RESOLUTION NO. 2010-51

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 GLASS AND TILE MOSAIC AS DESIGNED BY NORA M. CERVINO TO MEET THE AIPP REQUIREMENTS FOR THE CORAL REEF PARK CONCESSION STAND / PAVILLION, LOCATED AT 7895 SW 152ND STREET; 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 $7,000; 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 that will acknowledge the past and create programs and activities that will further these goals; and

WHEREAS, as part of the program, the AIPP 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 local artist residing in Miami-Dade County. The AIPP Advisory Board selected the top three candidates to design a proposal incorporating an artistic art element to the newly constructed concession/pavilion at the park in which each artist(s) received a stipend in the amount of $500 for their designs; and

WHEREAS, the Board reviewed and scored the design proposal submitted and selected Nora M. Cervino's glass and tile mosaic proposal entitled " Proposal #1 Optical Illusion and Proposal #4" dated stamped received May 6th, 2010, to be installed at the newly constructed concession stand and pavilion, located at Coral Reef Park, 7895 SW 152nd Street; and

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

WHEREAS, the proposed glass and tile mosaic will be the Village's first public art installation.

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

Section 1. The Mayor and Village Council hereby accepts the recommendation of the Art-in-Public-Places Advisory Board to approve the design proposal for an art glass and tile mosaic entitled "Proposal #1, Optical Illusion and Proposal #4" as designed by Nora M. Cervino dated stamped received May 6th, 2010, attached hereto as Exhibit 1 for the installation at the newly constructed concession stand and pavilion, located at Coral Reef Park, 7895 SW 152nd Street and in accordance with the provisions of the AIPP Ordinance with the following conditions:

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

   Name of Artist(s)
   Title of Art Work
   Date of Art Work Completion
   Art Consultant
   Name of Developer
   In Association with the Village of Palmetto Bay

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

2. That the proposed glass and tile mosaic is to comply with the requirements of all other applicable departments/agencies as part of the Village of Palmetto Bay building permit submittal process.

Section 2. This resolution shall take effect immediately upon approval.

PASSED and ADOPTED this 7th day of June, 2010.

Attest:

Meighan Rader
Village Clerk

Eugene P. Flinn, Jr.
Mayor

APPROVED AS TO FORM:

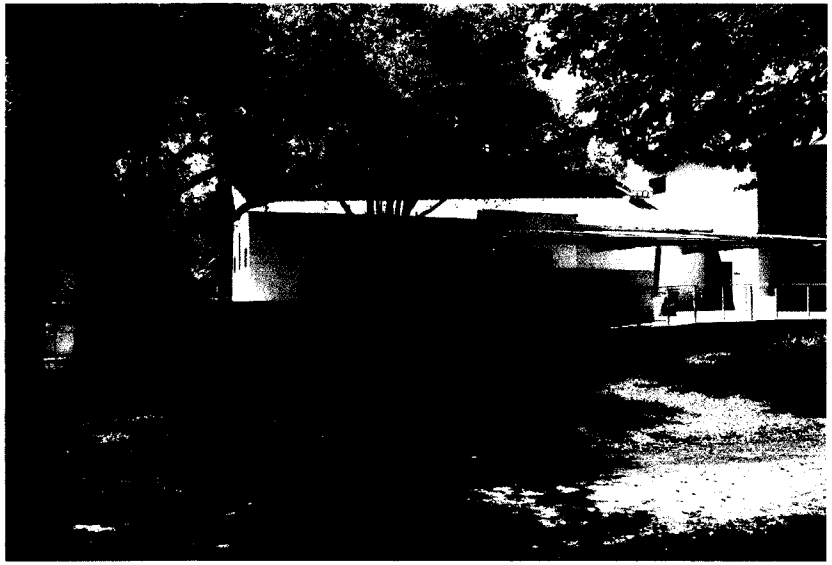
Eve A. Boutsis,
Office of the Village Attorney

FINAL VOTE AT ADOPTION:

Council Member Ed Feller	YES
Council Member Howard Tendrich	YES
Council Member Shelley Stanczyk	YES
Vice-Mayor Brain W. Pariser	YES
Mayor Eugene P. Flinn, Jr.	YES

