The Artist shall furnish certificates of insurance to the Village prior to the commencement of operations. The certificates shall clearly indicate that the Artist has obtained insurance in the type, amount, and classification as required for strict compliance with this paragraph and that no reduction in limits by endorsement during the policy term, or cancellation of this insurance shall be effective without 30 days prior written notice to the Village.

16.4 The Village is to be specifically included as an additional insured for the liability of the Village resulting from operations performed by or on behalf of Artist in performance of this or any project agreement. Artist's insurance, including that applicable to the Village as an additional insured, shall apply on a primary basis and any other insurance maintained by the Village shall be in excess of and shall not contribute to Artist's insurance. Artist's insurance shall contain a severability of interest provision providing that, except with respect to the total limits of liability, the insurance shall apply

to each insured or additional insured in the same manner as if separate policies has been issued to each.

16.5 Prior to the execution of this agreement, Artist shall provide the Village manager with evidence of insurability from the Artist's insurance carrier or a certificate of insurance. Prior to execution of any project agreement, the Artist shall provide to the Village manager, certificates of insurance evidencing the required insurance coverages. The certificates of insurance shall not only name the types of policy(ies) provided, but also shall refer specifically to this and any project agreement and shall state that such insurance is as required by the and any project agreement. The Village reserves the right to require the Artist to provide a certified copy of such policies, upon written request by the Village. If a policy is due to expire prior to the completion of the services, renewal certificates of insurance or policies shall be furnished 30 days prior to the date of their policy expiration. Each policy certificate shall be endorsed with a provision that not less than 30 days' written notice shall be provided to the Village before any policy or coverage is cancelled or restricted. Acceptance of the certificate(s) is subject to approval of the Village Manager.

16.6 Compliance with the foregoing requirements shall not relieve the Artist of its liability and obligations under this agreement.

All deductibles or self-insured retentions must be declared to and be approved by the Village manager. The Artist shall be responsible for the payment of any deductible or self-insured retentions in the event of any claim. The Village manager may require the Artist, as a condition of execution of a particular project agreement, to provide a bond or other monetary consideration to cover the Artists' deductible for professional liability insurance.

Section 17. Representative Of Village And Contractor

17.1 Village Representative. It is recognized that questions in the day-to-day conduct of this agreement will arise. The Village designates the Building & Capital Projects Director, as the person to whom all communications pertaining to the day-to-day conduct of this agreement shall be addressed.

17.2 Artist Representative. Artist shall inform the Village representative, in writing, of the representative of the Artist to whom all communications pertaining to the day-to-day conduct of this agreement shall be addressed.

Section 18 Cost And Attorney's Fees/Waiver Of Jury Trial

18.1 The Village does not waive sovereign immunity for any claim for breach of Contract/Agreement or for an award of prejudgment interest; provided, however, that in any action arising out of or to enforce this agreement, the prevailing party shall be entitled to its reasonable attorney's fees and costs in any state or federal administrative, circuit court and appellate court proceedings.

18.2 In the event of any litigation arising out of this agreement or project agreement, each party hereby knowingly, irrevocably, voluntarily, and intentionally waives its right to trial by jury in State or Federal Court proceedings in respect to any action, proceeding, lawsuit or counterclaim based upon the Contract Documents or the performance of the Work there under.

Section 19. Entire Contract/Agreement

19.1 The Contract/Agreement, and the attached Supplementary Conditions (Section 0080) when signed by all of the parties, constitutes the full and complete understanding and Contract/Agreement of all parties and may not be in any manner interpreted or fulfilled in contradiction of its express terms. This contract and the incorporated attachments constitute the entire understanding between the parties and integrates by its terms all previous contracts or understandings, oral or written, between the parties. In the event of any conflict, the terms of this Contract/Agreement will govern over the provisions of any incorporated documents.

Section 20. Subcontractors

20.1 None of the work or services under this agreement shall be subcontracted unless Artist obtains prior written consent from the Village. Approved subcontractors shall be subject to each provision of this agreement and Artist shall be responsible and indemnify the Village for all subcontractors' acts, errors or omissions.

20.2 The Artist shall not assign, transfer or pledge any interest in this agreement without prior written consent of the Village; provided, however, that claims for money by the Artist from the Village under this agreement may be assigned, transferred or pledged to a bank, trust company, or other financial institution without the Village's approval. Written notice of any assignment, transfer or pledge of funds shall be furnished within 10 days by the Artist to the Village.

20.3 In the event the Artist requires the services of any subcontractors or other professional associations in connection with services covered by any project agreement, the Artist must secure the prior written approval of the Village manager. The Artist shall utilize his/her best efforts to utilize subcontractors where principal place of business is located within the Village of Palmetto Bay, Florida.

20.4 Any subcontract with a subcontractor shall afford to the Artist right against the subcontractor which correspond to those rights afforded to the Village against the Artist herein, including but not limited to those rights of termination as set forth herein.

20.5 No reimbursement shall be made to the Artist for any subcontractors that have not been previously approved by the Village for use by the Artist.

20.6 The Artist, subcontractors, suppliers, and laborers are prohibited from placing a lien on Village's property.

Section 21. Notices

21.1 Whenever either party desires to give notice to the other, it must be given by hand delivery, facsimile, or written notice, sent by certified United States mail, with return receipt requested or a nationally recognized private mail delivery service, addressed to the party for whom it is intended, at the place last specified, and the place for giving of notice in compliance with the provisions of this paragraph. For the present, the parties designate the following as the respective places for giving of notice and identified the following persons as the contracting officers.

For Artist: Joshua Wiener
2695 Dartmouth Avenue
Boulder, Colorado 80305

For Village:

Village of Palmetto Bay
9705 East Hibiscus Street
Palmetto Bay, Florida 33157
Attention: Ron E. Williams, Village Manger

Section 22. Owner's Representations.

22.1 Village's Representative. The Building and Capital Improvements Director will be the Village's representative during the construction period. The duties and responsibilities and the limitations of authority of the Building and Capital Improvements Director as the Village's representative during construction are set forth in the Contract/Agreement Documents.

22.2 Visits To Site. The Building and Capital Improvements Director will make visits to the site during construction to observe the progress and quality of the Work and to determine, in general, if the Work is proceeding in accordance with the Contract/Agreement Documents. The Building and Capital Improvements Director will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Building and Capital Improvements Director will not, during such visits or as a result of such observations of the Artist's Work in progress, supervise, direct, or have control over the Artist's Work.

22.3 Project Representation. The Building and Capital Improvements Director may furnish a Resident Project Representative to assist in observing the performance of the Work. The duties, responsibilities, and limitations of authority of any such Resident Project Representative and assistants will be as provided in the Supplementary Conditions.

22.4 Clarifications And Interpretations. The Building and Capital Improvements Director will issue with reasonable promptness such written clarifications or interpretations of the requirements of the Contract/Agreement Documents (in the form of Drawings or otherwise) as the Building and Capital Improvements Director may determine necessary, which shall be consistent with or reasonably inferable from the overall intent of the Contract/Agreement Documents.

22.6 Authorized Variations In Work. The Building and Capital Improvements Director may authorize minor variations in the Work from the requirements of the Contract/Agreement Documents which do not involve an adjustment in the Contract/Agreement Price or the Contract/Agreement Time and are consistent with the overall intent of the Contract/Agreement Documents. These may be accomplished by a Field Order and will require the Artist to perform the Work involved promptly. If the Artist believes that a Field Order justifies an increase in the Contract/Agreement Price or an extension of the Contract/Agreement time and the parties are unable to agree as to the amount or extent thereof, the Artist may make a claim therefor as provided in this Agreement.

22.7 Rejecting Defective Work. The Building and Capital Improvements Director will have authority to reject Work which the Building and Capital Improvements Director believes to be defective and will also have authority to require special inspection or testing of the Work, whether or not the Work is fabricated, installed, or completed.

22.8 Artist Submittals, Change Orders, And Payments. In accordance with the procedures set forth in the General Requirements, the Building and Capital Improvements Director will review all Artist submittals, including shop drawings, samples, substitutes, or "or equal" items, etc., in order to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the requirements of the Contract/Agreement Documents and be compatible with the design concept of the completed project as a functioning whole as indicated by the Contract/Agreement Documents. The Building Official's review will not extend to means, methods, techniques, sequences or procedures of construction or to safety precautions or programs incident thereto.

Section 23. Consent To Jurisdiction

23.1 The parties submit to the jurisdiction of any Florida state or federal court in any action or proceeding arising out of relating to this agreement or any project agreement. Venue of any action to enforce this agreement or any project agreement shall be in Miami-Dade County.

Section 24. Governing Law

24.1 This agreement and any project agreement shall be construed in accordance with and governed by the laws of the State of Florida.

24.2 In the event a court must interpret any word or provision of this contract, the word or provision shall not be construed against either party by reason of drafting or negotiating this contract.

Section 25. Headings

25.1 Headings are for convenience of reference only and shall not be considered in any interpretation of this agreement.

Section 26. Exhibits

26.1 Each Exhibit referred to in this agreement forms an essential part of this agreement. The Exhibits if not physically attached, should be treated as part of this agreement, and are incorporated by reference.

Section 30. Severability

30.1 If any provision of this agreement or any project agreement or the application thereof to any person or situation shall to any extent, be held invalid or unenforceable, the remainder of this agreement, and the application of such provisions to persons or situations other than those as to which it shall have been held invalid or unenforceable shall not be affected thereby, and shall continue in full force and effect, and be enforced to the fullest extent permitted by law.

SECTION 31. COUNTERPARTS

31.1 This agreement may be executed in several counterparts, each of which shall be deemed an original and such counterparts shall constitute one and the same instrument.

SECTION 32. WARRANTY OF AUTHORITY

32.1 The signatories to this agreement warrant that they are duly authorized by action of their respective Village commission, board of directors or other authority to execute this agreement and to bind the parties to the promises, terms, conditions and warranties contained in this agreement.

32.2 Shannon Melendi Act. The Artist shall comply with the "Shannon Melendi Act of Miami-Dade County", which is incorporated by reference for the purpose of conducting background investigations for all principals, members, employees, and/or volunteers or participants ("Volunteers") associated with the operational activities for the Artist. Required background investigations shall be completed in accordance with the Act.

32.3 All agents, employees and subcontractor of the Artist retained to perform services pursuant to this bid shall comply with all laws of the United States concerning

work eligibility and comply with the Shannon Melendi Act, as adopted by the Village. All employees and subcontractors of Artist shall be properly screened as required under the Act.

32.4 Contingency Fee and Code of Ethics. Artist warrants that neither it, nor any principal, employee, agent, representative or family member has promised to pay, and Artist has not, and will not, pay a fee the amount of which is contingent upon the Village awarding this contract to Artist. Artist warrants that neither it, nor any principal, employee, agent, representative or family member has procured, or attempted to procure, this contract in violation of any of the provisions of the Miami-Dade County or the Village of Palmetto Bay conflict of interest and code of ethics ordinances. A violation of this paragraph will result in the termination of the contract and forfeiture of funds paid, or to be paid, to the Artist.

SECTION 34. TITLE/OWNERSHIP TO MATERIALS FOUND ON THE WORK

34.1 The Village reserves the right to retain title to all soils, stone, sand, gravel, and other materials developed and obtained from excavations and other operations connected with the Work until released by the Village. Any material desired to be retained by the Village shall be delivered by the Artist to a designed area within a six (6) mile radius of the project, at no extra cost to the Village, as directed by the Village, unless otherwise specified in the Contract/Agreement Documents. Neither the Artist nor any subcontractor shall have any right, title, or interest in or to any such materials. The Artist will be permitted to use in the Work, if approved by the Village and Building and Capital Improvements Director in writing, without charge, any such materials which meet the requirements of the Contract/Agreement Documents. Once the Village releases ownership of the material, it shall become the property of the Artist, who shall dispose of it in manner satisfactorily to the Building Official, as provided for by the Artist, at no extra cost to the Village.

SECTION 35. RIGHT TO AUDIT

35.1 If the Artist submits a claim to the Village for additional compensation, the Village shall have the right, as a condition to considering the claim, and as a basis for evaluation of the claim, and until the claim has been settled, to audit the Artist's books to the extent they are relevant. This right shall include the right to examine books, records, documents, and other evidence and accounting procedures and practices, sufficient to discover and verify all direct and indirect costs of whatever nature claimed to have been incurred or anticipated to be incurred and for which the claim has been submitted. The right to audit shall include the right to inspect the Artist's plants, or such parts thereof, as may be or have been engaged in the performance of the Work. The Artist further agrees that the right to audit encompasses all subcontracts and is binding upon subcontractors. The rights to examine and inspect herein provided for shall be exercisable through such representatives as the Village deems desirable during the Artist's normal business hours at the office of the Artist. The Artist shall make available to the Village for auditing, all

relevant accounting records and documents, and other financial data, and upon request, shall submit true copies of requested records to the Village.

IN WITNESS WHEREOF, the parties execute this agreement on the respective dates under each signature: The Village, signing by and through its Village manager, attested to by its Village Clerk, duly authorized to execute same and by Artist by and through its president, whose representative has been duly authorized to execute same through a resolution of the corporation or partnership.

ATTEST:

VILLAGE OF PALMETTO BAY

Village Clerk

By: _____
Ron E. Williams
Village Manager

Date: _____

APPROVED AS TO FORM:



Eye A. Boutsis
Village Attorney

ATTEST

Artist

Village Clerk

By: _____

Name: JOSHUA WIENER

Date: _____

**PROFESSIONAL ARTIST SERVICES AGREEMENT
BETWEEN
VILLAGE OF PALMETTO BAY'S ART IN PUBLIC PLACES PROGRAM
AND
HANS FEYERABEND**

EXHIBIT 1

Completion and Payment Schedule
Re: RFQ: Public Art / Roundabout
Budget: \$50,000

Project Location: Traffic Roundabout at the junction of Richmond Drive and Galloway Road

The artist hereto referred to as **Joshua Wiener** agrees to the following schedule for the execution and installation of the interpretive art works entitled "Balance of Life", as designed by Joshua Wiener, dated stamped received on January 3rd, 2011 attached hereto.

Work Schedule

The artist shall commence work within five (5) days of Council approval. Fifty percent (50%) of the work must be completed on or before Friday, January 28, 2011. The art piece shall be completed and installed no later than Monday, May 9th, 2011.

Payment Schedule

An initial payment will be issued to the artist in the amount equal to thirty (30%) of the contract award equivalent to fifteen thousand dollars (\$15,000) upon notice to proceed.

An additional payment in the amount equal to sixty two percent (62%) of the contract award equivalent to thirty one thousand dollars (\$31,000) will be issued upon 50% of completion of the art piece to the artist on or before Friday, March 18th, 2011, upon satisfaction of the Village.

The final payment in the amount equal to eight percent (8%) of the contract awarded equivalent to three thousand two hundred eighty dollars (\$4,000) will be released upon final installation of the art piece to the artist on or before Monday, May 9th, 2011, upon satisfaction of the Village.

ATTEST

JOSHUA WIENER / ARTIST

WITNESS

Julian H. Perez, AICP
Director of the Department of Planning and Zoning

ATTACHMENT 1

TRAFFIC ROUNDABOUT | PUBLIC ART INSTALLATION

BOARD RESULTS



Village of Palmetto Bay's Art in Public Places Advisory Board
RFQ Public Art at Roundabout – SW 168th Street & Galloway

Project Site: RFQ Public Art Installation at Roundabout
Budget Allocated: \$50,000 plus an additional \$4,000 for design proposals

AIPP Advisory Board Member: Dana Pezoldt

Final Voting:
RANKING

1. Joshua Wiener
Artist Name

Remarks: I predict this piece? ^{more kinetic} Two of the 4 directions lead to the bay and this demonstrates the fragility of our ecosystems while showing a community in flux. Love the materials!
I really loved his opportunities of outreach with local students. A plus will be fabricated locally. Feel the neighborhood will really embrace this.

2. Doree Thompson
Artist Name

Remarks: Really loved this proposal as well. My favorite feature was the bronze top with lighting as well as the marble tiles & color palette. Loved the sustainability & local fabrication.

3. Stephanie Jaffe Werner
Artist Name

Remarks: Very capable + professional.
Very historic loved by the community +
Atlanta butterfly. Fixed insects
+ various components.

4. _____
Artist Name

Remarks: Aleksey Sabido.
Beautiful mosaics yet just not
for this neighborhood.

Dana Pezoldt, MA.
Dana Pezoldt
Co-Chair
AIPP Advisory Board Member

Anna J. Homey
Village Clerk's Office



Village of Palmetto Bay's Art in Public Places Advisory Board
RFQ Public Art at Roundabout – SW 168th Street & Galloway

Project Site: RFQ Public Art Installation at Roundabout

Budget Allocated: \$50,000 plus an additional \$4,000 for design proposals

AIPP Advisory Board Member: Mary Liz Maggio

Final Voting:
RANKING

1. Joshua Wiener
Artist Name

Remarks: Beautiful piece "looks like Florida" –
Plays on involving the community
which I like as he has a very strong
background with in community art
and involving the community in his
projects. He has a very engaging
personality and covered a lot of
ground of experience in public art.

Is amenable to using other fish + utilizing
feedback from community? Wants to
work with elementary schools

Remarks: Drye + Thompson
Beautiful work but looks more like
a "south-western" piece than Floridian.

3.

Alexey Sabido
Artist Name

Remarks: I liked the work but the other artists & projects were stronger.
Very original & colorful

4.

Stephanie Jaffe Warner
Artist Name

Remarks: Does not address lighting issue.
I wasn't as interested in the historical detail & I think it's hard to see much detail while driving around circle. The other projects were just stronger for this particular space.

Mary Liz Maggio
Mary Liz Maggio
Chair
AIPP Advisory Board Member

Aun J. Momey
Village Clerk's Office



Village of Palmetto Bay's Art in Public Places Advisory Board
RFQ Public Art at Roundabout – SW 168th Street & Galloway

Project Site: RFQ Public Art Installation at Roundabout

Budget Allocated: \$50,000 plus an additional \$4,000 for design proposals

AIPP Advisory Board Member: Rona Kritzer

Final Voting:
RANKING

1. JUSTIN WEINER

Artist Name

Remarks: THIS IS A VISUALLY EXCITING WORK THAT SHOULD BE VERY APPEALING TO MOTORISTS IN GENERAL AND CONCEPT. THE CHOICE OF SURGEN, ALBERT SYMBOLIC AND ENGAGING, IS SOMETHING I RECOMMEND REPLACING WITH FISH DESIGNER TO SOUTH FLORIDA. HE HAS WONDERFUL PLANS FOR COMMUNITY OUTREACH

2. AUGUSTINA DROBE & REBECCA THOMPSON

Artist Name

Remarks: THE WAY FINDER CONCEPT IS A FITTING THEME FOR A TRAFFIC CIRCLE. THE ARTISTS USE OF THOUGHT PROVOKING AND VISUALLY PLEASING IMAGERY. THE ARTISTS HAVE CHOSEN THEIR MATERIALS WELL. I BELIEVE THEIR SKILL IS EVIDENT MY SUGGESTION WOULD BE TO HEIGHTEN THE BRONZE CAP

3. STEPHANIE JAFFE WERNER

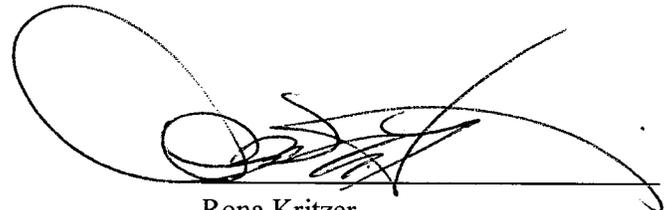
Artist Name

Remarks: _____

4. ALEKEY SABIDO & NINA TORRES

Artist Name

Remarks: _____



Rona Kritzer
AIPP Advisory Board Member

Ana J Gomez
Village Clerks Office



Village of Palmetto Bay's Art in Public Places Advisory Board
RFQ Public Art at Roundabout – SW 168th Street & Galloway

Project Site: RFQ Public Art Installation at Roundabout

Budget Allocated: \$50,000 plus an additional \$4,000 for design proposals

AIPP Advisory Board Member: Marco Lopez

Final Voting:
RANKING

1. Joshua Wiener
Artist Name

Remarks: "Balance of Life" The representation of his art piece was outstanding. The concept of the art will suit our community a one hundred percent. Due the fact that most of our neighbors own a boat or we are connected to the ocean. The piece will stand and it will be a great land mark for our village.

2. Rebecca Thompson / Augustina Doree
Artist Name

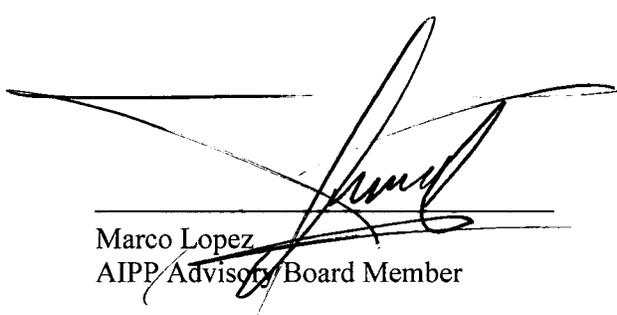
Remarks: The art piece "The way Finder" is a remarkable ornament for the obelisk, but the art itself will no represent our community. Personal opinion. Due to the fact of the color pallette is not compatible with the surroundings.

3. Stephanie Jaffe Werner.
Artist Name

Remarks: Her piece has way too much color and the concept is good. This proposal has history and research, but it is too much concentrate in the past of our area and it does not represent the future of our community.

