

RESOLUTION NO. 2011-13-1406

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE AN AGREEMENT WITH XAVIER CORTADA IN AN AMOUNT OF ONE HUNDRED FIFTY-TWO THOUSAND DOLLARS (\$152,000.00) TO IMPLEMENT THE PUBLIC ART DESIGN CONCEPT TITLED "SPLASH" FOR THE BETTY T. FERGUSON RECREATIONAL COMPLEX; PROVIDING FOR THE ADOPTION OF REPRESENTATIONS; PROVIDING AN EFFECTIVE DATE.

WHEREAS, in accordance with Miami-Dade County Ordinance No. 2-11.15, Art in Public Places, as well as the Building Better Communities General Obligation Bond ("GOB") contract for the Betty T. Ferguson Recreational Complex, the City is required to allocate 1.5% of the total project construction budget, or One Hundred Seventy-Two Thousand One Hundred Thirty-Nine Dollars (\$172,139.00) to integrate public art at the facility, and

WHEREAS, the City Council previously adopted Resolution No. 2010-009-1191, which allowed payment to the Miami-Dade County Art in Public Places Division in the amount of Eight Thousand Dollars (\$8,000.00) to assist City staff in advertisement and selection for an artist to design the proposed artwork at the Betty T. Ferguson Recreational Complex, and

WHEREAS, three percent (\$4,924) was set aside for future maintenance of the artwork, and

WHEREAS, the funding for the project will be paid by Miami-Dade County, in accordance with the GOB contract between the County and the City, and

WHEREAS, on June 24, 2010, a Call to Artists was advertised for this project on Miami-Dade County's Café system, and

WHEREAS, forty (40) applications were received, and

WHEREAS, City staff met with Miami-Dade County's Art in Public Places Trust to shortlist the applicants, and

WHEREAS, on November 18, 2010, the five shortlisted artists were paid \$750 each in honorariums to prepare and present design concept proposals to Miami-Dade County's Art in Public Places Trust and City staff, and

WHEREAS, City staff and the Art in Public Places Trust recommend that Xavier Cortada be selected to perform the design services based upon his concept proposal "Splash", and

WHEREAS, it is being recommended that the City Council authorizes the City Manager to enter into a contract on behalf of the City for this purpose in an amount of One Fifty-Two Thousand Dollars (\$152, 000.00),

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA AS FOLLOWS:

Section 1: ADOPTION OF REPRESENTATIONS: The foregoing Whereas paragraphs are hereby ratified and confirmed as being true, and the same are hereby made a specific part of this Resolution.

Section 2: AUTHORIZATION: The City Council of the City of Miami Gardens hereby authorizes the City Manager to negotiate and execute an agreement with Xavier Cortada in an amount of One Fifty-Two Thousand Dollars (\$152,000.00) to implement the Public Art Design Concept titled "Splash" for the Betty T. Ferguson Recreational Complex.

Section 3: EFFECTIVE DATE: This Resolution shall take effect immediately upon its final passage.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF MIAMI
GARDENS AT ITS REGULAR MEETING HELD ON JANUARY 26, 2011.


SHIRLEY GIBSON, MAYOR

ATTEST:


RONETTA TAYLOR, MMC, CITY CLERK

PREPARED BY: SONJA KNIGHTON DICKENS, ESQ., CITY ATTORNEY

SPONSORED BY: DR. DANNY O. CREW, CITY MANAGER

Moved by: Councilwoman Pritchett
Second by: Vice Mayor Campbell

VOTE: 7-0

Mayor Shirley Gibson	<u> X </u> (Yes)	<u> </u> (No)
Vice Mayor Aaron Campbell	<u> X </u> (Yes)	<u> </u> (No)
Councilwoman Lisa Davis	<u> X </u> (Yes)	<u> </u> (No)
Councilman Oliver Gilbert, III	<u> X </u> (Yes)	<u> </u> (No)
Councilwoman Sharon Pritchett	<u> X </u> (Yes)	<u> </u> (No)
Councilwoman Felicia Robinson	<u> X </u> (Yes)	<u> </u> (No)
Councilman Andre' Williams	<u> X </u> (Yes)	<u> </u> (No)