EXHIBIT 1

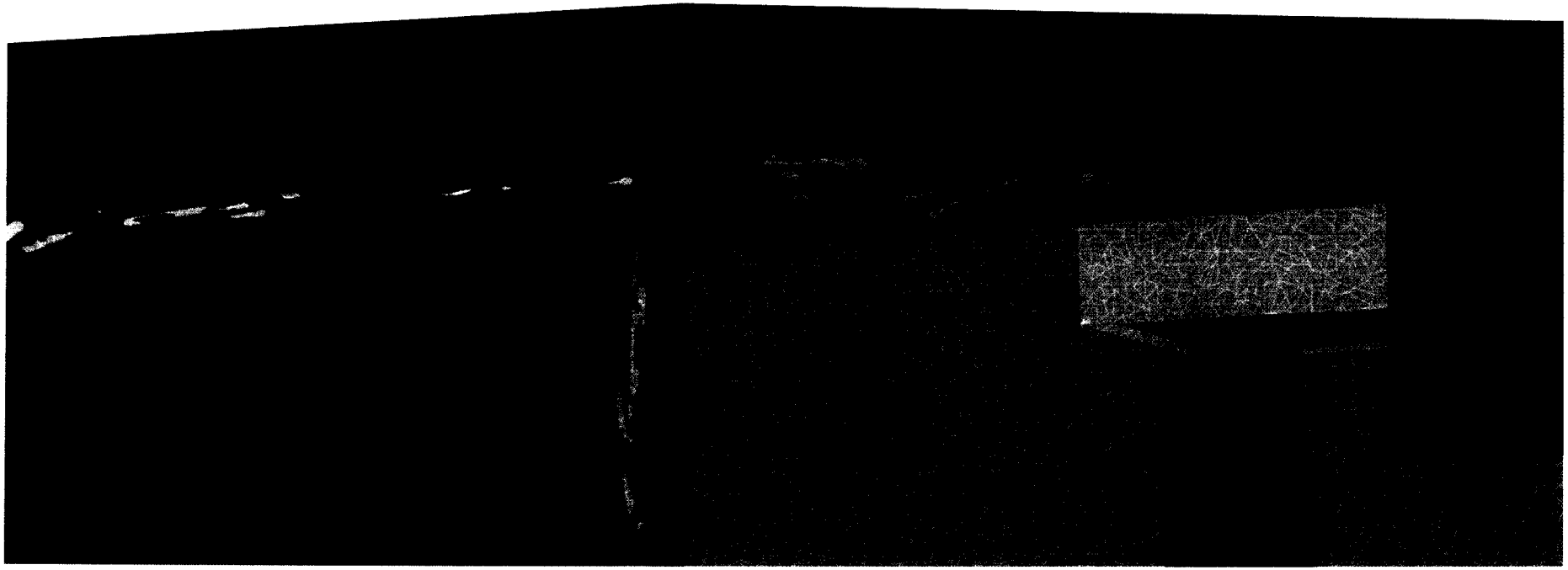
Nora M. Cervino



Nora Cerviño
Coral Reef Park(Proposal)