4. Alejandro Sabido & Nina Torres
Artist Name

Remarks: This piece was my least favorite due to the colors and the art proposed doesn't connect our community


Marco Lopez
AIPP Advisory Board Member


Ann L. Gomez
Village Clerk's Office



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RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO THE ART-IN-PUBLIC PLACES (AIPP) PROGRAM, ACCEPTING THE RECOMMENDATION FROM THE AIPP ADVISORY BOARD TO APPROVE THE PUBLIC ART WORK ENTITLED "BALANCE OF LIFE" AS DESIGNED BY JOSHUA WIENER TO MEET THE AIPP REQUIREMENTS FOR THE TRAFFIC ROUNDABOUT, LOCATED AT JUNCTION OF RICHMOND DRIVE AND GALLOWAY ROAD; AUTHORIZING THE VILLAGE MANAGER TO ISSUE A PURCHASE ORDER AND APPROVE EXPENDITURE OF FUNDS FROM THE ART-IN-PUBLIC PLACES FUND IN AN AMOUNT NOT TO EXCEED \$50,000; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, on October 1st, 2007, the Mayor and Village Council established the Art-in-Public-Places Program (AIPP) via Resolution 07-05, designed to promote the general welfare by encouraging pride in the community, increasing property values, enhancing the quality of life through artistic opportunities, uniting the community through shared cultural experiences, and creating a cultural legacy for future generations through the collection and exhibition of high-quality art pieces that reflect diverse styles, chronicling history through the collection of artifacts, documents and memorabilia; and,

WHEREAS, as part of the program, an advisory board was created to oversee the public education, and curatorial aspects of the program; and,

WHEREAS, a public call was issued through a Request for Qualifications (RFQ) to artist. The Village was fortunate to receive numerous submissions from artist from across the country. The top four candidates were selected to design a proposal incorporating an artistic art element to the obelisk and fountain located at the roundabout in which each artist(s) received a stipend in the amount of \$1000 for their designs; and,

WHEREAS, the Board reviewed and scored the design proposal submitted and selected Joshua Wiener's design proposal entitled "Balance of Life" dated stamped received January 3rd, 2011 to be installed at the new roundabout, located at the junction of Richmond Drive and Galloway Road; and

WHEREAS, the AIPP Board has determined that the proposed public artwork meets the general criteria of the AIPP program pursuant to Section 30-160.5 "Selections of Works of Art" in that the proposed public artwork is found to be appropriate to the site and the surrounding neighborhood and that it is not intrusive in nature; and,

1 **WHEREAS**, The Advisory Board finds the proposed location to be highly visible and
2 accessible to pedestrian, visitors and that it reflects the cultural ethnic diversity of the Village and
3 South Florida; and,
4

5 **WHEREAS**, at the direction of the Mayor and Village Council the Advisory Board was
6 asked to bring forth the top three (3) proposals from different artist; and,
7

- 8 1. Joshua Wiener
- 9 2. Augustina Droze and Rebecca Thompson
- 10 3. Stephanie Jaffe Werner

11
12 **WHEREAS**, the proposed artwork will be the Village’s third public art installation.
13

14 **NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND VILLAGE**
15 **COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, AS FOLLOWS:**
16

17 Section 1. The Mayor and Village Council hereby accepts the recommendation of the
18 Art-in-Public-Places Advisory Board to approve the design proposal for the public artwork entitled
19 “Balance of Life” as designed by Joshua Wiener dated stamped received January 3rd, 2011, to be
20 installed at the new roundabout located at the junction of Richmond Drive and Galloway Road, in
21 accordance with the provisions of the AIPP Ordinance with the following conditions:
22

- 23 1. That a plaque or equivalent form of permanent signage acknowledging the artist, other
24 design professionals involved in the project and the Village of Palmetto Bay must be sited in
25 a publicly accessible location near the art work. The physical dimensions of the plaque
26 should allow for the utmost legibility of the information contained on it, and should vary
27 appropriately with the scale of the artwork and the site. It should not, however, intrude on
28 the physical artwork. The plaque should include:
29

30 Name of Artist(s)
31 Title of Art Work
32 Date of Art Work Completion
33 AIPP Advisory Board
34 Village of Palmetto Bay Art-in-Public Places Collection
35

36 Final plaque layout shall be subject to the Department of Planning and Zoning approval.
37

- 38 2. That the proposed public artwork shall comply with the requirements of all other applicable
39 departments/agencies as part of the Village of Palmetto Bay building permit submittal
40 process.
41

42 Section 2. The Village Manager is authorized to enter into an agreement with the
43 selected artist to provide for the execution and installation of the proposed artwork at the
44 new roundabout in an amount not to exceed \$50,000. The standard Professional Artist
45 Services Agreement between the Village of Palmetto Bay’s Art in Public Places Program and
46 the selected artist is provided in Exhibit 1.



**PROFESSIONAL ARTIST SERVICES AGREEMENT
BETWEEN
VILLAGE OF PALMETTO BAY'S ART IN PUBLIC PLACES PROGRAM
AND
JOSHUA WIENER**

This Professional Artist Services Agreement For Artist Services Under The Village's Art In Public Places Program, is made and entered into this 7 day of February, 2011, by and between the Village of Palmetto Bay, and **Joshua Wiener**, hereinafter referred to as the "Artist".

WITNESSETH:

WHEREAS, the Village is now implementing a public art program as set forth in Ordinance 07-21, allocating certain funds for the acquisition of art works for public places and authorizing the Art-in-Public Places Trust to approve the selection of artists and make payments for the design, execution and installation of works of art; and,

WHEREAS, funds for art have been allocated in accordance with Ordinance 07-25 from the Art-in-Public Places Fund; and procedures duly adopted by the Village; and,

WHEREAS, the Artist was selected by the Art-in-Public Places Advisory Board through procedures duly adopted, by the Village approving a Proposal Contract with the Artist as set forth herein; and,

WHEREAS, both parties wish the integrity and clarity of the Artist's ideas in the work of art to be maintained,

NOW THEREFORE, in consideration of the mutual covenants of the parties set forth in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and the ability of the artist to participate in the Village's Art in Public Places Program pursuant to Ordinance 30-160, the artist agree as follows:

Section 1. Definitions. The words and terms as used in this Agreement shall have the following meanings unless some other meaning is plainly and clearly set forth:

"**Artist**" shall mean Joshua Wiener.

"**Board**" shall mean Village of Palmetto Bay's Art-in-Public Places Advisory Board.

"**Consultants**" shall mean design, engineering or other professional consultants contracted by the Village with which the "Artist" may be required to interact for purposes of completing the "Services" as described in this Agreement.

"Construction Manager" shall mean Edward Silva, AIA the entity appointed by the Village for the construction of the project with which the "Artist" may be required to interact for purposes of completing the "Services" as described in this Agreement.

"Director" shall mean the Director of the Department of Planning and Zoning of the Village of Palmetto Bay.

"Proposal" shall mean the artwork suggested by the Artist and its visual/written documentation.

"Services" shall mean the Scope of Services described in Article I of this Agreement.

"Subcontractor" shall mean any entity retained by the Artist for activities other than the creative and artistic portions of the work.

"Village" shall mean Village of Palmetto Bay, Florida.

Section 2. Scope of Work.

2.1 The Artist has already received a professional artist services agreement, in which the artist was to develop and submit to the Village a design proposal incorporating an artistic element to the existing obelisk and fountain located at the junction of Richmond Drive and Galloway Road in Palmetto Bay, Florida (the "premises").

2.2 The artwork is being installed at the premises is a part of the Village's Art in Public Places Program (AIPP).

2.3. Artist affirms that s/he has created the referenced art work, and expressly waives the rights that may be waived under applicable state and federal laws relating to granting to the Village an unlimited, perpetual, non-exclusive, royalty-free, irrevocable license to reproduce and distribute two-dimensional reproductions of the artwork for Village-related purposes, and grant to the Village the exclusive irrevocable ownership rights in any trademark, service mark, or trade dress rights regarding the artwork.

2.4. The Artist I warrants that no one else has a legal owner of any right, title and interest in the artwork, including all related intellectual property interests such as trademarks and the copyright, and that the artist has the full right and authority to enter this agreement and ability to grant the rights granted in this agreement.

2.5. The artist understands that Village Council approval of the artwork shall be deemed to be a grant of the artist for authorization by third-parties to review and reproduce documents provided by the artist to the Village which are deemed to be public records pursuant to the public records laws of the state. The Village shall also have the option of referring to the name and title of the artist and artwork in reproductions.

2.6. The Artist expressly release and hold harmless the parties listed below: The Village Council, AIPP Board Members, and Village staff, from liability for all damages to or from the reproduction of the art work as provided herein. This provision shall survive the termination of this agreement.

2.7. The Village, and the artist shall create a maintenance schedule and coordinate any needed repairs of the art piece due to damage – whether from the elements, time, graffiti, or other source of damage to the piece. Maintenance shall comply with the terms and conditions of Ordinance 30-160.14.

2.8. The provisions of Section One is binding on the artist, his/her heirs, legal representatives, successors, subcontractors, vendors, and assigns. The provisions of this agreement will continue in full force and effect even after the termination of the AIPP program.

2.9. The Artist shall furnish all labor, materials, equipment, machinery, tools, apparatus, and transportation and perform all of the work shown in Exhibit 1 and shall do everything required by this contract and any other contract documents.

2.10. The Contract time shall start to run on the commencement date of the Notice to Proceed and work shall commence within five (5) days of the Notice to Proceed.

2.11. Before undertaking each part of the Work, the Artist shall carefully study and compare the Contract Documents and check and verify pertinent figures shown thereon and all applicable field measurements. The Artist shall promptly report in writing to the Building and Capital Improvements Director any conflict, error, or discrepancy which the Artist may discover and shall obtain a written interpretation or clarification from the Building and Capital Improvements Director before proceeding with any Work affected thereby.

2.12. A preconstruction conference attended by the Artist, the Building and Capital Improvements Director and others as appropriate will be held to discuss the Work in accordance with the applicable procedures specified in the General Requirements. At least seven (7) days before the first Pre-Construction Meeting, a conference attended by the Artist, the Building Official, and others as appropriate, the Artist will submit the following documents, if required, for the Building Official's review: Construction Schedule, Schedule of Values, MOT Plan (if applicable), Staging Plan, Mobilization Plan, submitted in accordance with the General Requirements.

2.13 Ownership Of Instruments Of Service. Upon completion of the Services, all designs and other data, including the model, developed by the Artist and delivered to the Board for the purpose of this Agreement, shall become the property of the Village. All data as described herein shall be delivered to the Director prior to completion of the Agreement and final payment to the Artist. The Village does not intend to own the copyright of the Work.

2.14 Warranty Of Originality. The Artist warrants that the tangible objects it delivers to the Village in the performance of this Agreement shall be the result of the artistic efforts of the Artist and that, unless otherwise stipulated, the Work shall be unique and an edition of one.

2.15 Publicity And News Releases. The Artist shall not during the performance of this Agreement disseminate publicity or news releases regarding this project or the Services without prior written approval of the Director.

Section 3. Contract Sum

3.1 The Village shall pay the Artist for the faithful performance of the contract, in lawful money of the United States, and subject to addition and deductions as provided in the contract documents.

3.2 Based upon the price shown in the Proposal heretofore submitted to the Village by the Artist, a copy of said Proposal being part of these contract documents, the aggregate amount of this contract is the lump sum of \$50,000. The Village shall also pay for permits, if applicable, in addition to the amount to Artist. The Village shall pay the selected Artist(s) a Fixed Fee for construction of the conceptual/schematic design services previously obtained. THE FIXED FEE SHALL CONSTITUTE FULL COMPENSATION FOR ALL SERVICES AND MATERIALS TO BE PERFORMED AND FURNISHED BY THE ARTIST UNDER THIS AGREEMENT, INCLUDING THE ARTIST'S FEE, ANY SUBCONTRACTED WORK, VENDORS, TRAVEL EXPENSES, AND/OR ANY RELATED OVERHEAD EXPENSES. The Artist's Fee includes one (1) working meeting for purposes of conducting site visit and/or meeting with the Project's Design Team and the Village as may be deemed appropriate to complete the Services outlined in this agreement, and one (1) meeting to present the final art piece before the Mayor and Village Council. The Village shall be the owner of the Artist Proposal and shall be entitled to reproduce and distribute the final artwork.

3.3 The Village shall pay the Artist the Fixed Fee for the art piece for the Project site in an amount of \$50,000 upon completion of the services, receipt of the artist's invoice, and verification and approval by the Village Manager, in accordance with the progress payment schedule below or as indicated in Exhibit 1 page 30 attached hereto.

3.4 Application For Progress Payment.

a. Unless otherwise prescribed by law, on the 25th of each month, or other agreed upon date, the Artist shall submit to the Building and Capital Improvements Director for review, an Application for Payment filled out and signed by the Artist covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract/Agreement Documents.

b. The Application for Payment shall identify, as a subtotal, the amount of the Artist's Total Earnings to Date, plus the Value of Materials Stored at the Site

which have not yet been incorporated in the Work, and less a deductive adjustment for materials installed which were not previously incorporated in the Work, but for which payment was allowed under the provisions for payment for Materials Stored at the Site, but not yet incorporated in the Work.

c. The Net Payment Due to the Artist shall be the above-mentioned subtotal from which shall be deducted the amount of retainage specified herein, and the total amount of all previous payments made to the Artist. From each progress payment made prior to the time Substantial Completion of the Work has been reached, the Village shall retain eight percent (8%), if required, of the amount otherwise due after deduction of any amounts as provided in this Agreement. If the Village chooses to use this retainage provision:

1. at the time the Work is fifty percent (50%) complete and thereafter, the Village may choose to withhold no more retainage and pay the Artist the full amount of what is due on account of subsequent progress payments;
2. once each early finishing trade Subcontractor has completed its work and that work has been accepted by the Village, the Village may release final retention on such work;
3. in lieu of retainage, the Artist may furnish securities, acceptable to the Village, to be held by the Village. The interest on such securities shall accrue to the Artist;
4. the Village may, in its sole discretion, reduce the amount to be retained at any time.

d. The Value of Materials Stored at the Site shall be an amount equal to the specified percent of the value of such materials as set forth in the Supplementary Conditions. Said amount shall be based upon the value of all acceptable materials and equipment not incorporated in the Work but delivered and suitably stored at the site or at another location agreed to in writing; provided, each such individual item has a value of more than \$5,000 and will become a permanent part of the Work. The Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that the Artist has received the materials and equipment free and clear of all liens, charges, security interests, and encumbrances (which are hereinafter in these General Conditions referred to as "Liens") and evidence that the materials and equipment are covered by appropriate property insurance and other arrangements to protect the Village's interest therein, all of which will be satisfactory to the Village.

3.5 Artist's Warranty Of Title. The Artist warrants and guarantees that title to all Work, materials, and equipment covered by an Application for Payment, whether

incorporated in the Work or not, will pass to the Village no later than the time of final payment free and clear of all liens.

3.6 Review Of Applications For Progress Payment.

a. The Building and Capital Improvements Director will, within seven (7) days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to the Village, or return the Application to the Artist indicating in writing the Building Official's reasons for refusing to recommend payment. In the later case, the Artist may make the necessary corrections and resubmit the Application. Thirty days after presentation of the Application for Payment with the Building Official's recommendation, the amount recommended will (subject to all the conditions of this Contract/Agreement) become due and when due will be paid by the Village to the Artist.

b. The Village may refuse to make payment of the full amount recommended by the Building and Capital Improvements Director because claims have been made against the Village on account of the Artist's performance of the Work or Liens have been filed in connection with the Work or there are other items entitling the Village to a credit against the amount recommended, but the Village must give the Artist written notice within seven (7) days (with a copy to the Building Official) stating the reasons for such action.

3.7 Partial Utilization.

a. The Village shall have the right to utilize or place into service any item of equipment or other usable portion of the Work prior to completion of the Work. Whenever the Village plans to exercise said right, the Artist will be notified in writing by the Village, identifying the specific portion or portions of the Work to be so utilized or otherwise placed into service.

b. It shall be understood by the Artist that until such written notification is issued, all responsibility for care and maintenance of all items or portions of the Work to be partially utilized shall be borne by the Artist. Upon issuance of said written notice of partial utilization, the Village will accept responsibility for the protection and maintenance of all such items or portions of the Work described in the written notice.

c. The Artist shall retain full responsibility for satisfactory completion of the Work, regardless of whether a portion thereof has been partially utilized by the Village and the Artist's one year correction period shall commence only after the date of Substantial Completion for the Work.

3.8 Substantial Completion. When the Artist considers the Work ready for its intended use the Artist shall notify the Village and the Building and Capital

Improvements Director in writing that the Work is substantially complete and request that the Building and Capital Improvements Director prepare a Certificate of Substantial Completion/Notice of Completion. Within a reasonable time thereafter, the Village, the Artist, and the Building and Capital Improvements Director shall make an inspection of the Work to determine the status of completion. If the Building and Capital Improvements Director does not consider the Work substantially complete, the Building and Capital Improvements Director will notify the Artist in writing giving the reasons therefor. If the Building and Capital Improvements Director considers the Work substantially complete, the Building and Capital Improvements Director will prepare and deliver to the Village for its execution and recordation the Certificate of Substantial Completion/Notice of Completion signed by the Building and Capital Improvements Director and Artist, which shall fix the date of Substantial Completion. As applicable, there shall be attached to the Certificate/Notice a list of items to be completed or corrected before final payment.

3.9 Final Application For Payment. After the Artist has completed all correction Work referred above and delivered all maintenance and operating instructions, schedules, guarantees, Bonds, certificates of inspection, marked-up record documents (as provided in the General Requirements) and other documents, all as required by the Contract/Agreement Documents, and after the Building and Capital Improvements Director has indicated that the Work is acceptable, the Artist may make application for final payment following the procedure for progress payments. The final Application for Payment shall be accompanied by all documentation called for in the Contract/Agreement Documents, together with complete and legally effective releases or waivers (satisfactory to the Village) of all liens arising out of or filed in connection with the Work.

3.10 Final Payment And Acceptance. If, on the basis of the Building Official's observation of the Work during construction and final inspection, and the Building Official's review of the final Application for Payment and accompanying documentation, all as required by the Contract/Agreement Documents, the Building and Capital Improvements Director is satisfied that the Work has been completed and the Artist's other obligations under the Contract/Agreement Documents have been fulfilled, the Building and Capital Improvements Director will, within fourteen (14) days after receipt of the final Application for Payment, indicate in writing the Building Official's recommendation of payment and present the Application to the Village for payment.

After acceptance of the Work by the Village's governing body, the Village will make final payment to the Artist of the amount remaining after deducting all prior payments and all amounts to be kept or retained under the provisions of the Contract/Agreement Documents, including the following items:

- a. Liquidated damages, as applicable.
- b. Two times the value of outstanding items of correction Work or punch list items indicated on the Certificate of Substantial Completion/Notice of Completion as being yet uncompleted or uncorrected, as applicable. All

such Work shall be completed or corrected to the satisfaction of the Village within the time stated on the Certificate of Substantial Completion/Notice of Completion, otherwise the Artist does hereby waive any and all claims to all monies withheld by the Village to cover the value of all such uncompleted or uncorrected items.

3.11 Release Of Retainage And Other Deductions.

- a. After executing the necessary documents to initiate the lien period, and not more than forty-five (45) days thereafter (based on a 30-day lien filing period and 15-day processing time), the Village will release to the Artist the retainage funds withheld pursuant to the Agreement, less any deductions to cover pending claims against the Village as provided above.
- b. After filing of the necessary documents to initiate the lien period, the Artist shall have thirty (30) days to complete any outstanding items of correction Work remaining to be completed or corrected as listed on a final punch list made a part of the Certificate of Substantial Completion/Notice of Completion. Upon expiration of the 45 days, referred to in subsection 4.4.9b. above, the amounts withheld pursuant to the provisions of Paragraph 4.4.9b. herein, for all remaining Work items will be returned to the Artist; provided, that said Work has been completed or corrected to the satisfaction of the Village within said thirty (30) days. Otherwise, the Artist does hereby waive any and all claims for all monies withheld by the Village under the Contract/Agreement to cover two (2) times the value of such remaining uncompleted or uncorrected items.

3.12 Artist's Continuing Obligation. The Artist's obligation to perform and complete the Work in accordance with the Contract/Agreement Documents shall be absolute. Neither recommendation of any progress or final payment by the Building Official, nor the issuance of a Certificate of Substantial Completion/Notice of Completion, nor any payment by the Village to the Artist under the Contract/Agreement Documents, nor any use or occupancy of the Work or any part thereof by the Village, nor any act of acceptance by the Village nor any failure to do so, nor any review of a Shop Drawing or sample submittal, will constitute an acceptance of Work not in accordance with the Contract/Agreement Documents or a release of the Artist's obligation to perform the Work in accordance with the Contract/Agreement Documents.

3.13 Final Payment Terminates Liability Of Village. Final payment is defined as the last progress payment made to the Artist for earned funds, less retainage as applicable, less deductions listed above. The acceptance by the Artist of the final payment shall be a release of the Village and its agents from all claims of liability to the Artist for anything done or furnished for, or relating to, the Work or for any act or neglect of the Village or of any person relating to or affecting the Work, except demands against the Village for the remainder, if any, of the amounts kept or retained under this agreement; and

excepting pending, unresolved claims filed prior to the date of the Certificate of Substantial Completion/Notice of Completion.

Section 4. Contractor's Acceptance Of Conditions

4.1 The Artist hereby agrees that he/she has carefully examined the sites for the work to be performed and has fully satisfied himself/herself that such sites are correct and suitable ones for the work to be performed and he/she assumes full responsibility therefore. The provisions of this agreement shall control any inconsistent provisions contained in the specifications.

4.2 It is distinctly understood and agreed that the passing, approval and/or acceptance of any part of the work material by the Village, its Engineer, or by any agent or representative as in compliance with the terms of this agreement and/or any other document covering said work, shall not operate as a waiver by the Village of strict compliance with the terms of this agreement; and the Village may require the Artist and/or his/her insurer to repair, replace, restore and/or make to comply strictly and in all things with this agreement and all of said work and/or services which within a period of one year from and after the date of the padding, approval, and/or acceptance of requirements of attached Exhibit 1. This provision shall not apply to materials or equipment normally expected to deteriorate or wear out and become subject to normal repair and replacement before their condition is discovered. The Artist shall not be required to do normal maintenance work under the guarantee provisions. Failure on the part of the Artist and/or his/her insurer, immediately after Notice to either, to repair or replace any such defective materials and workmanship shall entitle the Village, if it sees fit, to replace or repair the same and recover the reasonable cost of such replacement and/or repair from the Artist and/or his insurer, who shall in any event be jointly and severally liable to the Village for all damage, loss, and expense caused to the Village by reason of the Artist's breach of this agreement and/or his/her failure to comply strictly and in all things with this agreement.

4.3 The Contract/Agreement Documents comprise the entire agreement between the Village and the Artist concerning the Work. The Contract/Agreement Documents are complementary; what is called for by one is as binding as if called for by all. The Contract/Agreement Documents will be construed in accordance with the law of the place of the Project.

4.4 It is the intent of the Contract/Agreement Documents to describe the Work, functionally complete, to be constructed in accordance with the Contract/Agreement Documents. Any Work, materials, or equipment that may reasonably be inferred from the Contract/Agreement Documents as being required to produce the intended result shall be supplied whether or not specifically called for. When words which have a well-known technical or trade meaning are used to describe Work, materials, or equipment such words shall be interpreted in accordance with that meaning. Reference to standard specifications, manuals, or codes of any technical society, organization, or association, or to the Laws or Regulations of any governmental authority, whether such reference be

specific or by implication, shall mean the latest standard specification, manual, code, or Laws or Regulations in effect at the time of opening of Bids, except as may be otherwise specifically stated. However, no provision of any referenced standard specification, manual, or code (whether or not specifically incorporated by reference in the Contract/Agreement Documents) shall be effective to change the duties and responsibilities of the Village, the Artist, or the Building and Capital Improvements Director or any of their consultants, agents, or employees from those set forth in the Contract/Agreement Documents.

4.5 If, during the performance of the Work, the Artist finds a conflict, error, or discrepancy in the Contract/Agreement Documents, the Artist shall so report to the Building and Capital Improvements Director in writing at once and before proceeding with the Work affected thereby, shall obtain a written interpretation, clarification, or correction from the Building Official.

4.6 Neither the Artist, nor any Subcontractor or Supplier, nor any other person or organization performing any of the Work under a Contract/Agreement with the Village shall have or acquire any title to or ownership rights in any of the Drawings, Technical Specifications, or other documents used on the Work, and they shall not reuse any of them on the extensions of the Project or any other project without written consent.

4.7 Availability Of Lands. The Village shall furnish, as indicated in the Contract/Agreement Documents, the lands upon which the Work is to be performed, rights-of-way and easements for access thereto, and such other lands which are designated for the use of the Artist. Easements for permanent structures or permanent changes in existing facilities will be obtained and paid for by the Village, unless otherwise provided in the Contract/Agreement Documents. Nothing contained in the Contract/Agreement Documents shall be interpreted as giving the Artist exclusive occupancy of the lands or rights-of-way provided. The Artist shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment; provided, that the Artist shall not enter upon nor use any property not under the control of the Village until a written temporary construction easement agreement has been executed by the Artist and the property Village, and a copy of said easement furnished to the Building and Capital Improvements Director prior to said use; and, neither the Village nor the Building and Capital Improvements Director shall be liable for any claims or damages resulting from the Artist's unauthorized trespass or use of any such properties.

4.8 Differing Site Conditions. The Artist shall notify the Building and Capital Improvements Director in writing of the following unforeseen conditions, hereinafter called differing site conditions, promptly upon their discovery (but in no event later than fourteen (14) days) and before they are disturbed:

- a. Subsurface or latent physical conditions at the site of the Work differing materially from those indicated, described, or delineated in the Contract/Agreement Documents including; and

- b. Unknown physical conditions at the site of the Work of an unusual nature differing materially from those ordinarily encountered and generally recognized as inherent in Work of the character provided for in the Contract/Agreement.