City of Miami Gardens Agenda Cover Memo

Council Meeting Date:	January 26, 2011		Item Type: <i>(Enter X in box)</i>	Resolution	Ordinance		Other	
				X				
Fiscal Impact: <i>(Enter X in box)</i>	Yes	No	Ordinance Reading: <i>(Enter X in box)</i>	1st Reading		2nd Reading		
		X		Public Hearing: <i>(Enter X in box)</i>	Yes	No	Yes	No
Funding Source:	Miami Dade County Building Better Communities General Obligation Bond		Advertising Requirement: <i>(Enter X in box)</i>		Yes		No	
						X		
Contract/P.O. Required: <i>(Enter X in box)</i>	Yes	No	RFP/RFQ/Bid #:	Miami Dade County <i>Call to Artists</i>				
	X							
Strategic Plan Related <i>(Enter X in box)</i>	Yes	No	Strategic Plan Priority Area: Enhance Organizational <input type="checkbox"/> Bus. & Economic Dev <input type="checkbox"/> Public Safety <input type="checkbox"/> Quality of Education <input type="checkbox"/> Qual. of Life & City Image <input type="checkbox"/> Communication <input type="checkbox"/>	Strategic Plan Obj./Strategy: <i>(list the specific objective/strategy this item will address)</i> NA				
		X						
Sponsor Name	City Manager Danny Crew		Department:	Capital Improvement Projects				

Short Title:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE AN AGREEMENT WITH XAVIER CORTADA IN AN AMOUNT OF ONE HUNDRED FIFTY-TWO THOUSAND DOLLARS (\$152,000) TO IMPLEMENT THE PUBLIC ART DESIGN CONCEPT TITLED "SPLASH" FOR THE BETTY T. FERGUSON RECREATIONAL COMPLEX; PROVIDING FOR THE ADOPTION OF REPRESENTATIONS; PROVIDING AN EFFECTIVE DATE.

Staff Summary:

Background

In accordance with Miami-Dade County Ordinance No. 2-11.15 Art in Public Places, as well as the Building Better Communities General Obligation Bond (GOB) contract for the Betty T. Ferguson Recreational Complex, the City must allocate 1.5% (\$172,139) of the eligible project construction and design costs to integrate public art at the facility.

**ITEM K-3) CONSENT AGENDA
RESOLUTION
Agreement w/ Xavier Cortada**

On January 13, 2010 Council passed Resolution No. 2010-009-1191, which allowed payment of \$8,000 to Miami-Dade County Art in Public Places Division to assist city staff in advertisement and selection of artist and proposed work of art to be implemented at the Betty T. Ferguson Recreational Complex for recommendation to the City's Mayor and Council. After payment to Miami-Dade County Art in Public Places Division, along with \$4,924 set aside for long-term maintenance of the artwork, \$159,215 remained from the original allocation.

All of the funding for this project is included in a current GOB contract between Miami-Dade County and the City of Miami Gardens.

Please note that all future Art in Public Places projects will be fully managed by the City of Miami Gardens per City Ordinance 2010-22-230 established in July 2010.

Current Situation

A *Call to Artists* for this project was placed on Miami Dade County Café system on June 24, 2010. City staff conducted a site visit of the Recreational Complex on July 7, 2010. Forty (40) applications were received by July 23, 2010. On September 17, 2010, City staff met with Miami-Dade County's Art in Public Places Trust (Trust) to short list the applicants. On November 18, 2010, the five shortlisted artists were paid \$750 each (for a total of \$3750 spent from allocation) in honorariums to prepare and present design concept proposals to Trust and City staff. After much consideration, Xavier Cortada's design concept proposal entitled "Splash" was chosen to be recommended to City Council for final approval to implement his work of art at the Betty T. Ferguson Recreational Complex.

The proposals from the five shortlisted artists are available for review at the Assistant to the Mayor and Council's office.