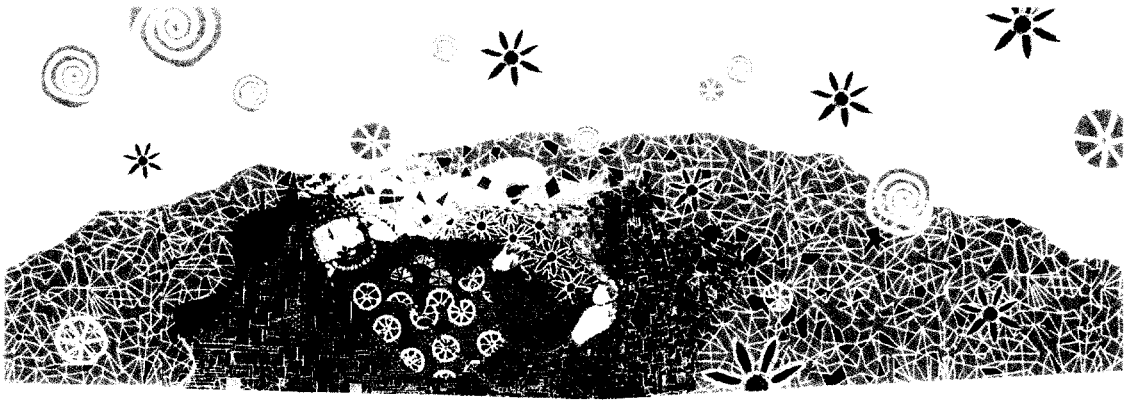
Proposal#1

Integration of the wall to the building architecture, using the image to give the sensation there is no wall and to show what it is behind it. The work is complete designed in mosaics, using the wall colors will create a minimalist form.
The work will have different shades, textures and luminosity, natural light as a complement
element.