The Building and Capital Improvements Director will review the pertinent conditions, determine the necessity of obtaining additional explorations or tests with respect thereto and advise the Village in writing of the Building Official's findings and conclusions. The Artist's failure to give notice of differing site conditions within fourteen (14) days of their discovery or before they are disturbed shall constitute a waiver of all claims in connection therewith, whether direct or consequential in nature.

4.9 Unless otherwise provided in the Summary of Work, the Artist shall obtain all construction permits and licenses from the agencies having jurisdiction, including the furnishing of insurance and bonds if required by such agencies. The enforcement of such requirements under this Contract/Agreement shall not be made the basis for claims for additional compensation. If Artist fails the regulatory inspections, Artist shall pay for the re-inspection fees necessary for the prosecution of the Work. Artist shall not commence any work without the appropriate permit. Copy of the respective permits shall be submitted to the Building and Capital Improvements Director prior to commencement of Work.

4.10 The Artist shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Contract/Agreement Documents for use in the performance of the Work and if to the actual knowledge of the Village or the Building and Capital Improvements Director its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by the Village in the Contract/Agreement Documents. The Artist shall indemnify, defend and hold harmless the Village and the Building and Capital Improvements Director and anyone directly or indirectly employed by either of them from and against all claims, damages, losses, and expenses (including attorneys' fees and court costs) arising out of any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract/Agreement Documents, and shall defend all such claims in connection with any alleged infringement of such rights.

4.11 Laws And Regulations. The Artist shall observe and comply with all federal, state, and local laws, ordinances, codes, orders, and regulations which in any manner affect those engaged or employed on the Work, the materials used in the Work, or the conduct of the Work. If any discrepancy or inconsistency should be discovered in this Contract/Agreement in relation to any such law, ordinance, code, order, or regulation, the Artist shall report the same in writing to the Building Official. The Artist shall indemnify, defend, and hold harmless the Village, the Building Official, and their

officers, agents, and employees against all claims or liability arising from violation of any such law, ordinance, code, order, or regulation, whether by Artist or by its employees or subcontractors. Any particular law or regulation specified or referred to elsewhere in the Contract/Agreement Documents shall not in any way limit the obligation of the Artist to comply with all other provisions of federal, state, and local laws and regulations. Where an individual State act on occupational safety and health standards has been approved by Federal authority, then the provisions of said State act shall control.

4.12 Taxes. The Artist shall pay all sales, consumer, use, and other similar taxes required to be paid by the Artist in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work.

4.13 Use Of Premises. The Artist shall confine construction equipment, the storage of materials and equipment, and the operations of workers to (1) the Project site, (2) the land and areas identified in and permitted by the Contract/Agreement Documents, and (3) the other land and areas permitted by Laws and Regulations, rights-of-way, permits, and easements. The Artist shall assume full responsibility for any damage to any such land or area, or to the Village or occupant thereof or of any land or areas contiguous thereto, resulting from the performance of the Work. Should any claim be made against the Village or the Building and Capital Improvements Director by any such Village or occupant because of the performance of the Work, the Artist shall promptly attempt to settle with such other party by agreement or otherwise resolve the claim through litigation. The Artist shall, to the fullest extent permitted by Laws and Regulations, indemnify, defend, and hold the Village and the Building and Capital Improvements Director harmless from and against all claims, damages, losses, and expenses (including, but not limited to, fees of Building Official, engineers, attorneys, and other professionals, and court costs) arising directly, indirectly, or consequentially out of any action, legal or equitable, brought by any such other party against the Village or the Building and Capital Improvements Director to the extent based on a claim arising out of the Artist's performance of the Work.

4.14 Safety And Protection. the Artist shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. The Artist shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:

- a. all employees on the Work and other persons and organizations who may be affected thereby;
- b. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the site; and
- c. other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, mechanical equipment, electronics, instrumentation, and utilities not designated for removal, relocation, or replacement in the course of construction.

4.15 The Artist shall comply with all applicable Laws and Regulations (whether referred to herein or not) of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury, or loss and shall erect and maintain all necessary safeguards for such safety and protection. The Artist shall notify owners of adjacent property and utilities when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property.

4.16 Indemnification. To the fullest extent permitted by Laws and Regulations, the Artist shall indemnify, defend, and hold harmless the Village; and its officers, directors, agents, and employees, against and from all claims and liability arising under, by reason of or incidentally to the Contract/Agreement or any performance of the Work, but not from the sole negligence or willful misconduct of the Village. Such indemnification by the Artist shall include but not be limited to the following:

- a. Liability or claims resulting directly or indirectly from the negligence or carelessness of the Artist, its employees, or agents in the performance of the Work, or in guarding or maintaining the same, or from any improper materials, implements, or appliances used in its construction, or by or on account of any act or omission of the Artist, its employees, or agents;
- b. Liability or claims arising directly or indirectly from bodily injury, occupational sickness or disease, or death of the Artist's or Subcontractor's own employees engaged in the Work resulting in actions brought by or on behalf of such employees against the Village;
- c. Liability or claims arising directly or indirectly from or based on the violation of any law, ordinance, regulation, order, or decree, whether by the Artist, its employees, or agents;
- d. Liability or claims arising directly or indirectly from the use or manufacture by the Artist, its employees, or agents in the performance of this Contract/Agreement of any copyrighted or uncopyrighted composition, secret process, patented or unpatented invention, article, or appliance, unless otherwise specifically stipulated in this Contract/Agreement;
- e. Liability or claims arising directly or indirectly from the breach of any warranties, whether express or implied, made to the Village or any other parties by the Artist, its employees, or agents;
- f. Liabilities or claims arising directly or indirectly from the willful misconduct of the Artist, its employees, or agents; and,
- g. Liabilities or claims arising directly or indirectly from any breach of the obligations assumed herein by the Artist.

The Artist shall reimburse the Village for all costs and expenses, (including but not limited to fees and charges of Building Official, engineers, attorneys, and other professionals, and court costs) incurred by said Village, and the Building Official in enforcing the provisions of this Section. The indemnification obligation under this

section shall not be limited in any way by any limitation of the amount or type of damages, compensation, or benefits payable by or for the Artist or any such subcontractor or other person or organization under workers' compensation acts, disability benefit acts, or other employee benefit acts.

4.17 Assignment Of Contract/Agreement. The Artist shall not assign, sublet, sell, transfer, or otherwise dispose of the Contract/Agreement or any portion thereof, or its right, title, or interest therein, or obligations thereunder, without the written consent of the Village except as imposed by law. If the Artist violates this provision, the Contract/Agreement may be terminated at the option of the Village. In such event, the Village shall be relieved of all liability and obligations to the Artist and to its assignee or transferee, growing out of such termination.

4.18 Suspension Of Work. In connection with the Village's right to stop Work or suspend Work, see Section 8, which deal with the Village's right to terminate services of the Artist under certain circumstances.

Section 5. Partial And Final Payments. In accordance with the provisions fully set forth herein and subject to additions and deductions as provided, the Village shall pay the Artist as follows:

5.1 Within 30 days after receipt of the Artist's request for payment by the Village, the Village shall make payments to the Artist on the lump sum amount established by this agreement for all work that has been performed strictly in accordance with this agreement and until such work has been accepted by the Village.

5.2 Upon submittal by the Artist of evidence satisfactorily to the Village that all payrolls, material bills and other costs incurred by the Artist in connection with the work have been paid in full, and also, after all guarantees that may be required in the specifications have been furnished and are found to be acceptable by the Village, payment on the account of this agreement shall be made within thirty (30) days after completion by the Artist of all work covered by this agreement and acceptance of such work by the Village.

Section 6. Term/Termination

6.1 Term of Agreement. This agreement shall commence on the date this instrument is fully executed by all parties and shall continue in full force and effect, unless and until terminated pursuant to section 6.2 or other applicable sections of this agreement. The project shall specify the period of service agreed to by the Village and Artist for services to be rendered under the project agreement.

6.2 Termination For Convenience. The Village may terminate this agreement for convenience at any time by giving thirty (30) days notice in writing to the Artist. The Artist will be paid for the value of service performed pursuant to the schedule contained in the statement of work, up to and including the termination date. Artist will be

permitted to complete on-going investigations and shall be paid for all satisfactory work completed. The Village shall not be liable for future profits or losses. In the event that the Village improperly terminates the agreement for default under paragraph 6.3, the termination shall be deemed a termination for convenience under this paragraph. In such a case, the Artist shall have no claims against the Village except: (1) for the value of Work performed up to the date the Agreement is terminated; and, (2) for the cost of materials and equipment on hand, in transit, or on definite commitment, as of the date the Agreement is terminated, which would be needed in the Work and which meet the requirements of the Contract/Agreement Documents. The value of Work performed and the cost of materials and equipment delivered to the site, as mentioned above, shall be determined by the Building and Capital Improvements Director in accordance with the procedure prescribed for the making of the final application for payment.

6.3 Termination For Default. The Village party may terminate this agreement prior to the expiration of the initial term or any subsequent renewal term on account of a material breach of the agreement, which has not been cured within ten (10) days from the date of receipt of written notice of breach from the party seeking termination. Artist is entitled to terminate as provided below. Termination shall be effective as of the end of the notice period in the case of any uncured material breach. Artist may terminate this agreement prior to the expiration of the initial term or any subsequent renewal term upon not less than ten (10) days prior written notice to the Village in the event that Artist is unable to complete the services identified in section 2 due to causes beyond Artist's control. The Village shall have no liability to the Artist for future profits or losses in the event of termination for default. The rights and remedies of the Village provided in this provision shall not be exclusive and are in addition to any other rights and remedies provided by law or under this agreement. Should Artist provide the Village with written notice of cancellation of agreement, Artist will be required to refund a pro-rata share of the compensation identified in section 2. It shall be considered a default by the Artist whenever Artist shall: (1) declare bankruptcy, become insolvent, or assign its assets for the benefit of its creditors; (2) fail to provide materials or workmanship meeting the requirements of the Contract/Agreement Documents; (3) disregard or violate provisions of the Contract/Agreement Documents or Building Official's instructions; (4) fail to prosecute the Work according to the approved progress schedule; or, (5) fail to provide a qualified superintendent, competent workmen, or materials or equipment meeting the requirements of the Contract/Agreement Documents. If the Artist fails to remedy the conditions constituting default within the time allowed, the Village may then issue the Notice of Termination. In the event the Agreement is terminated in accordance with this Paragraph, the Village may take possession of the Work and may complete the Work by whatever method or means the Village may select. The cost of completing the Work shall be deducted from the balance which would have been due the Artist had the Agreement not been terminated and the Work completed in accordance with the Contract/Agreement Documents. If such cost exceeds the balance which would have been due, the Artist shall pay the excess amount to the Village. If such cost is less than the balance which would have been due, the Artist shall not have claim to the difference.

6.4 Termination for Delay. If the project is suspended or the Artist's services are delayed by the Village for more than 90 consecutive days, the Artist may terminate this agreement by giving not less than 10 days written notice. The liability of the Village upon termination by the Artist for suspension or delay of this project shall be for the value of services performed pursuant to the schedule contained in the statement of work rendered by Artist to the time of termination by Artist. The Village shall not be liable for future profits or losses.

6.5 Termination for Lack of Funds. Notwithstanding any other provisions of the agreement, if the funds anticipated by the Village for the payment of work under this agreement are at any time not forthcoming, through the failure of the Village to appropriate funds, the failure of Miami-Dade County, the Florida Legislature, or the U.S. Congress to appropriate funds, or the refusal of the administrative branch of the federal or county government to release funds, or due to any other reason for the unavailability of funds in succeeding fiscal years, or the discontinuance or material alteration of the program under which funds are to be provided, the Village shall have the right to terminate the agreement without penalty by giving not less than 10 days written notice of the lack of available funding.

For any portion of the work that is funded by county, state, or federal appropriations or grants, the liability of the Village to Artist shall be limited to payment for services when payment is received by the Village from the county, state, or federal authority. The Village shall submit all required documents requesting payment within a reasonable time. The Village shall not be liable to Artist for work performed in the event that payment is not received by the Village from a county, state, or federal funding authority. This is a pay-when-paid clause.

6.6 Termination Of Agreement By Artist. The Artist may terminate the Agreement upon ten (10) days written notice to the Village, whenever: the Village should fail to pay the Artist any monies due him in accordance with the terms of the Contract/Agreement Documents and within 60 days after presentation to the Village by the Artist of a request therefor, unless within said 10-day period the Village shall have remedied the condition upon which the payment delay was based. In the event of such termination, the Artist shall have no claims against the Village except for those claims specifically enumerated, and as determined in accordance with the requirements of said paragraph.

Section 7. Warranties.

7.1 Warranty And Guarantee. The Artist warrants and guarantees to the Village and the Building and Capital Improvements Director that all Work will be in accordance with the Contract/Agreement Documents and will not be defective. Prompt notice of defects known to the Village or Building and Capital Improvements Director shall be given to the Artist. All defective Work, whether or not in place, may be rejected, corrected, or accepted as provided in this section.

7.2 One Year Correction Period.

a. If within one (1) after the date of Substantial Completion or such longer period of time as may be prescribed by Laws or Regulations or by the terms of any applicable special guarantee required by the Contract/Agreement Documents or by any specific provision of the Contract/Agreement Documents, any Work is found to be defective, the Artist shall promptly, without cost to the Village and in accordance with Village's written notification, either correct such defective Work, or, if it has been rejected by the Village, remove it from the site and replace it with non-defective Work. If the Artist does not promptly comply with the such notification, or in an emergency where delay would cause serious risk of loss or damage, the Village may have the defective Work corrected or the rejected Work removed and replaced, and all direct, indirect, and consequential costs and damages of such removal and replacement including but not limited to fees and charges of Building Official, engineers, attorneys and other professionals will be paid by the Artist.

b. Where defective Work (and damage to other Work resulting there from) has been corrected, removed or replaced under Paragraph 13.6, the correction period hereunder, with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

7.3 Acceptance Of Defective Work. If, instead of requiring correction or removal and replacement of defective Work, the Village prefers to accept the Work, the Village may do so. The Artist shall bear all direct, indirect, and consequential costs attributable to the Village's evaluation of and determination to accept such defective Work. If any such acceptance occurs prior to final payment, a Change Order will be issued incorporating the necessary revisions in the Contract/Agreement Documents with respect to the Work, and the Village shall be entitled to an appropriate decrease in the Contract/Agreement Price.

Section 8. Right To Withhold

8.1 If work under this agreement is not performed in accordance with the terms hereof, the Village has the right to withhold any payment due to the Artist, of any sums as the Village may deem sufficient to protect it against loss, or to ensure payment of claims, and, at its option, the Village may apply the sums in the manner as the Village may deem proper to secure itself or to satisfy the claims. The Village will provide Artist with 10 days prior written notice in the event that it elects to execute its right to withhold under this paragraph.

Section 9. Interest Payments

9.1 The Village shall make payment to Artist within 30 days of receipt of the original written invoice and sufficient backup documentation and acceptance of the work by the Village. Interest shall accrue on unpaid invoices as provided by section 218.74, Florida Statutes.

9.2 Artist shall not be entitled to any carrying charges or finance fees due to late payment by the Village.

Section 10. Survival Of Provisions

10.1 Any terms or conditions of either this agreement or any subsequent project agreement that require acts beyond the date of the term of either agreement, shall survive termination of the agreements, shall remain in full force and effect unless and until the terms or conditions are completed and shall be fully enforceable by either party.

Section 11. Ownership Of Documents/Deliverables

11.1 All finished or unfinished documents, including by not limited to, detailed reports, studies, plans, drawings, surveys, maps, models, photographs, specifications, digital files, and all other data prepared for the Village or furnished by the Artist pursuant to any project agreement, shall become the property of the Village, whether the project for which they are made is completed or not, and shall be delivered by Artist to the Village within five calendar days after receipt of written notice requesting delivery of said documents or digital files. The Artist shall have the right to keep one record set of the documents upon completion of the project, however, in no event shall the Artist, without the Village's prior written authorization, use, or permit to be used, any of the documents except for client or educational presentations or seminar use.

11.2 All subcontracts for the preparation of reports, studies, plans, drawings, specifications, digital files, or other data, entered into by the Artist for each specific project shall provide that all documents and rights obtained by virtue of the subcontracts shall become the property of the Village.

11.3 All final plans and documents prepared by the Artist shall bear the endorsement and seal of a person duly registered as a professional engineer, Building Official, landscape Building Official, professional geologist, or land surveyor, as appropriate, in the State of Florida and date approved and/or sealed. Artist shall within three business days of ascertaining or determining that the registered professional engineer, landscape Building Official, professional geologist or land surveyor is no longer affiliated with Artist or barred from practicing under his/her license, shall notify Village of the event and obtain the services of another, duly qualified and registered professional.

Section 12. Records/Audits

12.1 Artist shall maintain and require subcontractors to maintain, complete and correct records, books, documents, papers, and accounts pertaining to the specific project. Such records, books, documents, papers, and accounts shall be available at all reasonable times for examination and audit by the Village manager or any authorized Village representative with reasonable notice and shall be kept for a period of three (3) years after the completion of each project agreement. Incomplete or incorrect entries in such records, books, documents, papers, or accounts will be grounds for disallowance by or reimbursement to the Village of any fees or expenses based upon such entries. Disallowed fees will be paid when incomplete or incorrect entries are remedied to the satisfaction of the Village.

12.2 The Artist shall comply with Chapter 119, Florida Statutes, as applicable. Refusal of the Artist to comply with these provisions shall be grounds for immediate termination for cause by the Village of this agreement or any project agreement.

Section 13. Independent Contractor

13.1 The Artist is an independent contractor under this agreement and any project agreements and nothing in this agreement shall create any association, partnership, or joint venture between the parties, or any employer-employee relationship. Personal services provided by the Artist shall be by employees of the Artist and subject to supervision by the Artist, and not as officers, employees, or agents of the Village, personnel policies, tax responsibilities, social security, health insurance, employee benefits, purchasing policies, and other similar administrative procedures applicable to services rendered under this agreement or any project agreements shall be those of the Artist.

Section 14. Assignment; Amendments

14.1 This agreement shall not be assigned, transferred or otherwise encumbered, under any circumstances, by Artist, without prior written consent of the Village.

14.2 No modification, amendment, or alteration in the terms or conditions of this agreement shall be effective unless contained in a written documents executed with the same formality as this agreement.

Section 15. Indemnification/Hold Harmless

15.1 The Village shall not be held liable or responsible for any claims which may result from acts, errors or omissions of the Artist or its subcontractors, suppliers or laborers. In reviewing, approving or rejecting any submissions or acts of the Artist, the Village in no way assumes responsibility or liability for the acts, errors or omissions of the Artist or subcontractors.

15.2 The Artist shall not commence work under this agreement until it has obtained all insurance required by the Village. The Artist shall defend, indemnify and

hold harmless from any and all claims, liability, losses, expenses and causes of action arising out of a negligent act, error, or omission or misconduct of the Artist, or the Artist's subcontractors, suppliers and laborers incident to the performance of the Artist's services under this agreement. The Artist shall pay all claims, losses, fines, penalties, costs and expenses of any nature whatsoever resulting from its intentional misconduct or negligence.

15.3 Pursuant to section 768.28, Florida Statutes, the Artist shall indemnify and hold harmless the Village and its officers and employees, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorney's fees, to the extent such liabilities, damages, losses, and costs are caused by the negligence, recklessness, or intentionally wrongful conduct of the Artist or any persons employed or utilized by the Artist in the performance of this or any project agreement.

Section 16. Insurance

16.1 The Artist shall secure and maintain throughout the duration of this agreement and any project agreement, insurance of such type and in such amounts necessary to protect its interest and the interest of the Village against hazards or risks of loss as specified below. The insurance coverage shall include a minimum of:

- a. Comprehensive General Liability Insurance: with broad form endorsement, including automotive liability, completed operations and products liability, contractual liability, severability of interest with cross liability and property damage liability with limits of \$50,000.00 combined single limit per occurrence for bodily injury and property damage. The policy or policies shall name Village as additional insured and shall reflect the hold harmless provision contained herein. Coverage must be afforded in a form not more restrictive than the latest edition of the Commercial General Liability Policy without restrictive endorsements, as filed by the Insurance Services Office, and must include: (1) Premises and/or Operations; (2) Independent contractors and Products and/or completed Operations; (3) Broad Form Property Damage, Personal Injury and a Contractual Liability Endorsement, including any hold harmless and/or indemnification agreement. This insurance shall be written in comprehensive form and shall protect the Artist against all claims arising from injuries to persons other than its employees or damage to property of the Village or others arising out of any act or omission of the Artist or its agents, employees, or subcontractors. The policy shall also include protection against claims insured by usual personal injury liability coverage, a "protective liability" endorsement to insure the contractual liability assumed by the Artist under the indemnification provisions in the General Conditions. To the extent that the Artist's Work, or Work under its direction, may require blasting, explosive conditions, or underground operations, the comprehensive general liability coverage shall contain no exclusion relative to blasting, explosion, collapse of buildings, or damage to underground structures.

- b. Workers' Compensation Insurance in compliance with Chapter 440, Florida Statutes, as presently written or hereafter amended, and applicable federal law. The policies must include Employer's Liability with minimum limits of \$500,000 per accident.
- c. Comprehensive Automobile Liability: This insurance shall be written in comprehensive form and shall protect the Artist against all claims for injuries to members of the public and damage to property of others arising from the use of motor vehicles, and shall cover operation on or off the site of all motor vehicles licensed for highway use, whether they are owned, nonowned, or hired.
- d. Subcontractor's Public Liability and Property Damage Insurance and Vehicle Liability Insurance: The Artist shall either require each of its subcontractors to procure and to maintain Subcontractor's Public Liability and Property Damage Insurance and Vehicle Liability Insurance of the type and in the amounts specified in the Supplementary Conditions or insure the activities of its subcontractors in the Artist's own policy, in like amount.

16.2 The policies shall contain waiver of subrogation against the Village where applicable and shall expressly provide that the policy or policies are primary over any other insurance that the Village may have. The Village reserves the right to request a copy of the required policies for review. All policies shall contain a "severability of interest" or "cross liability" clause without obligation for premium payment to the Village.

16.3 All of the insurance is to be placed with Best rated A-8 or better insurance companies qualified to do business under the laws of the State of Florida and have agents upon whom service of process may be made in the State of Florida.

16.3.1 The Artist shall furnish certificates of insurance to the Village prior to the commencement of operations. The certificates shall clearly indicate that the Artist has obtained insurance in the type, amount, and classification as required for strict compliance with this paragraph and that no reduction in limits by endorsement during the policy term, or cancellation of this insurance shall be effective without 30 days prior written notice to the Village.

16.4 The Village is to be specifically included as an additional insured for the liability of the Village resulting from operations performed by or on behalf of Artist in performance of this or any project agreement. Artist's insurance, including that applicable to the Village as an additional insured, shall apply on a primary basis and any other insurance maintained by the Village shall be in excess of and shall not contribute to Artist's insurance. Artist's insurance shall contain a severability of interest provision providing that, except with respect to the total limits of liability, the insurance shall apply

to each insured or additional insured in the same manner as if separate policies has been issued to each.

16.5 Prior to the execution of this agreement, Artist shall provide the Village manager with evidence of insurability from the Artist's insurance carrier or a certificate of insurance. Prior to execution of any project agreement, the Artist shall provide to the Village manager, certificates of insurance evidencing the required insurance coverages. The certificates of insurance shall not only name the types of policy(ies) provided, but also shall refer specifically to this and any project agreement and shall state that such insurance is as required by the and any project agreement. The Village reserves the right to require the Artist to provide a certified copy of such policies, upon written request by the Village. If a policy is due to expire prior to the completion of the services, renewal certificates of insurance or policies shall be furnished 30 days prior to the date of their policy expiration. Each policy certificate shall be endorsed with a provision that not less than 30 days' written notice shall be provided to the Village before any policy or coverage is cancelled or restricted. Acceptance of the certificate(s) is subject to approval of the Village Manager.