If approved, Xavier Cortada will be compensated \$152,000 to implement his artwork "Splash", to serve as a functional, visual piece of art in the indoor pool area of the Betty T. Ferguson Recreational Complex. The remaining \$3,465 from the original allocation will serve as contingency for construction of this project.

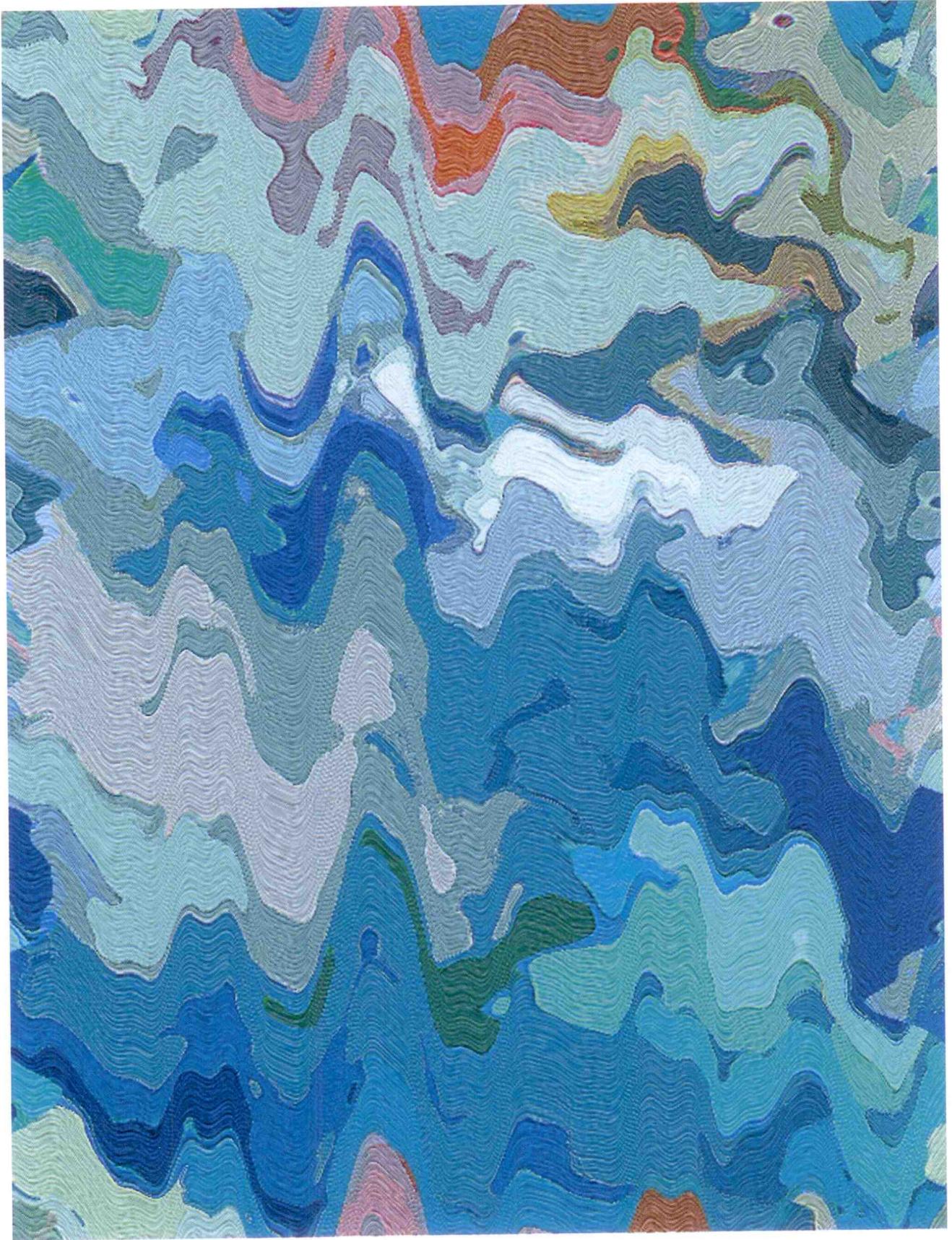
Proposed Action:

In order to receive reimbursement of contracted Building Better Communities General Obligation Bond funds and remain in compliance with Miami Dade County Ordinance No. 2-11.15, it is recommended that the City Council authorize the City Manager to negotiate and commission the services of Professional Artist Xavier Cortada in the amount of \$152,000 to implement the public art design concept titled "Splash" at the Betty T. Ferguson Recreational Complex.