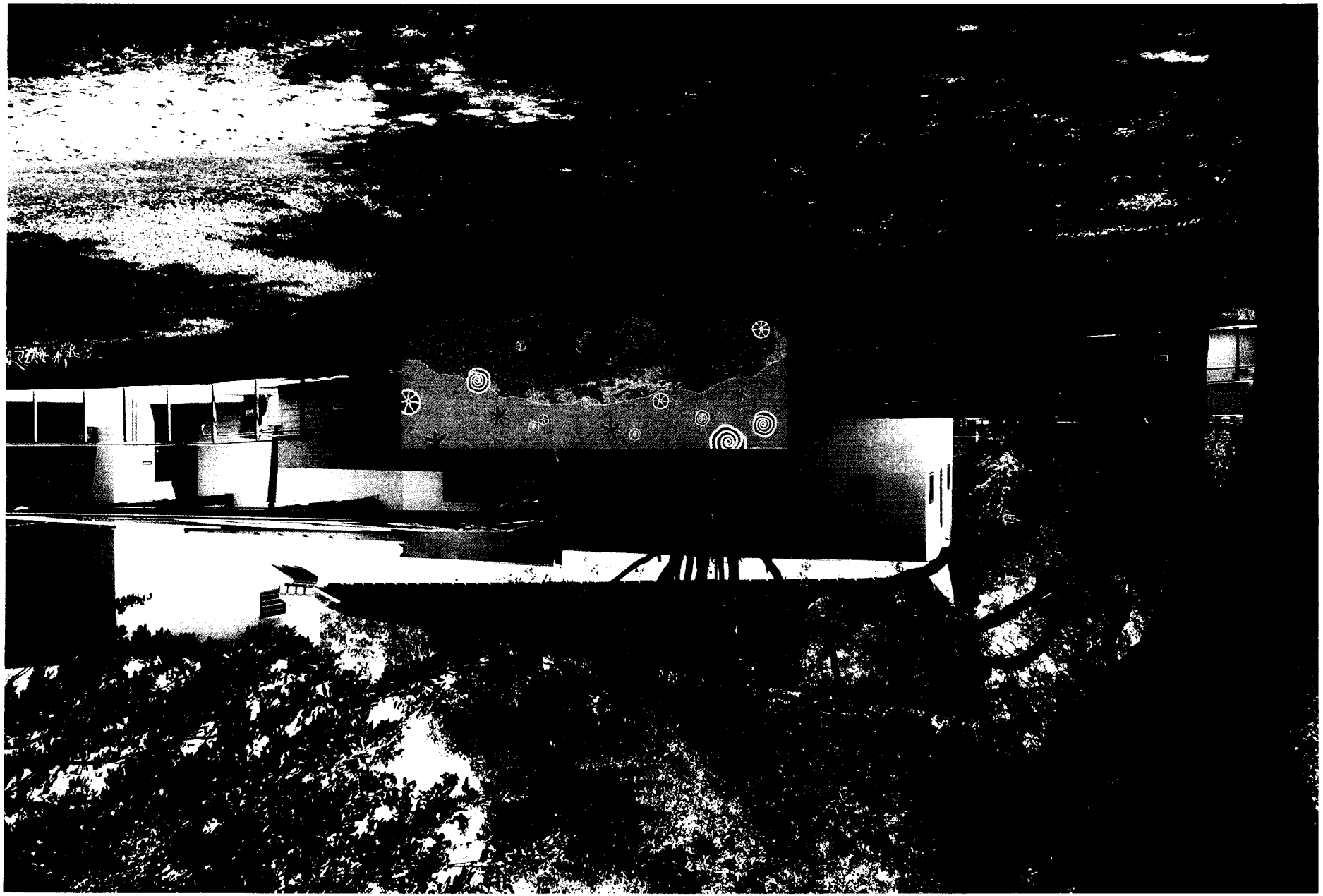


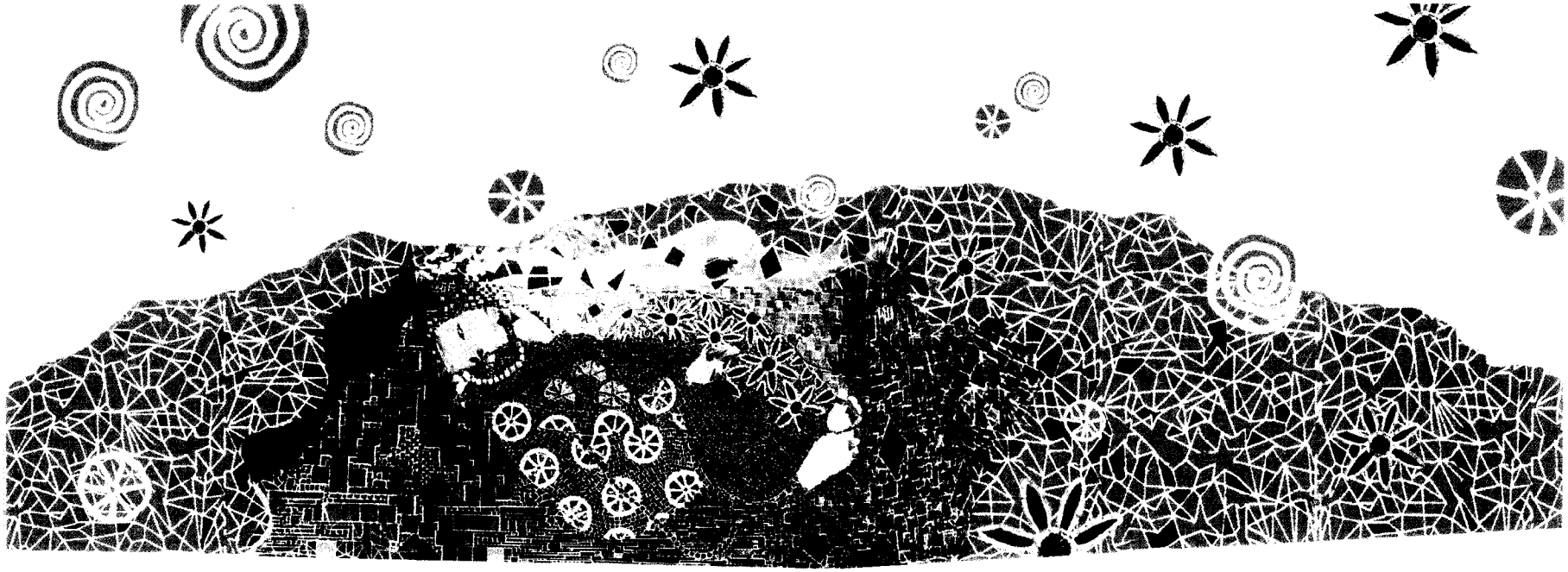
Proposal#2

The image in this proposal will give a resting sensation concept, the women lying, flowers falling down creating her dress.
The elements floating above the figure will be add to the painted wall as a individual pieces and they will combine to form the background.
Everything will be create with recyclables materials, colors, textures will create a peaceful atmosphere.