16.6 Compliance with the foregoing requirements shall not relieve the Artist of its liability and obligations under this agreement.

All deductibles or self-insured retentions must be declared to and be approved by the Village manager. The Artist shall be responsible for the payment of any deductible or self-insured retentions in the event of any claim. The Village manager may require the Artist, as a condition of execution of a particular project agreement, to provide a bond or other monetary consideration to cover the Artists' deductible for professional liability insurance.

Section 17. Representative Of Village And Contractor

17.1 Village Representative. It is recognized that questions in the day-to-day conduct of this agreement will arise. The Village designates the Building & Capital Projects Director, as the person to whom all communications pertaining to the day-to-day conduct of this agreement shall be addressed.

17.2 Artist Representative. Artist shall inform the Village representative, in writing, of the representative of the Artist to whom all communications pertaining to the day-to-day conduct of this agreement shall be addressed.

Section 18 Cost And Attorney's Fees/Waiver Of Jury Trial

18.1 The Village does not waive sovereign immunity for any claim for breach of Contract/Agreement or for an award of prejudgment interest; provided, however, that in any action arising out of or to enforce this agreement, the prevailing party shall be entitled to its reasonable attorney's fees and costs in any state or federal administrative, circuit court and appellate court proceedings.

18.2 In the event of any litigation arising out of this agreement or project agreement, each party hereby knowingly, irrevocably, voluntarily, and intentionally waives its right to trial by jury in State or Federal Court proceedings in respect to any action, proceeding, lawsuit or counterclaim based upon the Contract Documents or the performance of the Work there under.

Section 19. Entire Contract/Agreement

19.1 The Contract/Agreement, and the attached Supplementary Conditions (Section 0080) when signed by all of the parties, constitutes the full and complete understanding and Contract/Agreement of all parties and may not be in any manner interpreted or fulfilled in contradiction of its express terms. This contract and the incorporated attachments constitute the entire understanding between the parties and integrates by its terms all previous contracts or understandings, oral or written, between the parties. In the event of any conflict, the terms of this Contract/Agreement will govern over the provisions of any incorporated documents.

Section 20. Subcontractors

20.1 None of the work or services under this agreement shall be subcontracted unless Artist obtains prior written consent from the Village. Approved subcontractors shall be subject to each provision of this agreement and Artist shall be responsible and indemnify the Village for all subcontractors' acts, errors or omissions.

20.2 The Artist shall not assign, transfer or pledge any interest in this agreement without prior written consent of the Village; provided, however, that claims for money by the Artist from the Village under this agreement may be assigned, transferred or pledged to a bank, trust company, or other financial institution without the Village's approval. Written notice of any assignment, transfer or pledge of funds shall be furnished within 10 days by the Artist to the Village.

20.3 In the event the Artist requires the services of any subcontractors or other professional associations in connection with services covered by any project agreement, the Artist must secure the prior written approval of the Village manager. The Artist shall utilize his/her best efforts to utilize subcontractors where principal place of business is located within the Village of Palmetto Bay, Florida.

20.4 Any subcontract with a subcontractor shall afford to the Artist right against the subcontractor which correspond to those rights afforded to the Village against the Artist herein, including but not limited to those rights of termination as set forth herein.

20.5 No reimbursement shall be made to the Artist for any subcontractors that have not been previously approved by the Village for use by the Artist.

20.6 The Artist, subcontractors, suppliers, and laborers are prohibited from placing a lien on Village's property.

Section 21. Notices

21.1 Whenever either party desires to give notice to the other, it must be given by hand delivery, facsimile, or written notice, sent by certified United States mail, with return receipt requested or a nationally recognized private mail delivery service, addressed to the party for whom it is intended, at the place last specified, and the place for giving of notice in compliance with the provisions of this paragraph. For the present, the parties designate the following as the respective places for giving of notice and identified the following persons as the contracting officers.

For Artist: Joshua Wiener
2695 Dartmouth Avenue
Boulder, Colorado 80305

For Village:

Village of Palmetto Bay
9705 East Hibiscus Street
Palmetto Bay, Florida 33157
Attention: Ron E. Williams, Village Manger

Section 22. Owner's Representations.

22.1 Village's Representative. The Building and Capital Improvements Director will be the Village's representative during the construction period. The duties and responsibilities and the limitations of authority of the Building and Capital Improvements Director as the Village's representative during construction are set forth in the Contract/Agreement Documents.

22.2 Visits To Site. The Building and Capital Improvements Director will make visits to the site during construction to observe the progress and quality of the Work and to determine, in general, if the Work is proceeding in accordance with the Contract/Agreement Documents. The Building and Capital Improvements Director will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Building and Capital Improvements Director will not, during such visits or as a result of such observations of the Artist's Work in progress, supervise, direct, or have control over the Artist's Work.

22.3 Project Representation. The Building and Capital Improvements Director may furnish a Resident Project Representative to assist in observing the performance of the Work. The duties, responsibilities, and limitations of authority of any such Resident Project Representative and assistants will be as provided in the Supplementary Conditions.

22.4 Clarifications And Interpretations. The Building and Capital Improvements Director will issue with reasonable promptness such written clarifications or interpretations of the requirements of the Contract/Agreement Documents (in the form of Drawings or otherwise) as the Building and Capital Improvements Director may determine necessary, which shall be consistent with or reasonably inferable from the overall intent of the Contract/Agreement Documents.

22.6 Authorized Variations In Work. The Building and Capital Improvements Director may authorize minor variations in the Work from the requirements of the Contract/Agreement Documents which do not involve an adjustment in the Contract/Agreement Price or the Contract/Agreement Time and are consistent with the overall intent of the Contract/Agreement Documents. These may be accomplished by a Field Order and will require the Artist to perform the Work involved promptly. If the Artist believes that a Field Order justifies an increase in the Contract/Agreement Price or an extension of the Contract/Agreement time and the parties are unable to agree as to the amount or extent thereof, the Artist may make a claim therefor as provided in this Agreement.

22.7 Rejecting Defective Work. The Building and Capital Improvements Director will have authority to reject Work which the Building and Capital Improvements Director believes to be defective and will also have authority to require special inspection or testing of the Work, whether or not the Work is fabricated, installed, or completed.

22.8 Artist Submittals, Change Orders, And Payments. In accordance with the procedures set forth in the General Requirements, the Building and Capital Improvements Director will review all Artist submittals, including shop drawings, samples, substitutes, or "or equal" items, etc., in order to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the requirements of the Contract/Agreement Documents and be compatible with the design concept of the completed project as a functioning whole as indicated by the Contract/Agreement Documents. The Building Official's review will not extend to means, methods, techniques, sequences or procedures of construction or to safety precautions or programs incident thereto.

Section 23. Consent To Jurisdiction

23.1 The parties submit to the jurisdiction of any Florida state or federal court in any action or proceeding arising out of relating to this agreement or any project agreement. Venue of any action to enforce this agreement or any project agreement shall be in Miami-Dade County.

Section 24. Governing Law

24.1 This agreement and any project agreement shall be construed in accordance with and governed by the laws of the State of Florida.

24.2 In the event a court must interpret any word or provision of this contract, the word or provision shall not be construed against either party by reason of drafting or negotiating this contract.

Section 25. Headings

25.1 Headings are for convenience of reference only and shall not be considered in any interpretation of this agreement.

Section 26. Exhibits

26.1 Each Exhibit referred to in this agreement forms an essential part of this agreement. The Exhibits if not physically attached, should be treated as part of this agreement, and are incorporated by reference.

Section 30. Severability

30.1 If any provision of this agreement or any project agreement or the application thereof to any person or situation shall to any extent, be held invalid or unenforceable, the remainder of this agreement, and the application of such provisions to persons or situations other than those as to which it shall have been held invalid or unenforceable shall not be affected thereby, and shall continue in full force and effect, and be enforced to the fullest extent permitted by law.

SECTION 31. COUNTERPARTS

31.1 This agreement may be executed in several counterparts, each of which shall be deemed an original and such counterparts shall constitute one and the same instrument.

SECTION 32. WARRANTY OF AUTHORITY

32.1 The signatories to this agreement warrant that they are duly authorized by action of their respective Village commission, board of directors or other authority to execute this agreement and to bind the parties to the promises, terms, conditions and warranties contained in this agreement.

32.2 Shannon Melendi Act. The Artist shall comply with the "Shannon Melendi Act of Miami-Dade County", which is incorporated by reference for the purpose of conducting background investigations for all principals, members, employees, and/or volunteers or participants ("Volunteers") associated with the operational activities for the Artist. Required background investigations shall be completed in accordance with the Act.

32.3 All agents, employees and subcontractor of the Artist retained to perform services pursuant to this bid shall comply with all laws of the United States concerning



work eligibility and comply with the Shannon Melendi Act, as adopted by the Village. All employees and subcontractors of Artist shall be properly screened as required under the Act.

32.4 Contingency Fee and Code of Ethics. Artist warrants that neither it, nor any principal, employee, agent, representative or family member has promised to pay, and Artist has not, and will not, pay a fee the amount of which is contingent upon the Village awarding this contract to Artist. Artist warrants that neither it, nor any principal, employee, agent, representative or family member has procured, or attempted to procure, this contract in violation of any of the provisions of the Miami-Dade County or the Village of Palmetto Bay conflict of interest and code of ethics ordinances. A violation of this paragraph will result in the termination of the contract and forfeiture of funds paid, or to be paid, to the Artist.

SECTION 34. TITLE/OWNERSHIP TO MATERIALS FOUND ON THE WORK

34.1 The Village reserves the right to retain title to all soils, stone, sand, gravel, and other materials developed and obtained from excavations and other operations connected with the Work until released by the Village. Any material desired to be retained by the Village shall be delivered by the Artist to a designed area within a six (6) mile radius of the project, at no extra cost to the Village, as directed by the Village, unless otherwise specified in the Contract/Agreement Documents. Neither the Artist nor any subcontractor shall have any right, title, or interest in or to any such materials. The Artist will be permitted to use in the Work, if approved by the Village and Building and Capital Improvements Director in writing, without charge, any such materials which meet the requirements of the Contract/Agreement Documents. Once the Village releases ownership of the material, it shall become the property of the Artist, who shall dispose of it in manner satisfactory to the Building Official, as provided for by the Artist, at no extra cost to the Village.

SECTION 35. RIGHT TO AUDIT

35.1 If the Artist submits a claim to the Village for additional compensation, the Village shall have the right, as a condition to considering the claim, and as a basis for evaluation of the claim, and until the claim has been settled, to audit the Artist's books to the extent they are relevant. This right shall include the right to examine books, records, documents, and other evidence and accounting procedures and practices, sufficient to discover and verify all direct and indirect costs of whatever nature claimed to have been incurred or anticipated to be incurred and for which the claim has been submitted. The right to audit shall include the right to inspect the Artist's plants, or such parts thereof, as may be or have been engaged in the performance of the Work. The Artist further agrees that the right to audit encompasses all subcontracts and is binding upon subcontractors. The rights to examine and inspect herein provided for shall be exercisable through such representatives as the Village deems desirable during the Artist's normal business hours at the office of the Artist. The Artist shall make available to the Village for auditing, all

relevant accounting records and documents, and other financial data, and upon request, shall submit true copies of requested records to the Village.

IN WITNESS WHEREOF, the parties execute this agreement on the respective dates under each signature: The Village, signing by and through its Village manager, attested to by its Village Clerk, duly authorized to execute same and by Artist by and through its president, whose representative has been duly authorized to execute same through a resolution of the corporation or partnership.

ATTEST:

VILLAGE OF PALMETTO BAY

Village Clerk

By: _____
Ron E. Williams
Village Manager

Date: _____

APPROVED AS TO FORM:



Eve A. Boutsis
Village Attorney

ATTEST

Artist

Village Clerk

By: _____

Name: JOSHUA WIENER

Date: _____

**PROFESSIONAL ARTIST SERVICES AGREEMENT
BETWEEN
VILLAGE OF PALMETTO BAY'S ART IN PUBLIC PLACES PROGRAM
AND
HANS FEYERABEND**

EXHIBIT 1

Completion and Payment Schedule
Re: RFQ: Public Art / Roundabout
Budget: \$50,000

Project Location: Traffic Roundabout at the junction of Richmond Drive and Galloway Road

The artist hereto referred to as **Joshua Wiener** agrees to the following schedule for the execution and installation of the interpretive art works entitled "Balance of Life", as designed by Joshua Weiner, dated stamped received on January 3rd, 2011 attached hereto.

Work Schedule

The artist shall commence work within five (5) days of Council approval. Fifty percent (50%) of the work must be completed on or before Friday, January 28, 2011. The art piece shall be completed and installed no later than Monday, May 9th, 2011.

Payment Schedule

An initial payment will be issued to the artist in the amount equal to thirty (30%) of the contract award equivalent to fifteen thousand dollars (\$15,000) upon notice to proceed.

An additional payment in the amount equal to sixty two percent (62%) of the contract award equivalent to thirty one thousand dollars (\$31,000) will be issued upon 50% of completion of the art piece to the artist on or before Friday, March 18th, 2011, upon satisfaction of the Village.

The final payment in the amount equal to eight percent (8%) of the contract awarded equivalent to three thousand two hundred eighty dollars (\$4,000) will be released upon final installation of the art piece to the artist on or before Monday, May 9th, 2011, upon satisfaction of the Village.

ATTEST

JOSHUA WIENER / ARTIST

WITNESS

Julian H. Perez, AICP
Director of the Department of Planning and Zoning



JOSHUA WIENER

TRAFFIC ROUNDABOUT | PUBLIC ART INSTALLATION



"Balance of life"



presentation by:

Joshua Wiener

January 13, 2011

*Village of Palmetto Bay
Palmetto Bay, Florida*

RECEIVED
Zoning Department

Jan. 3. 2011

**Village of Palmetto Bay
Building & Zoning Department**

By: *[Signature]*

Proposal submitted by:

Joshua Wiener

2695 Dartmouth Avenue ♦ Boulder, Colorado 80305

(303) 908-2396 mobile ♦ (303) 447-2396 home

flowcus@gmail.com ♦ www.joshuawiener.com

Project:

***Village of Palmetto Bay
Palmetto Bay, Florida***

"Balance of life"

Presentation date:

January 13, 2011

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VILLAGE OF PALMETTO BAY, FLORIDA

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RECEIVED
Zoning Department

Village of Palmetto Bay
Building & Zoning Department
By:



JOSHUA WIENER

PROPOSAL FOR
VILLAGE OF PALMETTO BAY
PALMETTO BAY, FLORIDA

JANUARY 23, 2010
www.josiahwiener.com



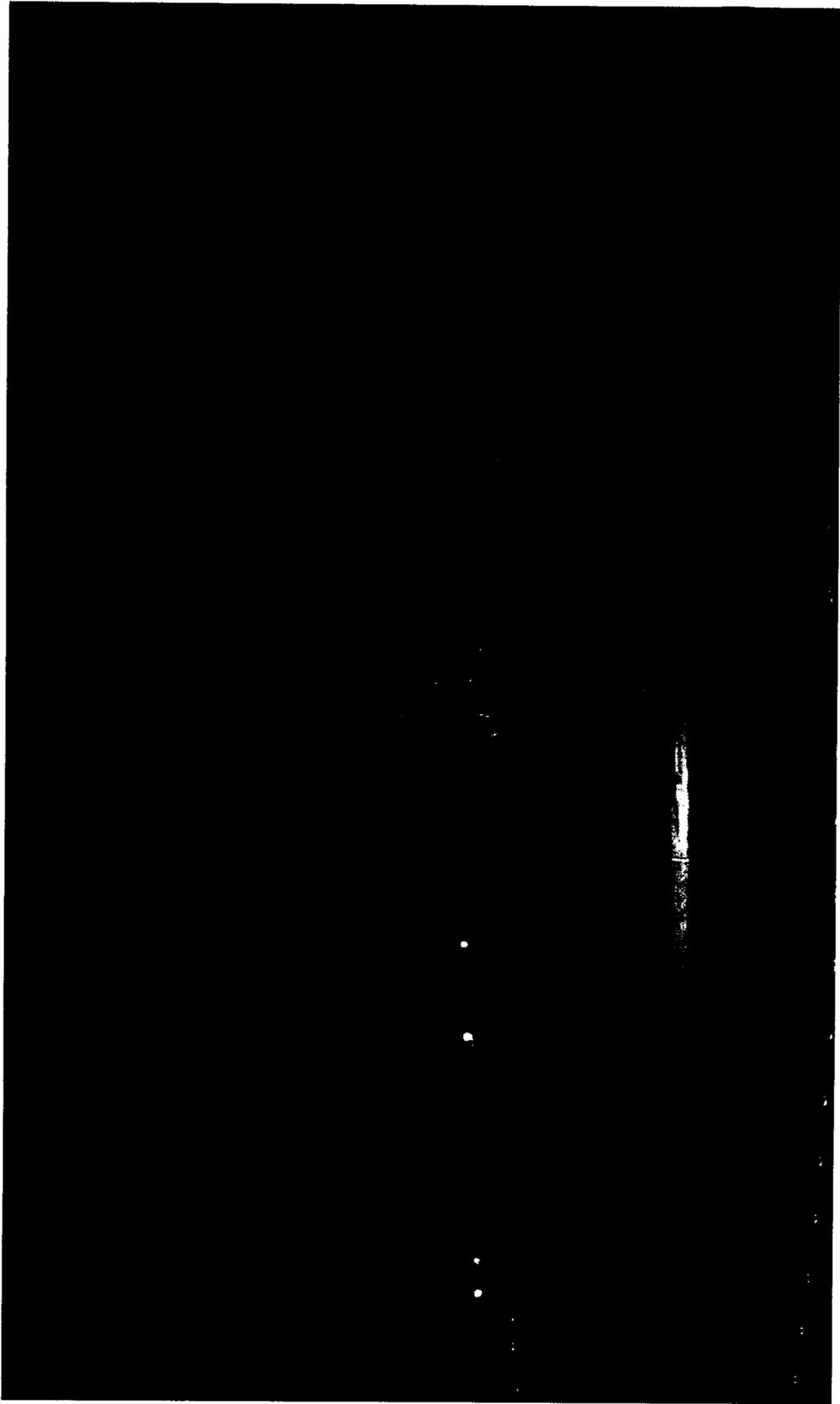
Proposed Design in site
(for reference only, not to scale)



JOSHUA WIENER

PROPOSAL FOR
VILLAGE OF PALMETTO BAY
PALMETTO BAY, FLORIDA

DATE: 03/13/2010
PROJECT: VILLAGE OF PALMETTO BAY
WWW.FORTRANSPORTATION.COM



Proposed Design in site
(for reference only, not to scale)

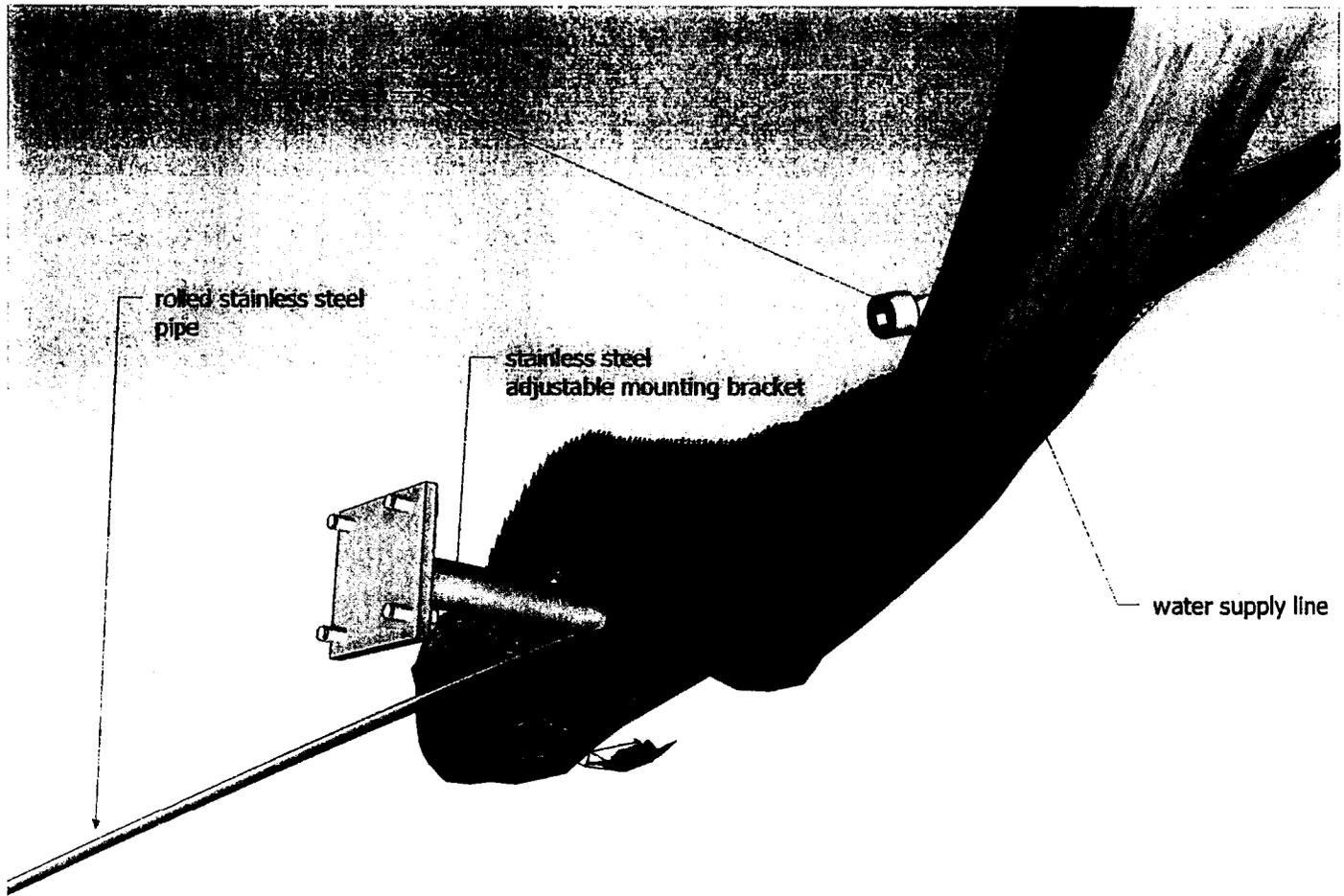


JOSHUA WIENER

PROPOSAL FOR
VILLAGE OF PALMETTO BAY
PALMETTO BAY, FLORIDA



Construction Detail



*Exact design will be worked out with structural engineer.
Initial consultation was with Shahin Hekmat at BCC Engineering.*



Sparkle finish for concrete veneer of obelisk



JOSHUA WIENER

PROPOSAL FOR
VILLAGE OF PALMETTO BAY
PALMETTO BAY, FLORIDA

2690 ...
504 ...
...
www.joshua...

NARRATIVE
FOR
VILLAGE OF PALMETTO BAY, FLORIDA

"Balance of life"

This sculpture is about the relationship of government and the natural world. During my visit to Palmetto Bay, I was impressed with the far reaching efforts for sustainability. This sculpture pays homage to these visionary practices by creating a piece where natural and human elements enhance one another.

This sculpture is a composition of sturgeons spiraling around an obelisk, ascending the tower, and projecting into the sky. These ancient fish are beautiful, recognizable, and in jeopardy. Having these fish spiral around the obelisk suggests their path relates to the obelisk. An obelisk is a symbol for a complex and organized civilization. The well being of our civilization is tied to our water. In this sculpture and in the world, water gives life, so the way we manage it is an indicator for our relationship with ourselves and the greater environment. When we cherish it, we improve.