Attachment:

Attachment A –Design Concept Proposal presented by Xavier Cortada

Attachment B – Final Artist Phase-Two Commission Contract



Xavier Cortada

924 Lincoln Road, Studio 201, Miami Beach, FL 33139

305-858-1323 * xavier@cortada.com * www.cortada.com

Xavier Cortada created art installations at the North Pole & South Pole to address environmental concerns at every point in between. He's been commissioned to create art for the White House, the World Bank, Miami City Hall, Miami-Dade County Hall, Florida Botanical Gardens, the Miami Art Museum, Museum of Florida History and the Frost Art Museum. Cortada has also developed numerous collaborative art projects globally, including peace murals in Cyprus and Northern Ireland, child welfare murals in Bolivia and Panama, AIDS murals in Switzerland and South Africa, and eco-art interventions in Holland, Hawaii and Latvia. Cortada is the founder of the Reclamation Project, a participatory eco-art project based at the Miami Science Museum.

SELECTED SOLO ART EXHIBIT

- [Sequentia](#), Frost Art Museum, Miami, FL. (2010)
- [North Pole/South Pole \(90n/90s\) Installations](#), Miami Science Museum, Miami, FL. (2010)
- [Endangered World: 80.15W Installation](#), Biscayne National Park, Homestead, FL. (2010)
- [Native Flags: North Pole](#), ecoartspace, Verge Art Fair, Miami Beach, FL. (2009)
- [The Reclamation Project](#), Martin County Courthouse Cultural Center, Stuart, FL. (2009)
- Ancestral Dinner Party/The Genographic Project, Miami Science Museum, Miami. (2008)
- South Pole Installations, Centre Gallery, Miami Dade College, Miami, FL. (2007)
- Native Flags and The Reclamation Project, Miami Science Museum, Miami, FL. (2007)
- Antarctica, Kunsthaus Miami Contemporary Art, Wynwood Arts District, Miami, FL. (2007)
- The Reclamation Project, Bass Museum of Art, Miami Beach, FL. (2006)

SELECTED GROUP EXHIBITS:

- [New Media Festival, 5th edition](#), Hardcore Art Contemporary Space, Miami, FL (2010)
- The Liberators Project/Liberadores ([Denver Biennial of the Americas](#)), Museo de las Americas, Denver, CO. (2010)
- [Adaptation](#), Art and Culture Center of Hollywood, Hollywood, FL. (2010)
- [Water: Three States](#), Auburn University Art Gallery, Auburn, AL. (2009)
- [Polar Identity](#), Works Gallery, San Jose, CA. (2009)
- [Antarctica: Collection from the Bottom of the World](#), Maryland Science Center, Baltimore, MD. (2009)
- Sustainable?, Central Connecticut State University Gallery, New Britain, CT. (2009)
- The Green Project presented by the Claire Oliver Gallery, Miami, FL. (2008)
- Polar Attractions, Peabody Essex Museum, Salem, MA. (2008)
- [EPA \(Environmental Performance Actions\)](#), EXIT ART, New York, NY. (2008)
- Weather Report, Boulder Museum of Contemporary Art, Boulder, CO -- curated by Lucy Lippard. (2007)
- Envisioning Change, presented by the Natural World Museum and the United Nations Environment Programme at the Nobel Peace Center, Oslo, Norway, the BOZAR Center for Fine Arts, Brussels, Belgium, and the Ministry of Culture in Monaco (2007-2008)
- [Miami in Transition](#), Miami Art Museum, Miami, FL.