proposal # 2

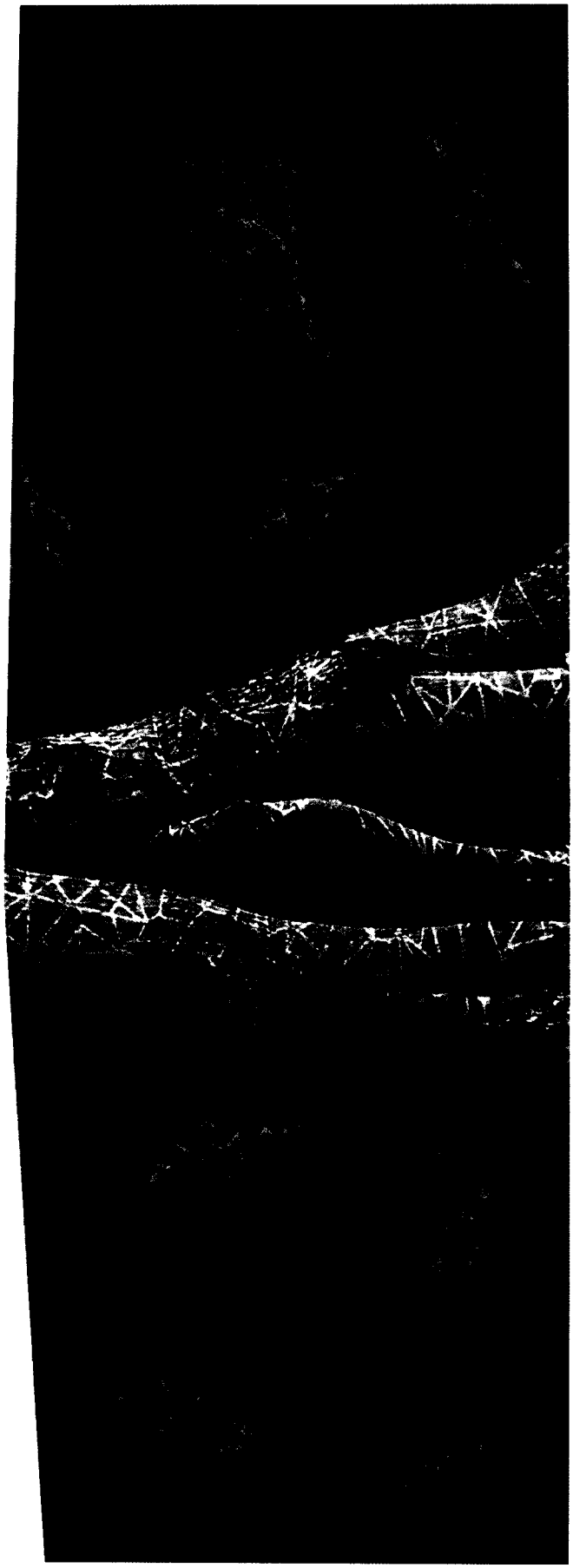




proposal # 2

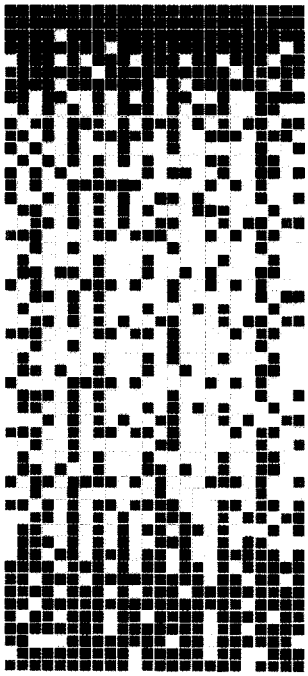
Proposal #3

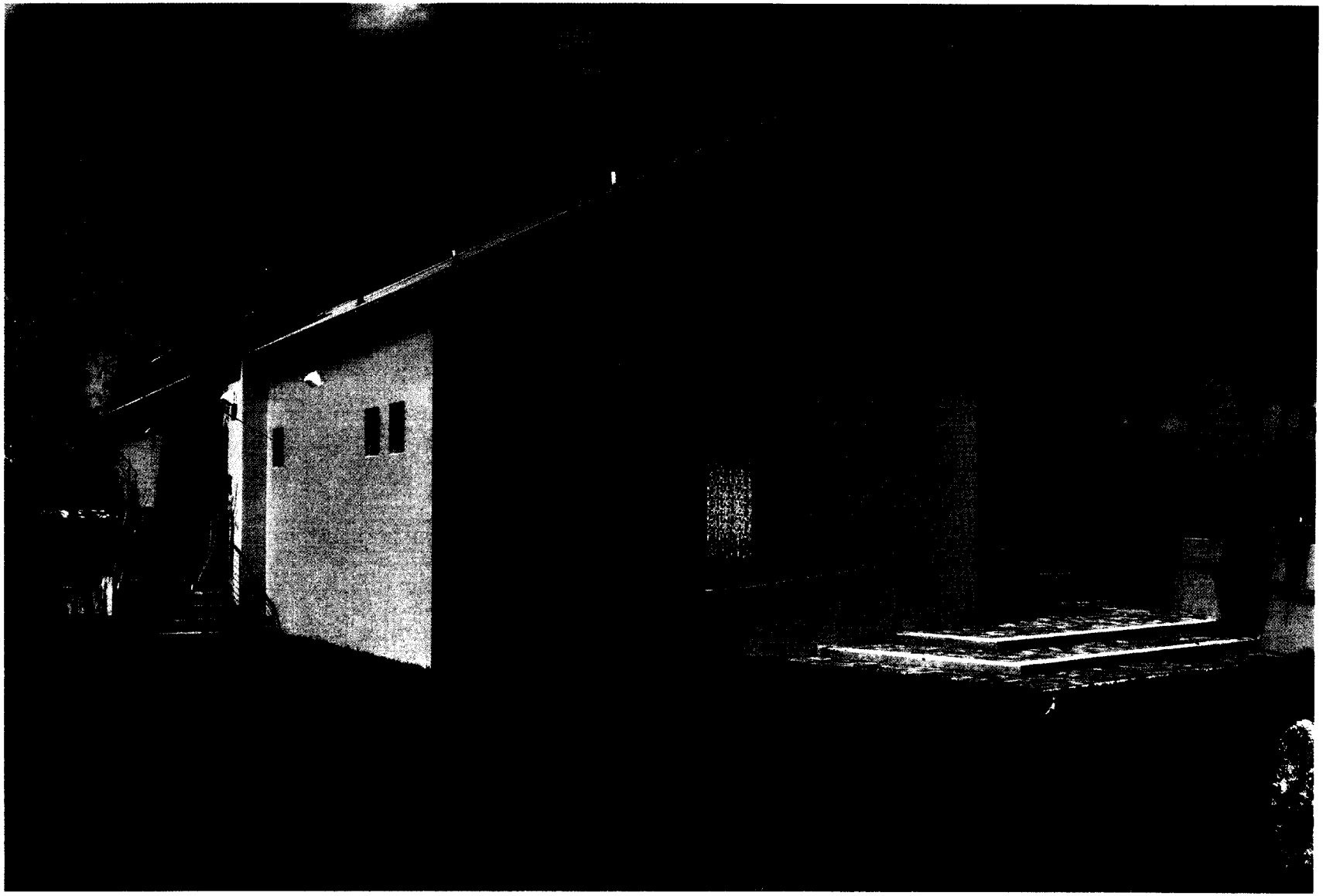
The building is surrounded by trees, that inspired me to create an image with a log figure and dry leaves falling down around.
Using big scale than the real one as a close up to the nature.
The background will be the wall and the elements will be bringing a floating sensation.
Oranges shades and sepias as main colors for the artwork, recyclables material will be used such as tiles, marbles and ceramics.