During the day, the piece will be in swirling clouds of glistening water. A series of ports will be piped through the piece and will jet water in refracted streams. This will give the piece an ephemeral presence while maintaining the distinct strength of the obelisk. At night, the water flow will change so the surface of the pool gently undulates. There will be blue lights set up to reflect off the surface of the pool to make a cascade of light on the obelisk. The following link is an example of how the reflection of the water will appear on the surface of the obelisk. <http://www.istockphoto.com/stock-video-9233558-water-ripple.php>

One of the most exciting aspects of this site is how the audience is moving past the piece in a consistent way. Because of this, I am able to give the piece a kinetic feel without moving parts. Having a gap between the fish and the obelisk makes them appear to be moving. As you move around the obelisk, the school of fish will appear to be rising. This illusion will be enhanced with the flow of water.

I am honored to be considered for this project. It is clear that Palmetto Bay is making strides to improve the environment. The new Municipal Center is a demonstration of how to apply our best practices. There is an array of exciting efforts that draw me to this project. My artwork is about elevating the way we see and interact with nature. I know we can have a dynamic civilization and a robust environment. The Cutler Rehydration Project, Deering Estate, and the 168th street roundabout all distinguish this area as a place where conservation and restoration are happening.

I will be able to create and install this piece by the March deadline. I am well versed in tight timelines and have just installed a major commission in 6 weeks- start to finish. You are welcome to contact the head of Clackamas County Arts Alliance to hear the level of professionalism that I executed this project with.

 **JOSHUA WIENER**

PROPOSAL FOR
VILLAGE OF PALMETTO BAY
PALMETTO BAY, FLORIDA

2695
Boulevard
2695
www.jos

ARTIST STATEMENT
FOR
VILLAGE OF PALMETTO BAY, FLORIDA

"Balance of life"

This project excites me for so many reasons. I am inspired by the natural beauty of Palmetto Bay, the obelisk, and the efforts for sustainability by the city. It relates to all of my efforts as an artist and an environmental advocate.

"Balance of Life" is about inspiring environmental stewardship. We are such a capable creature, and I think we are about to see our true potential. Through exemplary policy there are ways to use our space and materials to improve the environment. This is how our evolution is happening; we are learning how to have the best possible relationship with our greater surroundings. This progression is what I am interested in as an artist.

I look at my art as an instrument to educate, draw attention, and inspire. *"Balance of Life"* is a special kind of instrument. The intent of this piece is to present a flow of fish in a way that draws a relationship between good policy and a robust environment. Palmetto Bay is distinguished with sound efforts to improve ecology; I am drawn to this project to articulate the good work of the greater community.

"Joshua's knowledge of materials, shapes, forms, and compositions makes me highly recommend him for public art projects." Dean Pearson, Landscape Architect and President of Architerra Group

Public art should be important. It should mean something, have an impact on the audience, and change lives. To do this it has to be relevant, it has to contain recognizable language, to speak to the viewer, reveal something new, and be executed with the highest standard of perfection. I believe in art as an instrument to define our world. A well planned artwork shapes its environment and is shaped by it.

My experience includes:

- creating land art on a reclaimed contaminated site
- participating in design teams
- making site-specific public sculptures
- working in stone, steel, earth, and experimental materials with great success
- completing every project on time and within budget
- constructing contemplative gardens and water features with *Marpa*, winner of the numerous awards
- working with architects, landscape architects, city planners, engineers, and contractors
- generating construction documents
- teaching a month workshop at the Denver Art Museum
- apprenticing in Japan with sculptor, Kazutaka Uchida
- completing a residency at an accredited institution, PlatteForum, working with at risk youth
- co-founding and directing a community arts 501c3 non-profit organization, *Art In Your Park*
- leading nature walks with elementary school children at Durango Nature Studies
- teaching at the Art Students League in Denver
- managing over 100 community events
- managing a team of technicians and instructing workshops at MARBLE/marble Symposium



JOSHUA WIENER

PROPOSAL FOR
VILLAGE OF PALMETTO BAY
PALMETTO BAY, FLORIDA



BUDGET 1 (BRONZE)
FOR
VILLAGE OF PALMETTO BAY, FLORIDA

"Balance of life"

Artist Fees	
Design	\$ 3,000
Labor / Fabrication / Installation	<u>\$ 5,000</u>
Sub-total	\$ 8,000
Professional Consultation Fees	
Engineer	\$ 1,000
Concrete finishers	\$ 1,500
Stainless steel rolling	\$ 1,000
Plumbing	\$ 1,200
Electrician	<u>\$ 1,000</u>
Sub-total	\$ 5,700
Materials & Supplies	
Bronze (molds, pour, welding and patina, chasing)	\$15,500
Stainless steel, pins, and mounting plates	\$ 2,500
Sparkle coating	\$ 500
Lights and timer	\$ 800
Piping and fixture	<u>\$ 1,000</u>
Sub-total	\$20,300
Shipping	
Shipping	\$ 3,000
Installation	
Equipment (scaffolding, rolling carts, etc)	\$ 2,000
Crane	<u>\$ 2,500</u>
Sub-total	\$ 4,500
Travel	\$ 3,000
Insurance	
Insurance for length of project	\$ 500
Contingency	<u>\$ 5,000</u>
Total	\$50,000



JOSHUA WIENER

PROPOSAL FOR
VILLAGE OF PALMETTO BAY
PALMETTO BAY, FLORIDA

2008
www.joshua-wiener.com

BUDGET 2 (STONE)
FOR
VILLAGE OF PALMETTO BAY, FLORIDA

"Balance of life"

Artist Fees	
Design	\$ 3,000
Labor / Fabrication / Installation	<u>\$12,000</u>
Sub-total	\$15,000
Professional Consultation Fees	
Engineer	\$ 1,000
Concrete finishers	\$ 1,500
Stainless steel rolling	\$ 2,000
Plumbing	\$ 1,000
Electrician	<u>\$ 1,500</u>
Sub-total	\$ 7,000
Materials & Supplies	
Stone	\$ 4,000
Stainless steel, pins, and mounting plates	\$ 3,700
Sparkle coating	\$ 500
Lights and timer	\$ 800
Piping and fixture	<u>\$ 1,000</u>
Sub-total	\$10,000
Shipping	
Shipping	\$ 4,000
Installation	
Equipment (scaffolding, rolling carts, etc)	\$ 2,500
Crane	<u>\$ 3,000</u>
Sub-total	\$ 5,500
Travel	\$ 3,000
Insurance	
Insurance for length of project	\$ 500
Contingency	<u>\$ 5,000</u>
Total	<u>\$50,000</u>



JOSHUA WIENER

PROPOSAL FOR
VILLAGE OF PALMETTO BAY
PALMETTO BAY, FLORIDA



TIMELINE
FOR
VILLAGE OF PALMETTO BAY, FLORIDA

"Balance of life"

<u>Task</u>	<u>Time allotted for each process</u>
Short-list Presentation	January 13, 2011
Signing of contract	January 2011
Receipt of first check	January 2011
Sculpting/Fabrication	2 months
Install artwork	3 days
Site restoration	1 day
<i>Estimated time needed to complete project</i>	12 weeks

**Estimated Installation date ~ March 31, 2011*

**pending city approval/signing of contract/receipt of deposit/weather meets the estimated timeline presented here*

***I would be prepared to begin the project as soon as the contract is awarded and the deposit is received.*



JOSHUA WIENER

PROPOSAL FOR
VILLAGE OF PALMETTO BAY
PALMETTO BAY, FLORIDA



RÉSUMÉ

PUBLIC COMMISSIONS

2010	Denver Urban Gardens (SCFD GRANT)	Denver, Colorado
2010	Juanita Beach Park (<i>living sculpture</i>)	Kirkland, Washington
2010	Carson Nature Center/South Platte Park (<i>living sculpture/gateway</i>)	Littleton, Colorado
2010	172 nd Avenue Roundabout (<i>gateway & sign</i>)	Happy Valley, Oregon
2008	(<i>Artist for</i>) Governor's Excellence in Renewable Energy Award	Denver, Colorado
2008	<i>Designs for Crosswalks</i> - Mid Town Redevelopment Project	Longmont, Colorado
2007	<i>Sculpture 2</i> - Maher Ranch, Gemstone Park	Castle Rock, Colorado
2006	(1) Community Park	Broomfield, Colorado
2006	(2) Community Park	Broomfield, Colorado
2006	(3) Community Park	Broomfield, Colorado
2006	<i>Design Team</i> - Maher Ranch, Gemstone Park	Castle Rock, Colorado
2006	<i>Sculpture 1</i> - Maher Ranch, Gemstone Park	Castle Rock, Colorado
2005	Founders' Park	Wheat Ridge, Colorado

COMMISSIONS

2010/05	Evoke Landscape Design	Boulder, Colorado
2008	Denver Art Museum (<i>demonstration piece</i>)	Denver, Colorado
2008	Laura Landgraf	Denver, Colorado
2008	Benjamin & Heather Victor	Pittsburg, Pennsylvania
2006	Head Start Regional 8 Conference	Denver, Colorado
2006/05	Sanzone Studios	Boulder, Colorado
2005	Dr. Mark Brodie	Genesee, Colorado
2005	Dr. Rick Newman	Arvada, Colorado
2004/03/02	Studio Forma Landscape Design	Boulder, Colorado
2004	Cody Center	Lakewood, Colorado
2004	Pharmatech, Inc.	Denver, Colorado
2004	Ken Lindeneau	La Mesa, California
2004	Adam Wiener	Durango, Colorado
2003	Bobby Smith	Niwot, Colorado
2003	Ryan Hubbard	Denver, Colorado
2002	Colorado State University	Fort Collins, Colorado
2001	Marpa & Associates Landscape Design	Boulder, Colorado
2001	Dr. William Silvers	Denver, Colorado

COLLECTIONS

2010	Nick Sorenson	Denver, Colorado
2009	Town of Castle Rock	Castle Rock, Colorado
2009	La Academia at the Denver Inner City Parish	Denver, Colorado
2009/08	John & Dianne Dinneen	Littleton, Colorado
2008	Sandy Wolf	Denver, Colorado
2007	Dr. Henry M. Sondheimer	Washington, D.C.
2007	Jeannie Stuntz	Loveland, Colorado
2007	Martin Gates	Micanopy, Florida
2007	Linda Reynolds	Cody, Wyoming
2006	Russ Johnson	Denver, Colorado
2006	Casey Matthews	Denver, Colorado
2005	Pharmatech, Inc.	Denver, Colorado
2004	Krishnamurti Valley School	Bangalore, India
2004	John and Karen Nystrom	Fort Collins, Colorado
2004	Christine Lark	Longmont, Colorado
2003	Barbara Wojcik	West Broomfield, Michigan
2003	Marita Schmitz	Denver, Colorado
2002	Bob Case	Flagstaff, Arizona
2002	Vickie Branson	Afton, Oklahoma
2002	James Moses	Flagstaff, Arizona
2002	Matthew Wiener	Aurora, Colorado
1996	Kazutaka Uchida	Tokyo, Japan
1995	John Cole	

 JOSHUA WIENER

PROPOSAL FOR
VILLAGE OF PALMETTO BAY
PALMETTO BAY, FLORIDA

1698... Durango, Colorado
800...
www.fosh...

EXHIBITIONS

2011/10/04/03	US Bank "Art on the Streets" Exhibition (2 Sculptures Selected)	Colorado Springs, Colorado
2011/10	City of Durango outdoor exhibit	Durango, Colorado
2011/10	City of Greeley outdoor exhibit (2 Sculptures Selected)	Greeley, Colorado
2010/09/08	Douglas County "Art Encounters" outdoor exhibit (4 sites)	Castle Rock & Parker, CO
2010-99	Stone Carver's Exhibition at Redstone Art Center	Redstone, Colorado
2009 - 2003	Invited 09-08, Juried 07-03 "Sculpture in the Park" exhibition	Loveland, Colorado
2009	Madden Museum, "Windows to the Divine", juried	Denver, Colorado
2009	Loveland Museum, "Twirling Dali's mustache"	Denver, Colorado
2009	RedLine Gallery, 'Art for Ransom' (fundraiser)	Denver, Colorado
2009	PlatteForum Gallery, "Elevating nature/Germination of ideas"	Denver, Colorado
2009	eventgallery 910Arts, "Exploring the Values of our Waters"	Denver, Colorado
2009/08/06/05	Evergreen Sculpture Walk - (3 Sculptures Selected)	Evergreen, Colorado
2009/08/07	Sioux Falls Sculpture Walk - (3 Sculptures Selected)	Sioux Falls, South Dakota
2009/08/07	"Art on the Move" outdoor exhibition - (3 Sculptures Selected)	Longmont, Colorado
2009/07	Access Gallery, tactile show, juried	Denver, Colorado
2009/08	El Paso's pre-qualified artist pool, juried	El Paso, Texas
2009/08	City of Evanston's pre-qualified database, juried	Evanston, Illinois
2008	Solo Show, Icelantic Gallery	Denver, Colorado
2008/07	20 th Annual Outdoor Sculpture Exhibition	Lawrence, Kansas
2008/07	Fryberger Art Consulting Gallery & Sculpture Garden	Littleton, Colorado
2007/06	The Standing Sun Fine Art Gallery, 2007 Solo Show	Denver, Colorado
2007	Functional Park Art Database - Colorado Springs, juried	Colorado Springs, Colorado
2006/05/04/03	Randall Chase Gallery	Palm Desert, California
2006/05/04	Treeline Gallery	Estes Park, Colorado
2005/04	Gallery 730	Prospect, Colorado
2004	Sumukha Art Gallery	Bangalore, India
2003/01	Colorado History Museum / Stone Sculptor Showcase	Denver, Colorado
2002	15th Annual Sedona Sculpture Walk	Sedona, Arizona
2002	"Eclectic Mess" Invitational at Ironton Gallery	Denver, Colorado
2002	Purple Door Studio Exhibition	Denver, Colorado
2001/00	Odalisque Gallery	Online Gallery

TEACHING AND SPEAKING ENGAGEMENTS

Present-96	Staff/Presenter	Marble Institute of Colorado	Marble, Colorado
Present-08	Instructor	Art Students League	Denver, Colorado
2010	Juror	Colorado Artfest / 21 st Annual	Castle Rock, Colorado
2009	Presenter	University of Colorado	Boulder, Colorado
2009	Juror/Architecture studio	UCD/College of Architecture & Planning	Denver, Colorado
2009	Residency	PlatteForum	Denver, Colorado
2009	Juror	La Academia, "Art for Youth" Art Show	Denver, Colorado
2008	Presenter/Instructor	Denver Art Museum	Denver, Colorado
2008	Instructor for workshop	Colorado Academy	Denver, Colorado
2007	Presenter	Communication Arts, Inc.	Boulder, Colorado
2006	Instructor/Presenter	Bridge School	Boulder, Colorado
2006	Presenter	Parker High School	Parker, Colorado
2005	Substitute Instructor	Armory Art Center Master Artist Workshop	West Palm Beach, Florida

INTERNATIONAL EXPERIENCE ~ INDIA

- Invited to Bangalore, India in 2004 along with over forty other carvers from around the world to be a part of a two week stone sculpting symposium
- Sculpture was exhibited in Bangalore at the Sumukha Art Gallery and is now on permanent collection at the Krishnamurti Valley School

INTERNATIONAL APPRENTICESHIP ~ JAPAN

- Apprenticed twice with master sculptor, Kazutaka Uchida, in Tokyo, Japan
- Worked with Uchida on monumental pieces for museums, and also public and private collections
- Assisted Uchida on a sculpture for permanent collection at the Toyota Municipal Museum in Japan along side a Henry Moore bronze sculpture and two different twenty-piece stone exhibitions in Japan
- Studied with Uchida the techniques of professional networking, from museum curators to presidents of universities



JOSHUA WIENER

PROPOSAL FOR
VILLAGE OF PALMETTO BAY
PALMETTO BAY, FLORIDA

1699
www.jw.com

PROFESSIONAL EXPERIENCE

Joshua Wiener/Sculptor ~ Boulder, Colorado

- Started stone sculpting in 1994
- Soon become skilled in carving all types of stone with a strong grasp of technique and style
- Have developed a language in stone that communicates ideas with simple forms

The Marble Institute of Colorado ~ Marble, Colorado

- The Marble Institute of Colorado is an international stone sculpting symposium that has been functioning for the last twenty years.
- This annual event was the springboard to my sculpting career.
- Was brought on as a full time staff member, after two years as an apprentice at Marble/marble
- Learned a wide range of techniques and technical necessities to function as a professional public artist through Marble/marble
- Help over 150 artists achieve their dreams of sculpting stone each year

Art In Your Park ~ Boulder, Colorado

- Co-founded the community arts organization *Art In Your Park* in 1999 in order to fulfill a monumental aspect of my creative voice
- *AIYP*, a 501©3 non-profit organization, enhances community well being by creating opportunities for people to come together in local parks to paint, draw, sculpt, play music, and meet new people.
- *AIYP*'s mission is to develop a positive community experience by cultivating creativity.

Marpa & Associates ~ Boulder, Colorado

- *Marpa* is a landscape architecture company that has a reputation for creating botanical garden caliber spaces for private residences.
- Worked with *Marpa* to help create gardens with water-features
- My expertise in stone has been utilized in creating some of the finest water-features in Colorado.
- Was brought in for my creative insight, attention to detail, and my understanding of stone

Artscapes ~ Denver, Colorado

- An artistic landscaping company; *Artscapes* is one of the leading companies producing public art.
- Was brought in for my experience and knowledge in stone.

Evoke Landscaping/Sanzone Studios ~ Boulder, Colorado

- Evoke Landscaping/Sanzone Studios has completed projects nationwide such as urban design and planning, city parks, plazas, retreats, and contemplative gardens.
- The landscape architecture designs of Evoke Landscaping/Sanzone Studios result from an understanding of the connection between culture and environment, art and nature, conceptual and material processes, and craft and detail.
- Was brought in to create stone water features

Studio Forma ~ Boulder, Colorado

- *Studio Forma* is an artistic landscape architecture company.
- These works of art have called for expertise in sculpting stone additions to accentuate the cumulative creativity of the owner, the landscape architect, and myself.

COMMUNITY

Art In Your Park is a 501©3 non-profit arts organization that I co-founded in 1999. My interest in creating this program was to facilitate community art by providing free opportunities for the general public to paint, draw, sculpt, and make music. *AIYP* has been functioning successfully for nine years. *AIYP* has developed relationships with several productive organizations such as Head Start, Alzheimer's Association, and various Universities. To date, *AIYP* has estimated that over 20,000 people have participated with the program.

SELECTED PUBLICATIONS

2009 'Sculptors of the Rockies' book/Southwest Art publ.	2006 September - Southwest Art Magazine
2007 November/December - Tools Magazine	2006 Fall/Winter Issue 3 - Cairn Magazine
2007 August 12 - Reporter-Herald/Loveland, CO	2005 Winter Vol. 4 No. 1 - Sculptural Pursuit Magazine
2007 July - Southwest Art Magazine	2004 November 18 - Wheat Ridge, CO Transcript
2007 July 19-25 - The Valley Journal/Marble, CO	2004 Winter Vol. 3 No. 1 - Sculptural Pursuit Magazine
2007 May 30 - Enterprise/Broomfield, CO	2004 August 1 - Daily Camera/Boulder, CO



JOSHUA WIENER

PROPOSAL FOR
VILLAGE OF PALMETTO BAY
PALMETTO BAY, FLORIDA

2695
Boulder, CO 80302
www.joshuawienersculptor.com
2011/08/08 12

PROFESSIONAL REFERENCES

Cheryl Snow, Executive Director

Clackamas County Arts Alliance · P.O Box 2181 · Oregon City, OR 97045
(503) 266-1496 · cheryl@clackamasartsalliance.org

Betsy Bostwick, (*Public Art Manager at the time of project, no longer there*)
elizabeths25@gmail.com (*current email*)

Project: 172nd Roundabout ~ Happy Valley, Oregon

Michael Cogle, Park Planning Manager

City of Kirkland · 123 5th Avenue · Kirkland, WA 98033
(425) 587-3310 · mcogle@ci.kirkland.wa.us

Project: Juanita Beach Park ~ Kirkland, Washington

Julie Reynolds Huffman, Special Projects/Volunteer Coordinator

City of Kirkland · 123 5th Avenue · Kirkland, WA 98033
(425) 587-3012 · Fax: (425) 587-3019

Project: Juanita Beach Park ~ Kirkland, Washington

Lauren Greenfield, Art in Public Places Administrator

City of Longmont · 400 Quail Road · Longmont, CO 80501
(303) 651-8924 · Lauren_Greenfield@ci.longmont.co.us

Project: Mid Town Redevelopment Project ~ Longmont, Colorado

Lynn Jeffers, Broomfield Public Art Committee

City of Broomfield · 3 Community Park Road · Broomfield, CO 80020
(303) 464-1221 · lynicejeffers@comcast.net

Project: Community Park ~ Broomfield, Colorado

Jeff Smullen, Park Planning and Construction Superintendent

Town Of Castle Rock · 2301 N. Woodlands Boulevard · Castle Rock, Colorado 80104
(303) 814-7458 · jsmullen@crgov.com

Project: Gemstone Park ~ Castle Rock, Colorado

Dean Pearson, Landscape Architect

Architerra Group · 5881 South Defrane Street · Littleton, Colorado 80127
(303) 948-0766 · dpearson@architerragroup.com

Project: Gemstone Park ~ Castle Rock, Colorado

Judy Anderson, Artistic Director/Founder

PlatteForum · 1610 Little Raven Street, Suite 135 · Denver, Colorado 80202
(303) 893-0791 · judy@platteforum.org

Project: Residency at PlatteForum ~ Denver, Colorado

Barbara Neal, Public Art Consultant

P.O. Box 6982 · Denver, Colorado 80206
(303) 830-8791 · barbneal@mindspring.com

Project: Founders' Park ~ Wheat Ridge, Colorado

Joyce Manwaring, Director of Parks and Recreation

City of Wheat Ridge · 4005 Kipling · Wheat Ridge, CO 80033
(303) 231-1308 · jmanwaring@ci.wheatridge.co.us

Project: Founders' Park ~ Wheat Ridge, Colorado

Luke Sanzone, Landscape Architect

Evoked Landscaping · 5648 Slick Rock Court · Boulder, CO 80301
(720) 470-2920 · studiosanzone@yahoo.com

Project: Various water features ~ Denver/Boulder, Colorado



JOSHUA WIENER

PROPOSAL FOR
VILLAGE OF PALMETTO BAY
PALMETTO BAY, FLORIDA



P.O. Box 2181, Oregon City, OR . 97045
www.clackamasartsalliance.org
503.655.0525



September 27, 2010

To Whom It Concerns:

I'm pleased to write a reference for Joshua Wiener's work as a public artist.

In collaboration with the Clackamas County Development Agency and the City of Happy Valley, our local arts agency contracted with Joshua to create an iconic sculpture sited in a traffic roundabout. Key project goals for this site were to create a gateway identity, and to improve traffic safety by creating a visual reference point for drivers. Challenges were designing an artwork specifically intended to be viewed through vehicle windows or from the perimeter of the roundabout. Equally important to our Selection Committee was that the sculpture have lasting impact and integrity, but require minimal ongoing maintenance. Joshua's project emerged through our national call to public artists; his proposal successfully satisfied all project objectives. He completed the project to approved specifications, on budget and on time.

Time was a particular issue and problem with this project. Although we contracted with Joshua for a 12-week construction timeline, a variety of external circumstances not known at contract outset required that the project in fact be complete and installed in 6 weeks. Joshua was extraordinarily willing to adapt to these needs; his flexibility and patience was a distinct asset for both our Committee and construction project managers.

Joshua clearly understands the challenges of creating civic sculpture. His Committee presentation was clear, articulate and supported by excellent documentation, including maquette models and drawings. In his interactions with our Committee and staff, he was consistently open to change and responsive to critique. He evidenced good understanding of design and materials, and provided added value to project planning by participating in the landscape design process, resulting in a beautiful, well-integrated roundabout design. He was generally courteous and communicative with Committee members, project partners, construction crew and site neighbors, recognizing that negotiation and dialogue are important factors in the public art process. Additionally, Joshua was well-organized for the transportation and installation of his artwork. Tight schedules for all road construction aspects demanded that Joshua be careful, cautious and respectful of roadwork onsite; he employed the heavy machinery needed for his installation without causing any damage to fragile site surfaces.

Joshua's project has now been in place for several months and we have received feedback that his artwork is both admired and enjoyed by the community and by all project collaborators -- the best endorsement for any civic artwork! I can confidently recommend him for any project of similar scale and scope.

Sincerely,

A handwritten signature in cursive script that reads 'Cheryl Snow'.

Cheryl Snow, Executive Director

Working in Partnership With:



Clackamas County Arts Alliance supports, develops, and promotes access to performing, literary and visual arts in all our communities. A Division of the Clackamas County Department of Tourism and Cultural Affairs

May 26, 2009

To Whom It May Concern:

I am honored to write a recommendation for Joshua Wiener, with whom I have worked on several projects over the past three + years in my role of Art in Public Places Administrator for the City of Longmont.

I met Joshua and his wife, Gia just over three years ago when they were selected as finalists (one of three teams) for a “crosswalk” project that I was working on. Joshua and Gia were extremely flexible in their willingness and ability to work with me and the (potential) vendors as modifications to the project were explored. Ultimately, they went above and beyond the scope of the contract, delivering to the vendors exactly what they needed, on time, and never asking me for more money.

In addition to this “permanent” installation, I have had the pleasure of working with Joshua over the past two years as he has had several pieces selected for Longmont’s Art on the Move program. I enjoy working with Joshua; he is always on time with his deliveries, thorough in his installations, and has addressed any questions or concerns that arise in a timely manner.

Due in part to our good working relationship and Joshua’s ability to present and his enthusiastic energy, Joshua was selected as a guest speaker for Longmont’s Virtual Art Tour in 2008. The Longmont Community has embraced his work that is and has been here, and I would be happy to work with him again in the future, if and when the opportunity presents itself. I would highly recommend Joshua as a competent and professional artist to work with – from the artistic and creative side to the business side.

Please don’t hesitate to contact me should you have any further questions.

Lauren Greenfield
Art in Public Places Administrator
City of Longmont, CO
Lauren.greenfield@ci.longmont.co.us
303.651.8924





December 5, 2006

Josh Wiener
865 McIntire Street
Boulder, CO 80303

To Whom It May Concern:

Artist Josh Weiner recently contributed to Broomfield, Colorado's first public art project. This letter of recommendation is intended to convey our extremely positive experience with him.

The City and County of Broomfield and the Broomfield Public Art Committee (PAC) were exceptionally pleased with the quality and timeliness of Josh's commissioned work. He was cooperative with the extra questions and concerns that accompanied our community's first public art project. His artwork shows a high level of workmanship and integrity. We have every reason to expect it will stand the test of time.

The PAC was also very pleased with the quality of the maquettes submitted by Josh as part of his proposal. This was important to us since our project included public comment. All maquettes submitted needed to look good, be quite accurate and detailed, and be presentable and understandable for the public to respond to them.

Our public art project involved commissioning artwork for ten sites. The PAC provided suggested themes that finalists could use in their proposals for each site. Josh's vision and creativity in interpreting these themes was a delight.

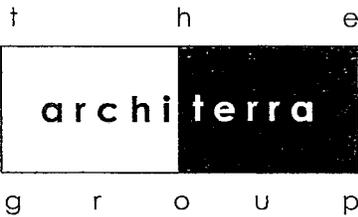
In particular, we found Josh to be an important and valuable "team member" in our public art process. He was asked to make changes to his initial site plans to accommodate a memorial that was placed in the same park. He was cooperative and helpful during many meetings with various parties involved with the memorial, and contributed to several "brainstorming" sessions to resolve site plan issues. He gave a significant amount of time to make the changes needed to integrate his pieces into the park in a manner consistent with the memorial. It was obvious that Josh was concerned about the overall context of his pieces in relation to the memorial and their impact on the community. He values the role of public art in society and spends a significant amount of time and effort with all involved to bring his vision to fruition.

We hope your experience working with Josh proves to be as positive as ours. If you have any additional questions, please feel free to contact Alisa Zimmerman, Cultural Affairs Manager, at 303-464-5835 or email: azimmerman@broomfield.org

Sincerely,

Broomfield Public Art Committee

C: Josh Wiener
Alisa Zimmerman, Cultural Affairs Manager



5881 south deframe street
littleton, colorado 80127
303.948.0766 fax.948.0977
www.architerragroup.com

November 16, 2006

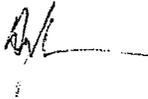
Re: Joshua Wiener, Stone Sculptor
865 McIntire Street
Boulder, CO 80303

To Whom It May Concern:

As the park landscape architect, we had the pleasure of working with Josh on the recently completed Gemstone Park project in Castle Rock, Colorado. Josh designed and constructed several limestone sculptures as public art which were nicely integrated into the overall park.

I highly recommend Josh as a public artist. His knowledge of materials, shapes, forms and compositions allowed him to create public art that fits within the greater context of the site. If you would like more information about our experience with Josh, please do not hesitate to call me.

Sincerely,



Dean Pearson, ASLA, RLA
President



Parks, Recreation and Golf Division

Robert C. Hanna, Director

December 4, 2006

To Whom It May Concern:

I am writing this letter of reference on behalf of Josh Weiner for work he performed for The Town of Castle Rock. Josh was commissioned to complete a public art project in late 2005, by the Town's public art committee. The committee had selected the next Castle Rock Park, Gemstone Park, as the location for this work. This group tasked Josh to team with Park Staff and its consultant/contractor to craft artwork that would blend with the overall theme of the project. The artwork would also have to stand up to a high use, public park environment.

Josh met this challenge by effectively working with the project team. He produced two freestanding limestone sculptures that were not only beautiful but also, complemented the overall Gemstone theme. He completed his work within the allowed budget and met our grand opening schedule. Once the job was complete, we directly contracted with Josh to complete and additional sculpture that will also function as an entry sign for the park.

I would be happy to answer any questions or provide greater detail regarding this project.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff A. Smullen". The signature is fluid and cursive, written over the printed name.

Jeff Smullen, Park Planning and Construction Superintendent
Town of Castle Rock
(303) 814-7458
jsmullen@crgov.com

BARBARA
NEAL

November 14, 2005

NOV 14 2005
10 52 AM
WHEAT RIDGE
CO
10100 1/2
202 555 8777

To Whom It May Concern:

I am glad to provide a letter of reference for Joshua Wiener in support of his work as a public art artist. I recently worked with Josh on a project for Founders' Park in Wheat Ridge, Colorado.

It was a pleasure to work with Josh on this project. His proposal, a large sculpture composed of different materials and suggesting an environmental narrative, demonstrated his capacity for thoughtful, imaginative work. A very accomplished sculptor, he approached this project seriously and with enthusiasm. He followed through consistently to ensure the successful installation of the artwork.

As the public art consultant on this project, I appreciated the fact that he communicated responsibly and effectively with me and with the Director of the Parks and Recreation Department of the City of Wheat Ridge, the client agency, throughout this process.

I would certainly recommend Joshua Wiener for any public art project for which he is a finalist.

Sincerely,

Barbara Neal

Barbara Neal
Public Art Consultant



Knowledge to Go Places

Facilities Management
Fort Collins, Colorado 80523-6030

To Whom It May Concern:

As an architect with Colorado State University, one of my responsibilities is to manage historic preservation projects. I selected Mr. Joshua Wiener to replicate a heavily worn marble water fountain bowl in one of our historic buildings on campus. He was recommended to me by a Denver based stone and marble supplier.

Mr. Wiener was very professional in his dealings with the University. He researched marble options and accurately estimated the costs and material availabilities for each option. Once a marble selection was made, Mr. Wiener flawlessly executed the carving in time to meet a very important reception at the building. His carved bowl was an extremely accurate replication of the original feature, attesting to his extraordinary sculpting ability. Mr. Wiener's dedication to the project led him to aid in setting the bowl on the pedestal with a professional marble installer, a turnkey operation.

The fountain had been taken out of service due to the irregular flow of the water from the worn bowl. The fountain is now in full operation and the campus community is thrilled with the result. The fountain now serves as a focal point of one of the best-loved structures at Colorado State.

I heartily recommend Mr. Josh Wiener, sculptor, for any stone sculpture projects.

Sincerely,

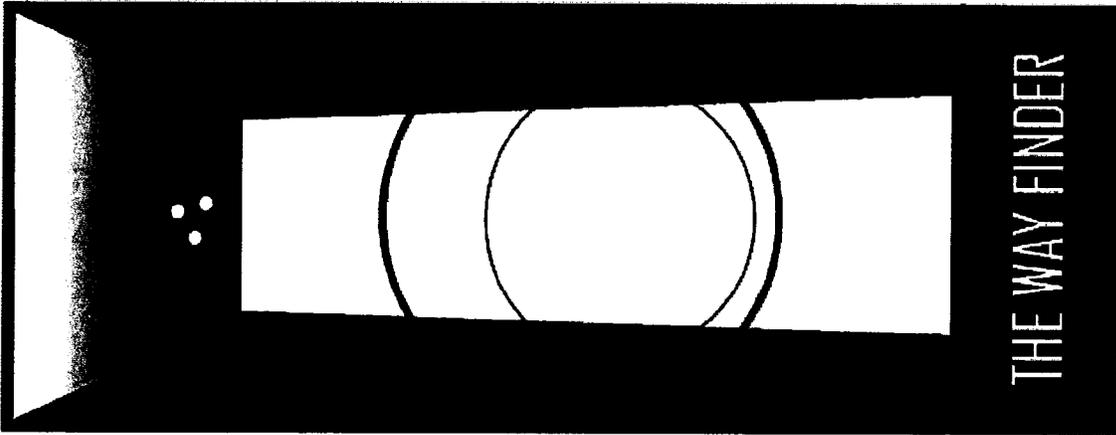
A handwritten signature in cursive script that reads "Jim White".

Jim White AIA
(970) 491-0101



DROZE & THOMPSON

TRAFFIC ROUNDABOUT | PUBLIC ART INSTALLATION



Village of Palmetto Bay
Public Art Roundabout

January 13, 2011

RECEIVED
Zoning Department

12.31.11

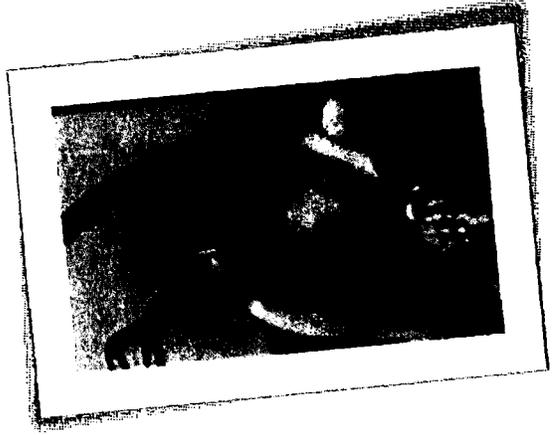
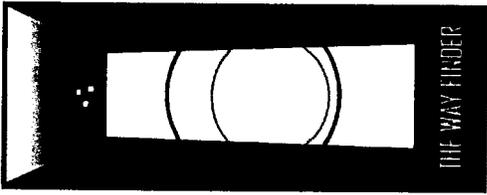
Village of Palmetto Bay
Building & Zoning Department

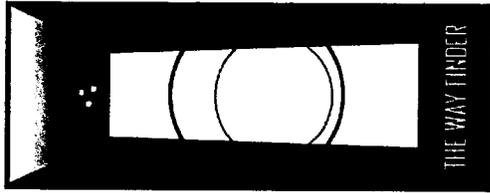
By: 

ABOUT THE ARTISTS

Augustina Droze

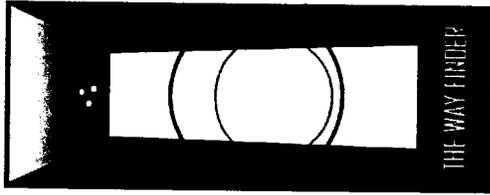
Augustina Droze is familiar with large scale public art through her work in large scale mural projects and mixed media installations. With over 10 years experience in the industry she has worked extensively with architects and designers nationwide during every phase of a project. She has worked with a variety of public art agencies including The Chicago Public Art Group and the Baltimore Office of Promotion and the Arts as well as with large corporations. She completed a 365 ft long mural commissioned by the Forbes Company in the Gardens Mall in Palm Beach Gardens, FL. Augustina's work is figurative, realism based, and draws on conceptual elements of nature, science, and fantasy.





AGENDA

1. About The Artists
2. Proposal Images
3. About the Project
4. Mosaic Details
5. Bronze Medallion Details
6. Engineering
7. Timeline
8. Budget
9. Questions

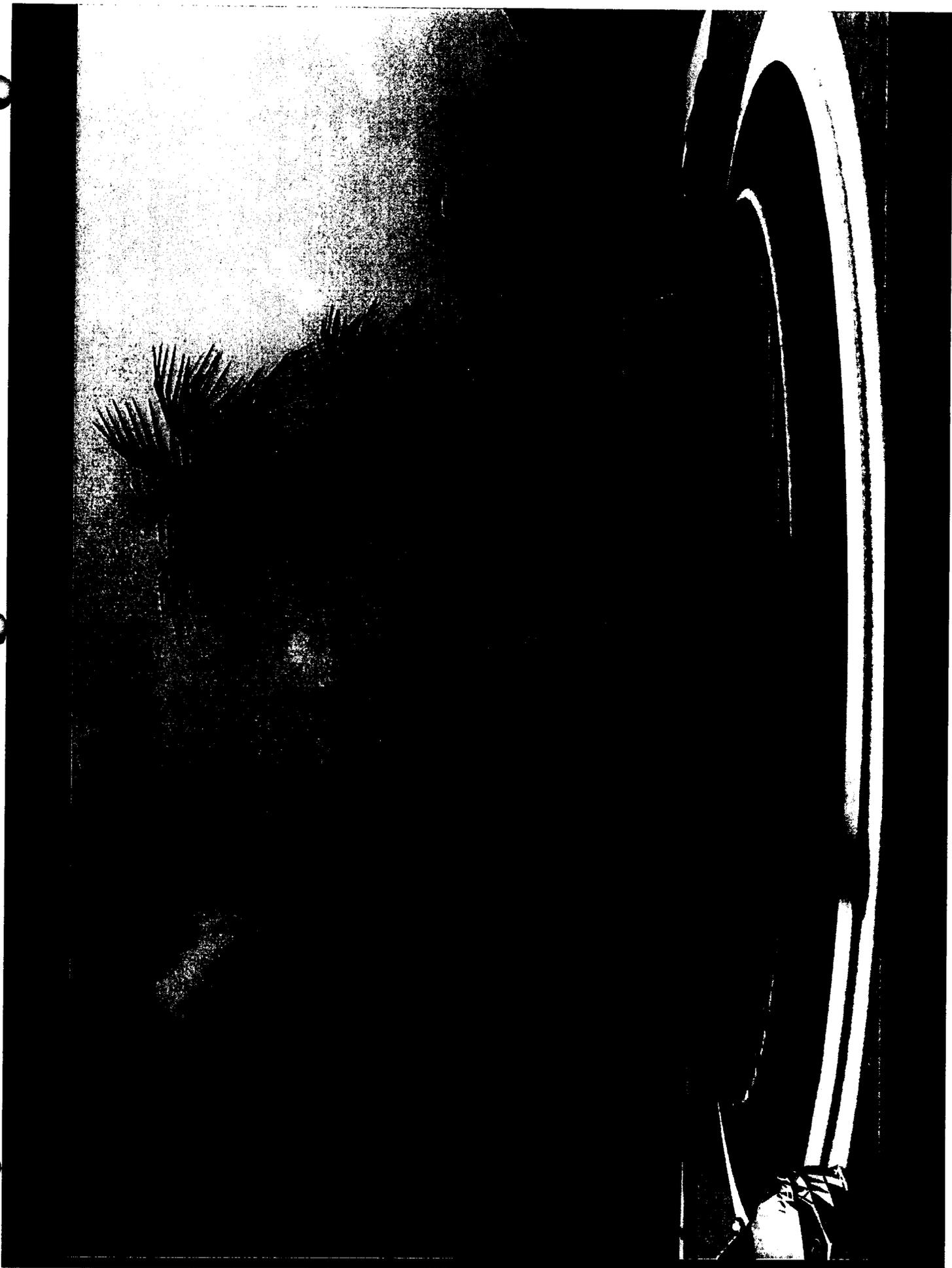


ABOUT THE ARTISTS

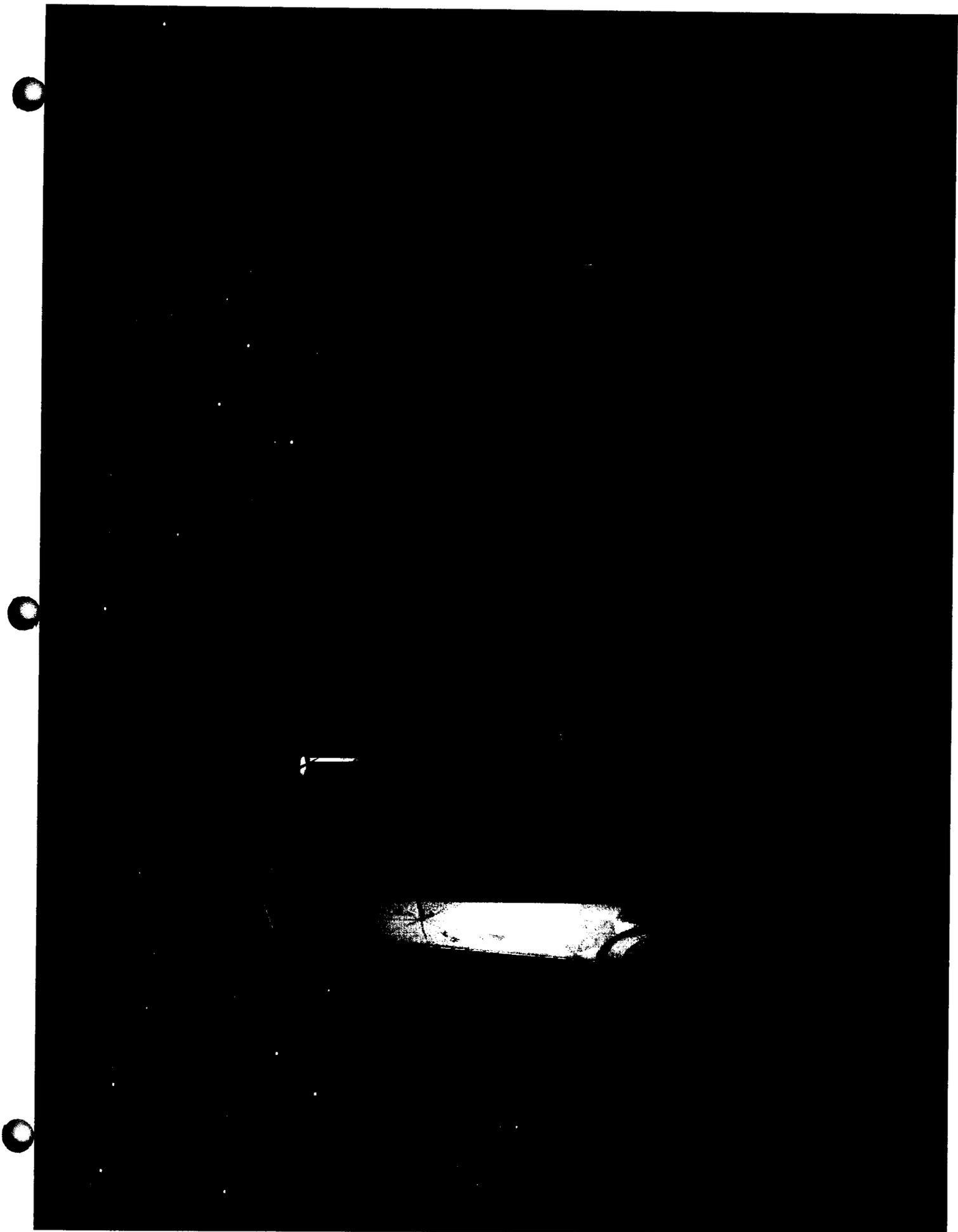
Rebecca Thompson

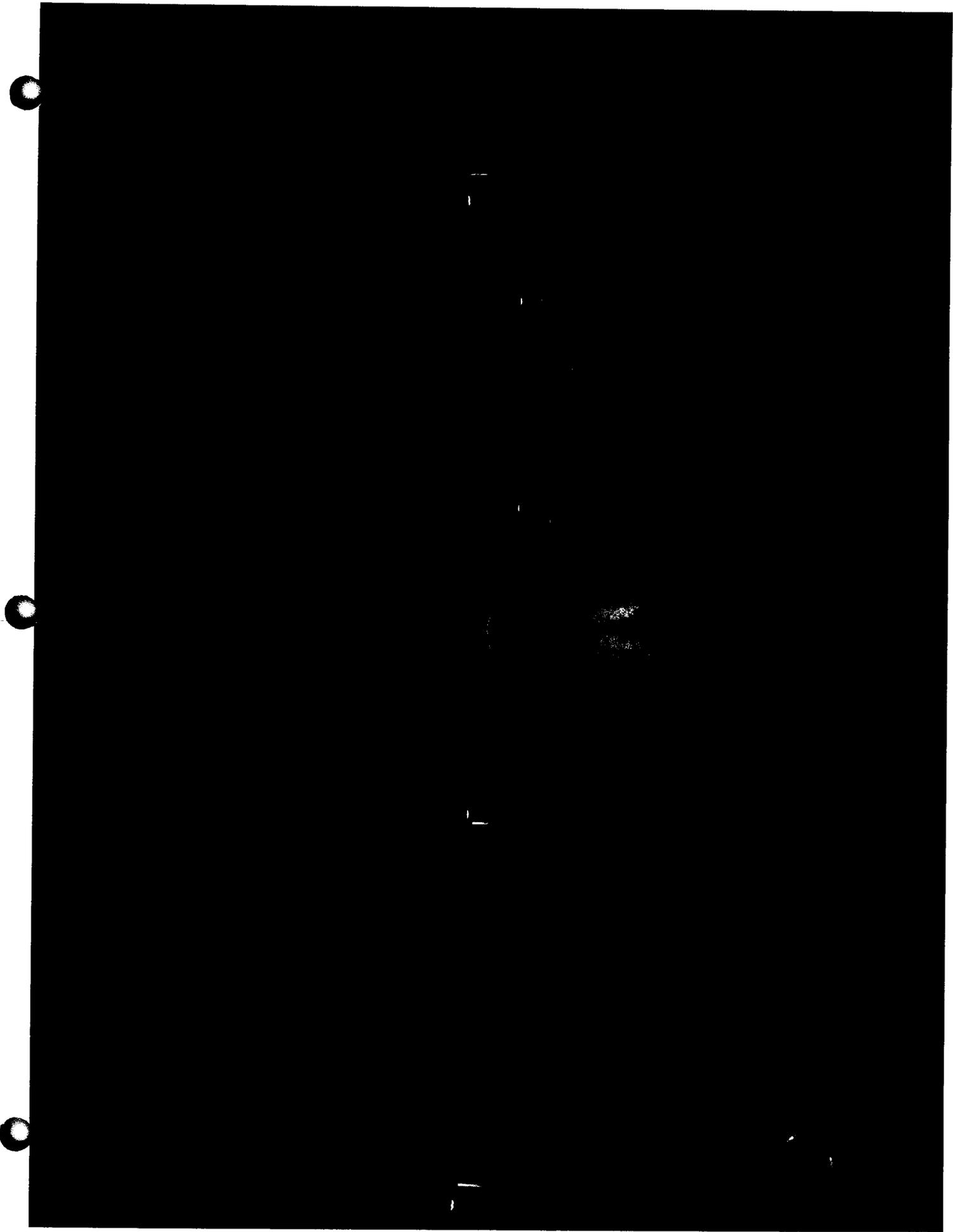
Rebecca's large scale public art projects have required working with architects, engineers, subcontractors as well as interfacing with community members and City officials. Her primary choice of materials has been based on the use of sustainable materials such as bronze, rammed earth and stone, reclaimed water sources and xeroscape use of plant material. She recently completed an extensive garden site for global pharmaceutical company Sanofi-Aventis in Oro Valley, AZ, "Sarvodaya Garden" with a budget that exceeded \$350,000. Rebecca worked closely with scientists to create a timeless visual metaphor for the connection of science to nature and to the well being of all people. Prior to the Oro Valley project, Rebecca completed a gateway feature for downtown Phoenix which is the first ever 28' high rammed earth and bronze structure for the City area. This required detailed interface with the City, community and client. Permitting and code modification were required and granted for this project due to her attention to details and professional skills.