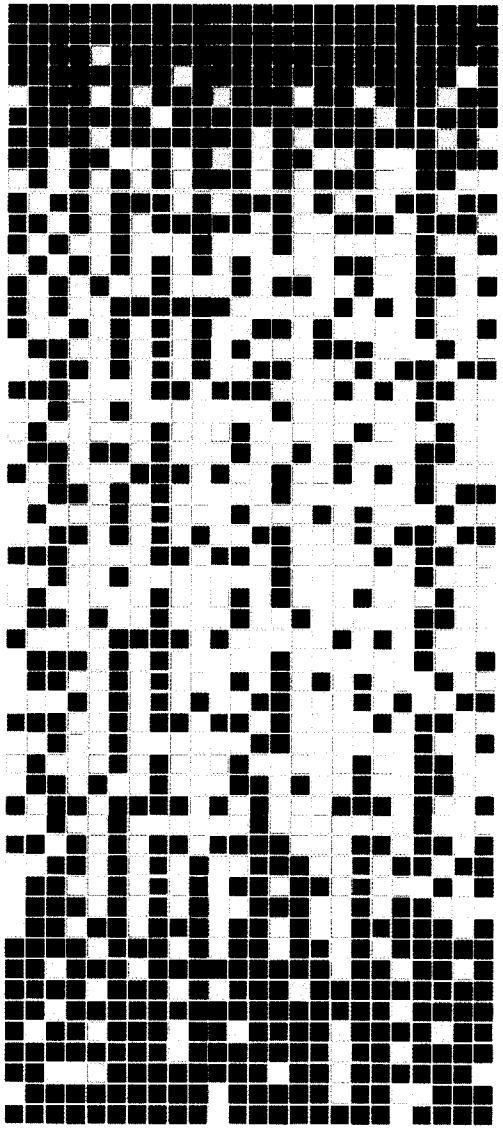
Proposal #4

Using the criterion of building architecture, i will create simplicity.
The artwork designed with tiles can be read as colors sample brought it from the environment and from the other artwork installed around it.





Proposal# 4



Proposal# 4

PROFESSIONAL ARTIST SERVICES AGREEMENT
BETWEEN
VILLAGE OF PALMETTO BAY'S ART IN PUBLIC PLACES PROGRAM
AND
NORA M. CERVINO

This Professional Artist Services Agreement For Artist Services Under The Village's Art In Public Places Program, is made and entered into this 16th day of June, 2010, by and between the Village of Palmetto Bay, and Nora M. Cervino, 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 under Board Resolution No. AIPP 10-01, 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:

"**Architect**" shall mean MC Harry Associates, James Piersol, AIA, the architectural Firm, 2780 Douglas Road, Coral Gables, FL 33133.

"**Artist**" shall mean Nora M. Cervino.

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

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"**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 Al Delgado the entity contracted 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 t develop and submit to the Village a proposal for a work of art for the Coral Reef Park Concession Building to be located at 7895 SW 152nd Street, 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

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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

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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 $7,000. 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 one lump sum of _____ 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.

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

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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

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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:

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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

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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

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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

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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,

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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.

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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.

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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

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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. Not withstanding 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

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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.

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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.

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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 nor 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

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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

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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 breech 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

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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 contact 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.

NC Artist

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:

For Village:

Village of Palmetto Bay
8950 S.W. 152nd 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

NC Artist

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 that 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.

NC Artist

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.

NC Artist

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:

Meighan T. Kader
Village Clerk

VILLAGE OF PALMETTO BAY

By: Ron E. Williams
Ron E. Williams
Village Manager

Date: 6-15-10

APPROVED AS TO FORM:

Eve A. Boutsis
Village Attorney

ATTEST

Village Clerk Meighan Kader

Artist

By: Nora

Name: NORA CERVINO

Date: 6/16/10

NC Artist

PROFESSIONAL ARTIST SERVICES AGREEMENT
BETWEEN
VILLAGE OF PALMETTO BAY'S ART IN PUBLIC PLACES PROGRAM
AND
NORA M. CERVINO

EXHIBIT 1

Completion and Payment Schedule
Re: RFQ: Coral Reef Park / Concession Stand
Budget: $7,000

Project Location: Coral Reef Park, 7895 SW 152nd Street, Palmetto Bay, FL 33157

The artist hereto referred to as **Nora M. Cervino** agrees to the following schedule for the execution and installation of the glass and tile mosaic entitled "Optical Illusion, Proposal 1 and Proposal 4", as designed by Nora M. Cervino, dated stamped received on May 6th, 2010, 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 July 6, 2010. The art piece shall be completed and installed no later than Monday, August 2, 2010.

Payment Schedule
An initial payment will be issued to the artist in the amount equal to thirty (30%) of the contract award equivalent to two thousand one hundred dollars ($2,100) upon notice to proceed.

An additional payment in the amount equal to sixty two percent (62%) of the contract award equivalent to four thousand three hundred and forty dollars ($4,340) will be issued upon 50% of completion of the art piece to the artist on or before July 6, 2010, upon satisfaction of the Village.

The final payment in the amount equal to eight percent (8%) of the contract awarded equivalent to five hundred sixty dollars ($560) will be released upon final installation of the art piece to the artist on or before August 2, 2010, upon satisfaction of the Village.

ATTEST

NORA M. CERVINO / ARTIST

WITNESS

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