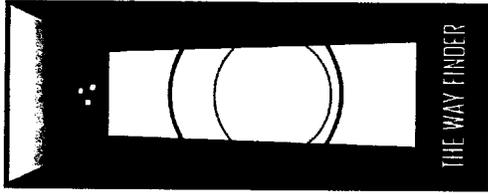




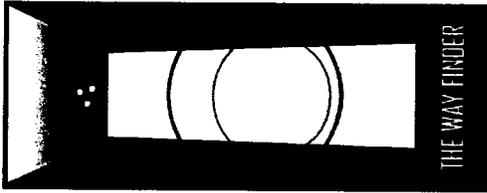
THE WAY FINDER

About the Project

The Way Finder public art roundabout will act as a timeless beacon for the surrounding community. As drivers navigate on their journey around the roundabout they will also contemplate the journeys of those who came before us. The intricately crafted mosaic pattern depicts navigational imagery from the discovery of the area and Brisayne Bay by explorers including Ponce de Leon. A large nautical compass, a map of the bay as well as celestial star maps guide viewer's eyes to the top of the obelisk where the imagery shifts to constellations. A **cast bronze cap** sits atop the structure with holes to signify the constellations retrofitted with **custom LED lighting** which will shine after dusk. Cast bronze medallions will be integrated into the mosaic pattern with Native American imagery from the region. Flood lights will illuminate the faces of the obelisk. The fountain area will be finished in timeless terracotta tile. The Way Finder will lead viewers to their destination and on a journey through history.



THE WAY FINDER



Symbols of Constellations

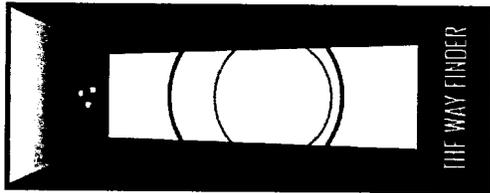
Bronze Medallion

Cast Bronze Cap

Map of Briscayne Bay



THE WAY FINDER



Bronze Medallion

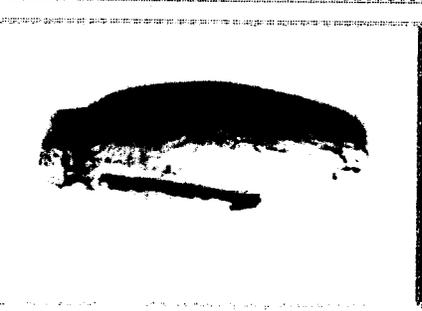
Celestial Map



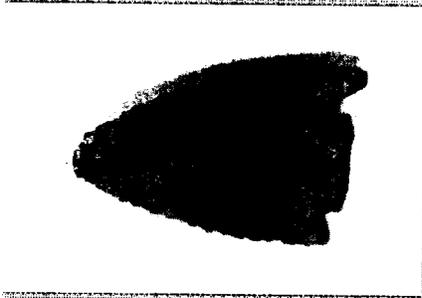
Bronze Medallion

Indian Artifacts

Original Indian Artifacts:



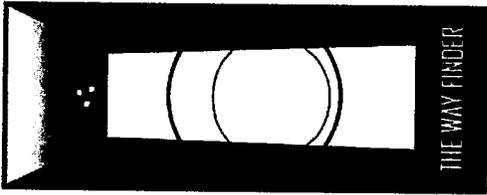
Tequesta Pendant



Cutler Point

Images Courtesy of HistoryMiami

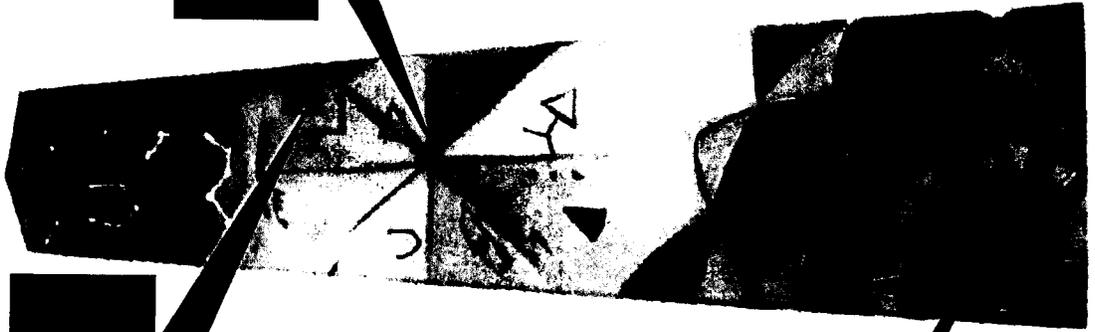
THE WAY FINDER



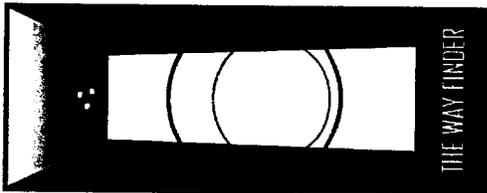
Bronze Medallion

Celestial Map

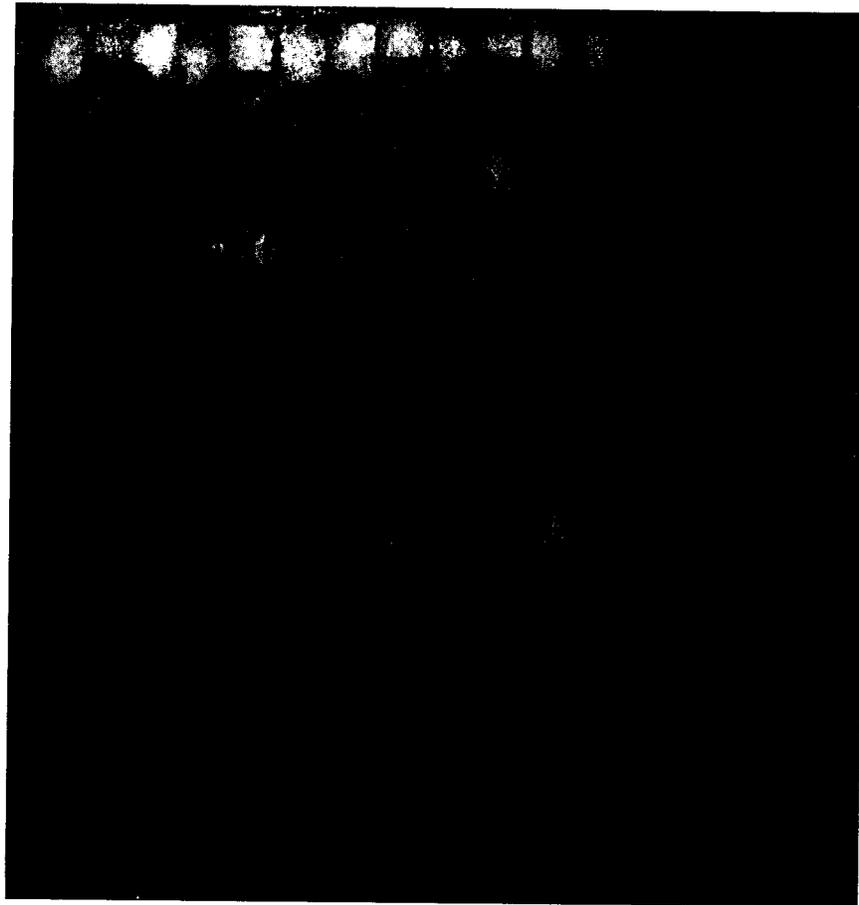
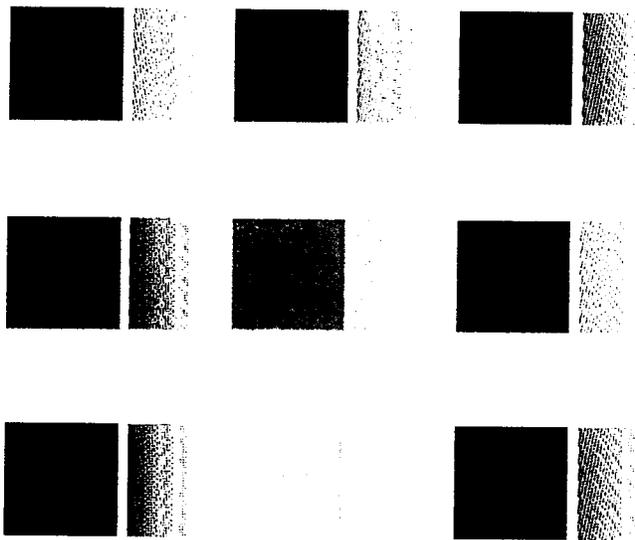
Nautical Compass

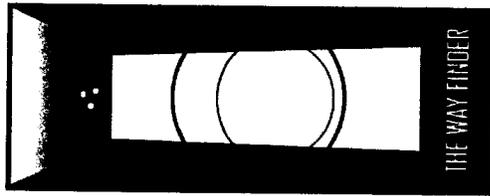


MOSAIC



1. Marble and Smalti mosaic glass.
2. Adhesive and grout appropriate for fountain installation.
3. Terracotta tile on exterior of fountain base and top ledge.





BRONZE MEDALLIONS

5 approximately 6" x 6" cast bronze medallions to be affixed to obelisk using two part epoxy. Designs are a series of traditional motifs from original people of the area. Water, waves, connections to the land are important symbols as is the "spider woman" origin myth in which the spider is a symbol for the great web of life that connects us all.



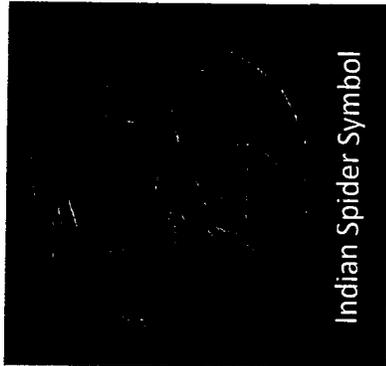
Abstracted Indian Symbol



Indian Knot Symbol



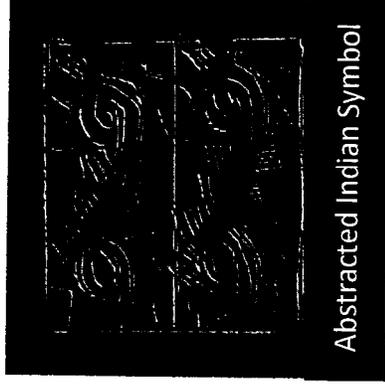
Indian Wave Symbol



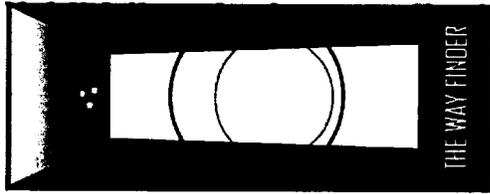
Indian Spider Symbol



Sample Bronze Finish

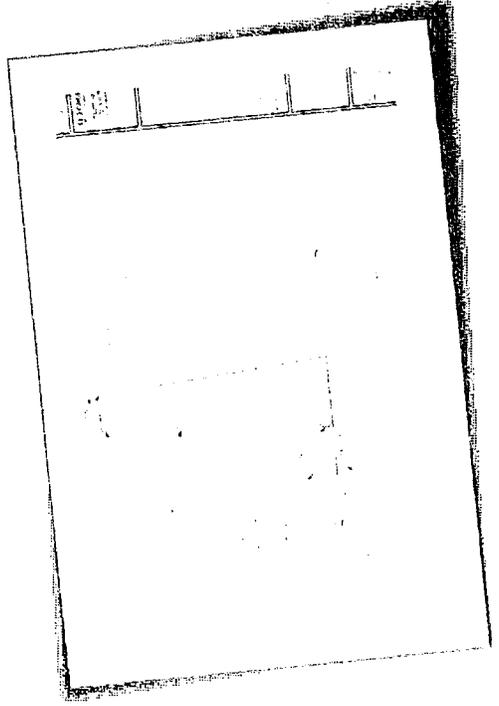


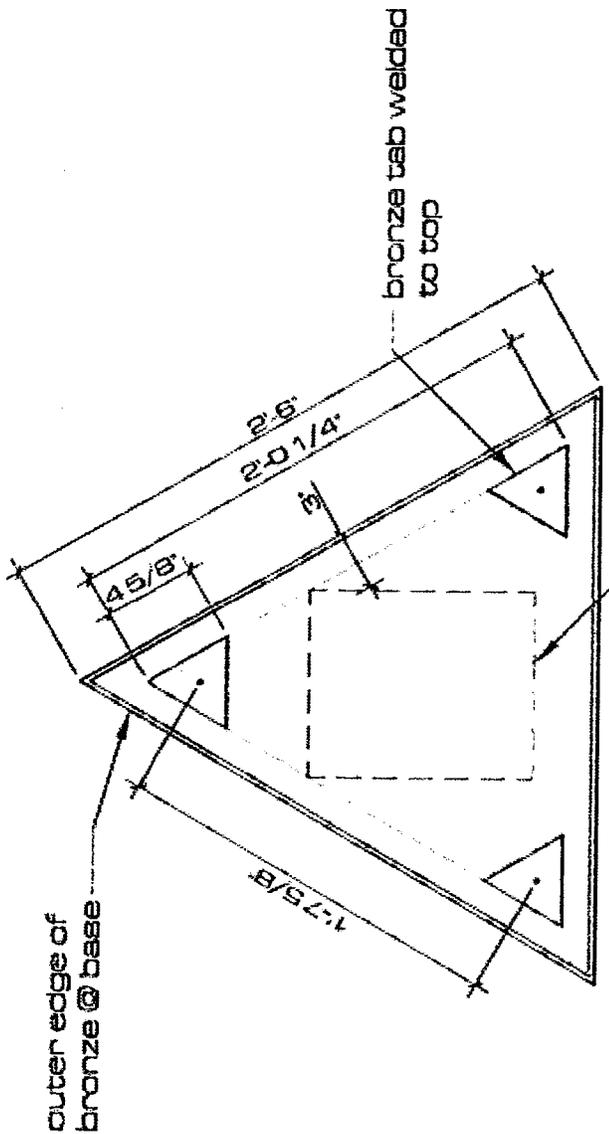
Abstracted Indian Symbol



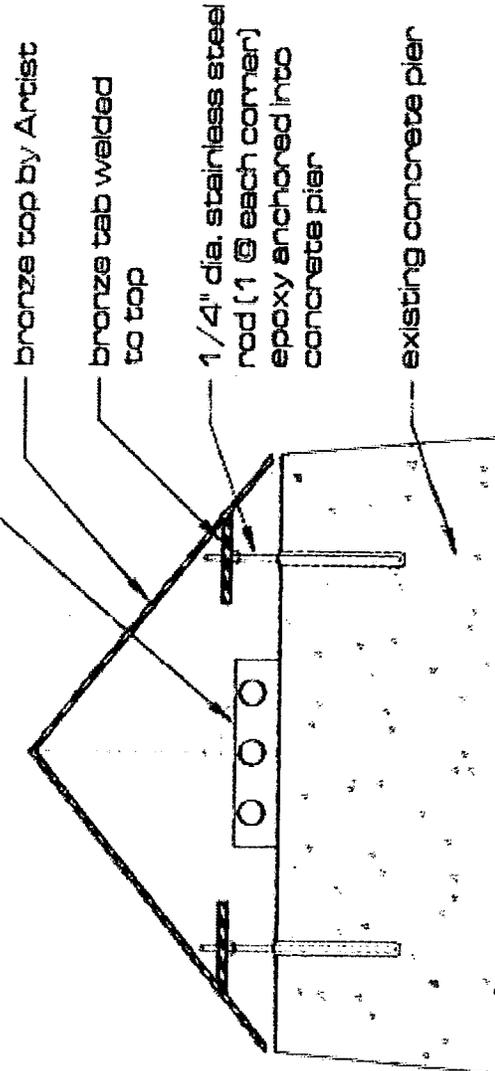
ENGINEERING

1. Bronze (873 Everdur) cap to be affixed to top of obelisk.
2. The entire cap will be epoxied into place with 3 - 1/4" threaded stainless steel rods. Rods are welded to sides of Cap and then epoxied into the concrete base structure.
3. Approximately 1/4" of reveal at bottom will allow for a light weightlessness of the metal cap.
4. The weight of the bronze cap will be approx 100 lbs.
5. Custom 80W LED exterior lighting installed inside of cap via cut channel up side of obelisk.
6. Timer on lights to turn on at dusk and off at dawn, coordinating with existing flood lights.

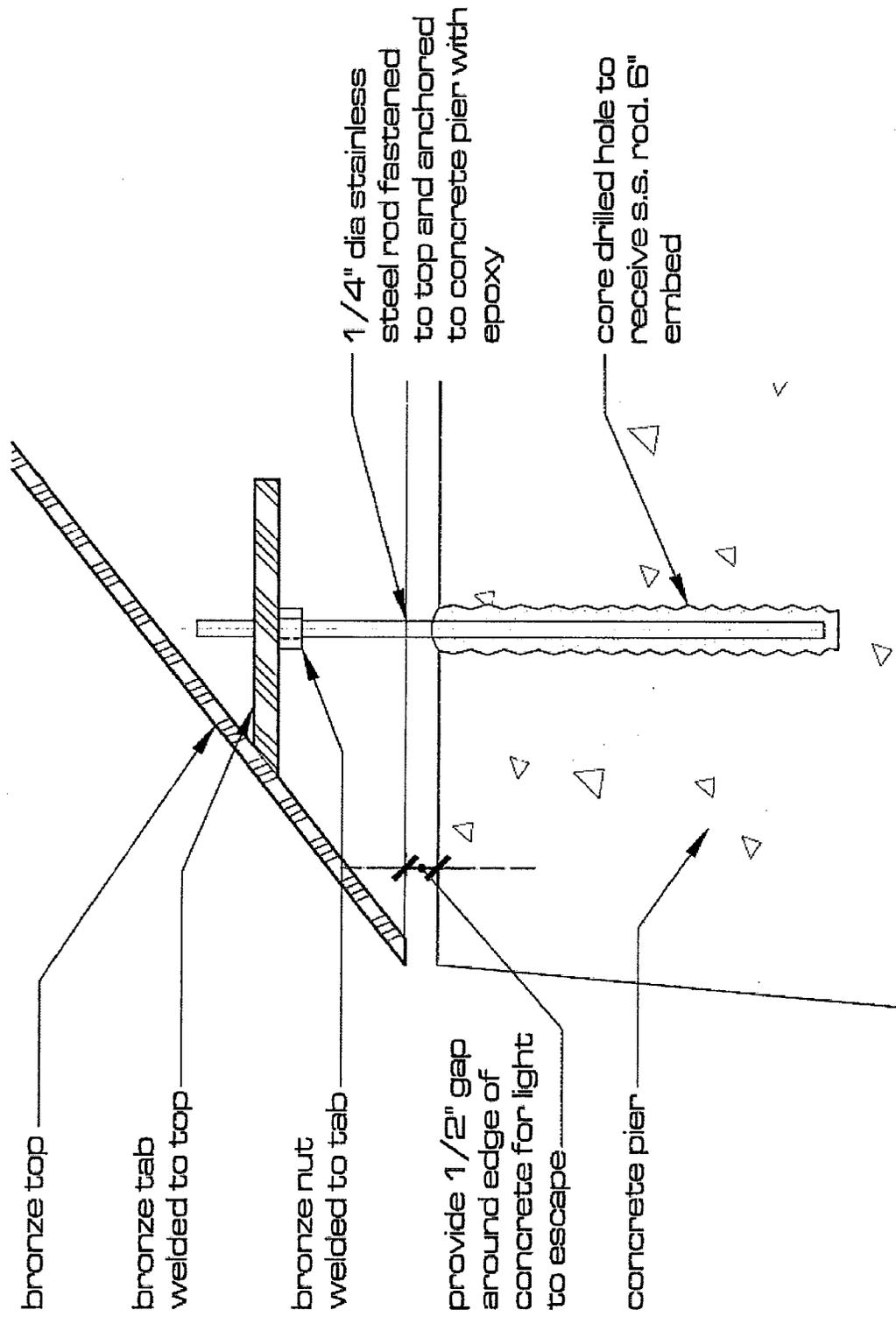




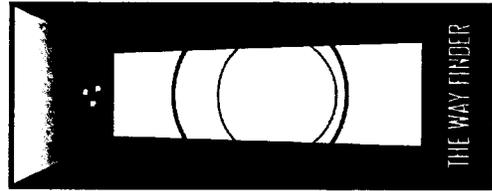
plan



section

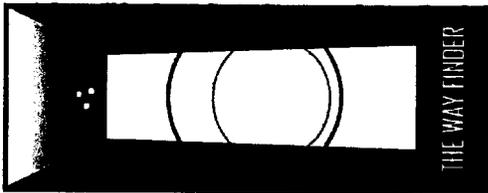


detail



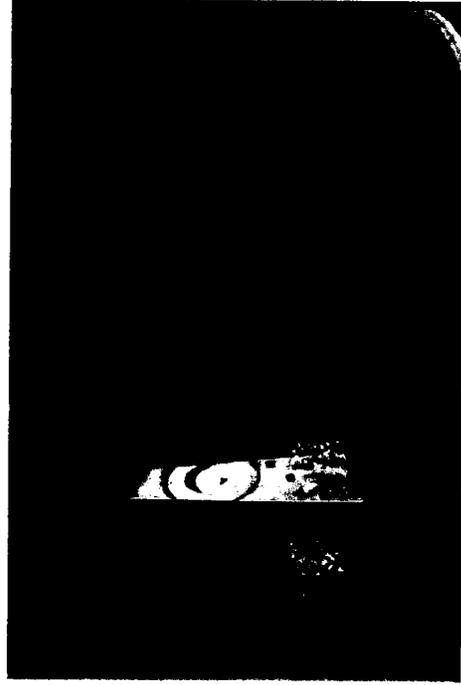
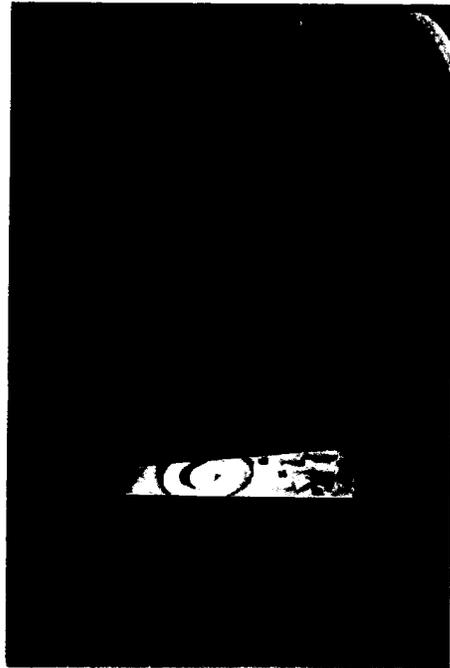
MAINTENANCE

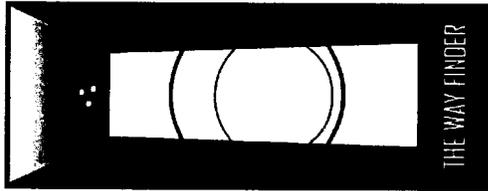
1. Buff bronze with Johnsons Paste once a year or as needed. Best to be completed in summer.
2. Optional marble or granite sealer, not required.



WATER FEATURE

Team plans to maintain current fountain spout locations. 6"-8" bronze plate will be placed at spout to add visual interest.

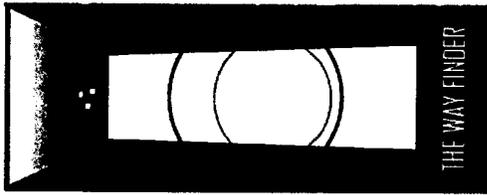




TIMELINE

Jan 21- March 21	Bronze Cap, Medallions, and Mosaic Fabrication
March 21-27	Shipment of Bronze Cap
March 21-31	Site Modification, Electrical Modification, Installation of Mosaic/Medallions
March 28-31	Bronze Cap Installation

**Project will be completed by deadline March 31 however exact dates of project details may change*

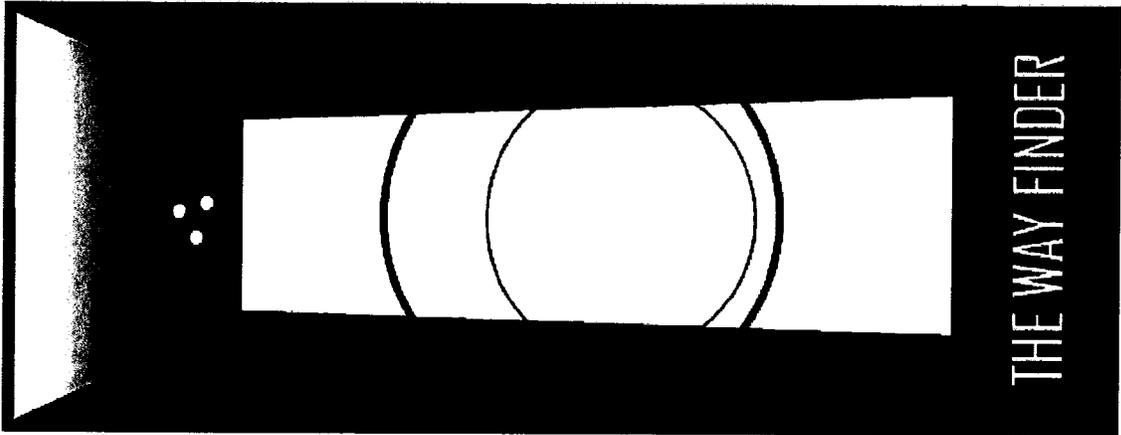


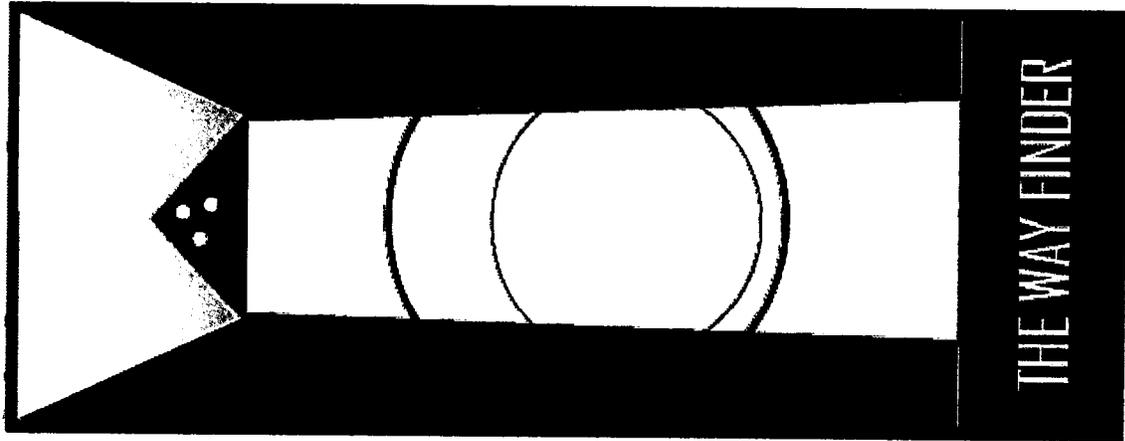
BUDGET

Mosaic and Terracotta Tile Fabrication and Installation	\$ 22,250.00
Bronze Fabrication	\$ 5,500.00
Bronze Cap Installation	\$ 1,200.00
Electrical (distribution box to be upgraded to accommodate 4 lights, wiring, tie in, water)	\$ 3,840.00
Obelisk Modification (removal of top, electrical channel, drilling, epoxy, placement of brackets, restoration)	\$ 2,900.00
Artist Travel	\$ 2,500.00
Engineering	\$ 2,000.00
Photo Documentation	\$ 360.00
Miscellaneous	\$ 1,000.00
Shipping	\$ 450.00
Artist Fees (design, project management)	\$ 8,000.00
TOTAL	\$ 50,000.00

**This is an estimate and is subject to change*

THE WAY FINDER





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520.260.0922
pendulumstudios@msn.com



STEPHANIE JAFFE WERNER

TRAFFIC ROUNDABOUT | PUBLIC ART INSTALLATION





RECEIVED
Zoning Department

1-4-11

Village of Palmetto Bay
Building & Zoning Department

By: 

Stephanie Jaffe Werner
Finalist Proposal Project Narrative
Village of Palmetto Bay / Obelisk Roundabout

ENCLOSED SUBMISSION LIST

1. MAQUETTE OF THE OBELISK
2. SAMPLE OF THE MOSAIC STYLE
3. SAMPLE OF THE FIBERGLASS MATERIAL FOR FAÇADE
4. SAMPLE OF THE CERAMIC WOODCUT STYLE FOR THE HISTORICAL PLAQUES
5. CD
6. NARRATIVE



Stephanie Jaffe Werner
Finalist Proposal Project Narrative
Village of Palmetto Bay / Obelisk Roundabout

The rotary at SW 168th street and 87th Ave. presents a unique opportunity to celebrate the people, flora and fauna that have contributed to the growth and evolution of Palmetto Bay. These changing elements are the historical and natural foundation that has made the surrounding area the dynamic and elegant place it is today. The circular shape of the base and upward reach of the obelisk are a natural canvas to depict the change and growth of Palmetto Village. I propose to enhance the symmetry of the triangular tower by adding three panels of indigenous people, plants and animals on each side.

The base of the Obelisk will be a visual reminder of time and change. The lower third of the structure will have three different carved bas-reliefs of the same blue heron standing in Biscayne Bay, the areas natural constant. Each side of the bas-relief will be painted differently to show the bay at daytime, sunrise and evening. In each case the water will be two colors to reference brackish water. The water from the fountain will spray from the area of the mural showing the bay over the coral rock so that the mural water and the fountain water will meet. The surrounding wall and top of the fountain will be veneered in stucco.

The upper two-thirds of the obelisk will integrate historical peoples and their use of the land. The earliest panel features a Tequesta Indian in a canoe with the ancient Tequesta Indian burial site found on the Deering Estate in the background. An image of the largest oak tree in Florida shades and protects the Tequesta Indian and their sacred burial ground. The second plaque shows a Bahamian field worker to highlight the multicultural and agrarian history of the area. The image is paired with wild coffee, an indigenous plant and agricultural commodity. The final plaque depicts Mrs. Addison, an early settler of Old Cutler. The influx of pioneers after the civil war was a precursor to the modern era in Palmetto's history. Mrs. Addison is shown framed by the Coontie plant, an ancient local resource used in starch factories during the areas industrial development.

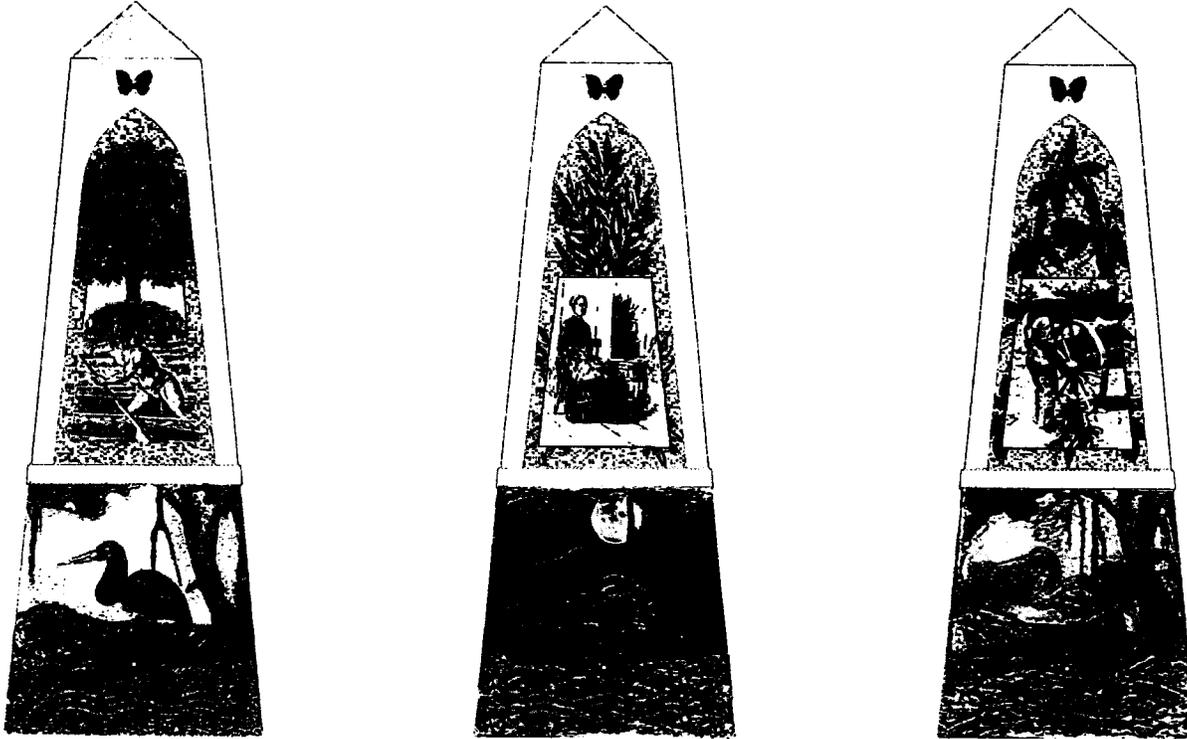
Today coontie is protected due to overuse and collecting it from the wild is illegal. Coontie is also the larval food for the Florida Atala butterfly shown at the top of all three sides of the obelisk. The re-growth of coontie has lead to the rediscovery of the Atala, once thought extinct. The butterflies are placed on yellow stucco arches in the Moorish style inspired by Deering Estate. The apex of the obelisk represents the balance between man and nature and celebrates the reemergence of this rare and protected species.

Stephanie Jaffe Werner
Finalist Proposal Project Narrative
Village of Palmetto Bay / Obelisk Roundabout

The butterflies are placed on yellow stucco arches in the Moorish style inspired by Deering Estate. The apex of the obelisk represents the balance between man and nature and celebrates the reemergence of this rare and protected species.

The Village of Palmetto Bay is a place where people, plants and animals all have coexisted for thousands of years. My proposal is designed to depict this story focusing on the natural environment and the people that brought the area to life. When completed, the project will highlight its proximity to Biscayne Bay and Biscayne National Park. The images will be bold and easily seen and understood from a distance, with the most important view being at eye level from a car passing by.

Bas-Relief



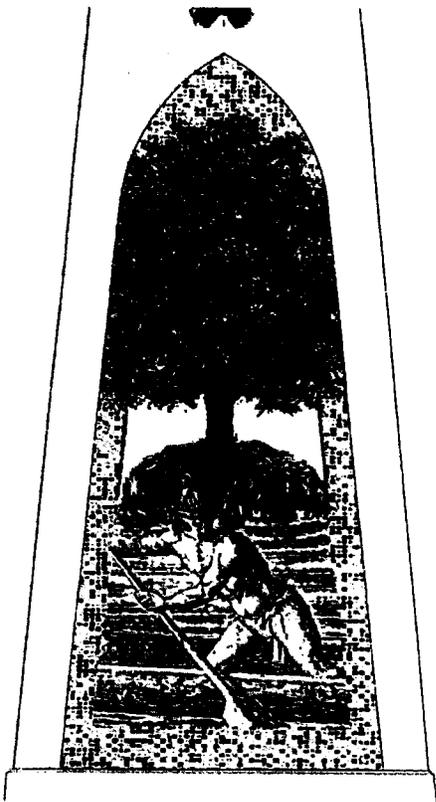
The lower third of the structure will have three different carved bas-reliefs of the same blue heron standing in Biscayne Bay, the areas natural constant.

Each side of the bas-relief will be painted differently to show the bay at daytime, sunrise and evening. In each case the water will be two colors to brackish water.



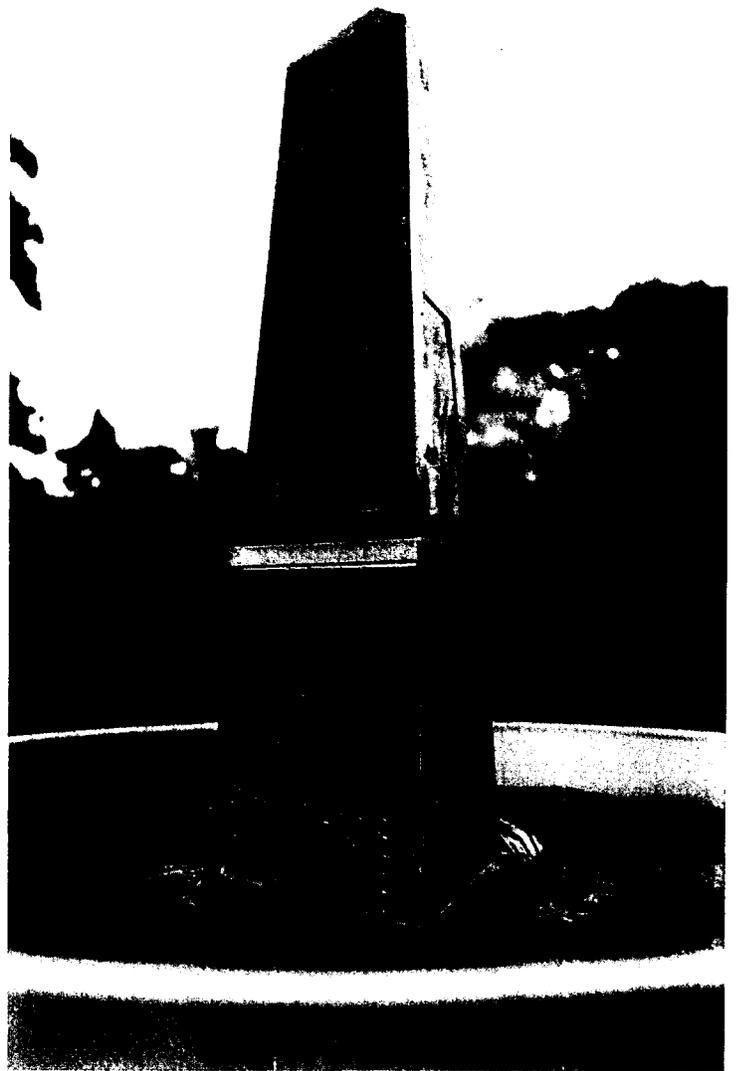
- The water from the fountain will spray in a fan shape from the area of the mural showing the bay over the coral rock.
- The mural water and the fountain water will meet.

Stephanie Jaffe Werner
Village of Palmetto Bay Obelisk Proposal
HISTORICAL PANELS



This page illustrates the carving style of the ceramic historical plaques. The car panel from the Highwaymen obelisk shows how a photograph is transformed.

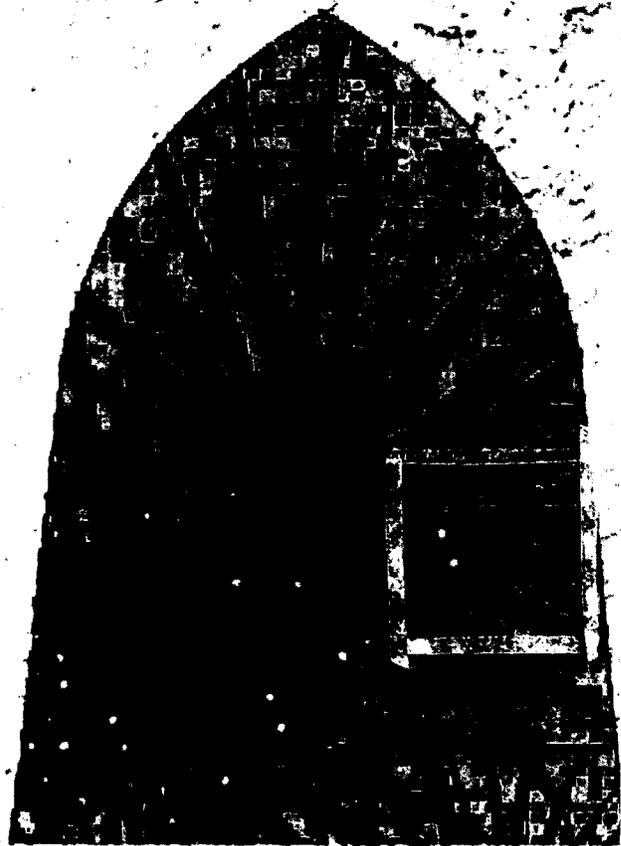
EXAMPLE OF INSTALLED PLAQUES



MOSAIC SAMPLE



The original design for the piece had Mrs. Addison paired with the saw Palmetto leaf. The design has since been changed to eliminate this plant. The sample of mosaic style shows saw palmetto as an example of the mosaic style. The tile used is glass smalti.



AGRICULTURAL
WORKER + WILD
COFFEE PANEL



Stephanie Jaffe Werner
Finalist Proposal Project Narrative
Village of Palmetto Bay / Obelisk Roundabout

FABRICATION, MATERIALS AND ARTWORK INSTALLATION

The fiberglass cast of my bas-relief facade of the lower portion of the Obelisk will be done at Haligon Fine art Studios. The fiberglass panels will be attached to the obelisk on site by Haligon using four three inch stainless steel bolts on each panel. The edges of the panels will be adhered one to the other on site using fiberglass. A waterproof urethane spray finish will be applied to the surface to seal it. The artist will oversee the installation. The Haligon Enterprise, a family owned operated enterprise since 1875, builds artwork enlargements and produces a wide variety of pieces with the tight cooperation of the artists. Olivier Haligon is the great grandson of Louis Haligon, who was the principal enlarger of the statue of Liberty. With his engineering background and his love for sculpture, he continues his family business, which has worked on pieces by artists such as Dubuffet and Niki de Saint Phalle.

The mosaic work would be done off site by two of the industry's area's top mosaic fabricators. The mosaics would later be installed on site using cement and tile grout suitable for the outdoors. The mosaics will arrive in sections and will be installed using thin set in a depression created using plywood templates left from the stucco. All of the mosaics will be adhered to the surface using thin set and tile grout. It should take 2- 3 days to install the mosaics. Once the mosaics are set, the thin set will need two days to cure.

My mosaic design will be fabricated using Italian glass smalti at Miotto Mosaic Art Studios. Miotto Studios has been responsible for many of the mosaic installations in the New York subway system. They have been in business for over twenty years and have worked with many artists, designers, and architects. The studio is stocked with over 30,000 lbs. of glass and marble tessere and has had a long and rich experience in the mosaic field. My mosaic design will be fabricated using Italian glass smalti at Miotto Mosaic Art Studios. Miotto Studios has been responsible for many of the mosaic installations in the New York subway system. They have been in business for over twenty years and have worked with many artists, designers, and architects. The studio is stocked with over 30,000 lbs. of glass and marble tessere and has had a long and rich experience in the mosaic field.

FABRICATION, MATERIALS AND ARTWORK INSTALLATION CONTINUED

My designs for the historical woodcut ceramic plaques will be fabricated by the mosaic fabricators Mosaika Art and Design who specializes in the creation and installation of large-scale works of art in hand-glazed ceramic tile, marble, and glass. The company has become internationally recognized in the field of public art as world's top mosaic atelier. They produced the plaques on the Florida Highwaymen obelisk, which I recently completed for The City of Fort Pierce.

WATER FEATURE & LIGHTING

Cascade Fountains of Boca Raton installed the fountain and lighting on the obelisk. Three brass nozzles with "fan" features will be fitted in the current spouts. The spouts will be lowered by Cascade to meet the correct opening in the fiberglass façade.

According to Cascade Fountains three 250-watt lights are installed in the fountain with 110 amps. The lights can be moved back or set on pedestals to increase the light. The power would need to be increased or 500 watt lights. There does need to be more lighting in the rotary itself. I suggest the city install lights outside of the fountain (perhaps solar powered) as the city of Fort Pierce did for The Florida Highwaymen Obelisk.

MAINTAINENCE

The mosaics require no maintenance. They are durable and able to withstand the harsh Florida sun. The fiberglass may be cleaned periodically with water and mild soap. It can be touched up on site if the need ever arose.

Stephanie Jaffe Werner
Finalist Proposal Project Narrative
Village of Palmetto Bay / Obelisk Roundabout

TIMELINE

Mosaics are very time consuming by nature. The suggested timeline for the project is unrealistic for a piece of this detail and magnitude. The actual Fabrication of the mosaics can begin in March and will take approximating 10 weeks to complete. The final artwork can be installed at the end of May. The project may go faster, but there is a built in contingency.

FEBRUARY 2011

Fiberglass façade is carved and cast
Templates, patterns and models designed for the mosaics and plaques

MARCH & APRIL 2011

Plumbing is moved to the new height.
Concrete surface of the obelisk is waterproofed below the white band.
The pointed top is fixed
Yellow stucco applied and arches formed. White band applied.
Fiberglass facades are painted
Work begins on the mosaics

END OF MAY 2011

Mosaic background is installed.
Mosaic woodcut plaques are installed
Fiberglass façade panels are installed and sealed to the white band

**STEPHANIE JAFFE WERNER
City of Palmetto Bay Obelisk**

BUDGET

PREPARATION OF THE OBELISK

Prepare, smooth and size the surface to receive mosaics
Concrete preparation for
artwork.....\$1500.00

MOSAICS \$13,000.00

Construction of mosaic panels measuring: mosaic fabrication, manufacture, storage,
transport and installation on site.

WOODCUT CERAMIC PLAQUES..... \$10, 600.00

Construction of mosaic panels includes: hand glazed ceramic tiles, hand carved ceramic
tiles, all materials, manufacture, all insurance, storage, transport to site, and installation
on site

FIBERGLASS BAS-RELIEF FACADE \$11,700.00

Carving, Silicone mold, fiberglass cast, urethane protective coating
Delivery to site and installation

WATER FEATURE..... \$1300.00

New Brass fan nozzles and installation and move plumbing

STUCCO + PERMIT\$2000.00

ARTIST FEE.....\$10,200.00

Research and design, project coordination, installation and documentation
Participation in all facets of the design and execution of the art work + insurance

GRAND TOTAL..... \$50,000.00