SELECTED MEDIA:

- Green Museum, by Allison Compton, *Public Art Review*, Issue 40, pp 52-55 (Spring/Summer 2009).
- Global Warnings, by Suzaan Boettger, *Art in America*, Issue No. 6, pp. 154-161, 206-207, June/July 2008.
- The Arts: "The Longitudinal Installation: Representing those affected by climate change," *Resurgence*, edition 243, page 32-33 (July/August 2007).
- Kunsthaus Miami exhibit. Review by Milagros Bello. Published in *arte al día* (International Magazine of Contemporary Latin American Art), edition 119, (July 2007).

SELECTED GRANTS/Residencies:

- *Paths and Traces/Chemins et Tracés*, Fondation Derouin – Symposium 2009, Les Jardins du Précambrien, Val-David, Quebec, Canada, 2009. Created "[Genetic Markers](#)."
- *Kunst- en natuurwandeling OverLeven*, Foundation Nature Art Drenthe (Stichting Natuurkunst Drenthe), Drenthe, the Netherlands, 2009. Created "[Life Wall](#)."
- 90N (North Pole) Installations, [New York Foundation for the Arts](#), NYFA sponsored artist, 2008. Created "[Native Flags](#)."
- Art in Antarctica (South Pole Installations), [National Science Foundation Antarctic Artists and Writers Program](#), 2006-2007. Created "[Art in Antarctica](#)" installations.
- Prior grantors also include: U.S. State Department, USAID, State of Florida Division of Cultural Affairs, Miami-Dade Cultural Affairs Council, Miami-Dade Art in Public Places.

SELECTED PUBLIC ART COMMISSIONS

- Art in State Buildings, [Frost Art Museum](#), Miami, FL. (2008)
- Monroe County Art in Public Places, [Upper Keys Government Center](#), FL. (2008)
- Pinellas County Art in Public Places, [Florida Botanical Gardens](#), Largo, FL. (2008)
- Monroe County Art in Public Places North Key Largo Fire Station, Key Largo, FL. 2007)

SELECTED LECTURES

Cortada has delivered lectures in countries across all seven continents (and even on a Russian icebreaker crushing through the Arctic's frozen sea). In recent years, Cortada was invited to deliver formal lectures about his art at:

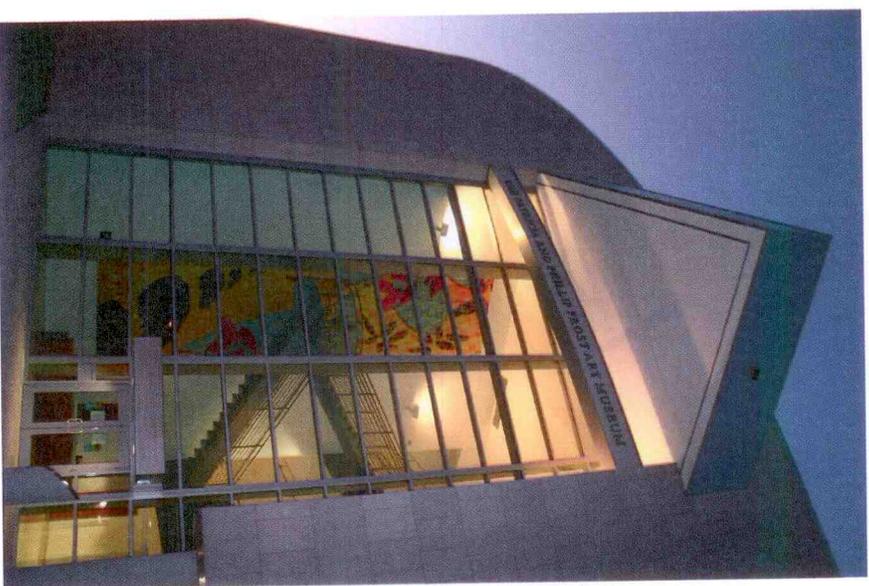
- [Auburn University](#), Auburn, AL (2009)
- [Exploratorium \(at the Palace of Fine Arts\)](#), San Francisco, CA (2009)
- [Peabody Essex Museum](#), Salem, MA (2008)
- [Princeton University](#), Princeton, NJ (2010)
- [San Jose State University](#), San Jose, CA (2010)
- [United States Embassy](#), Helsinki, Finland (2008)

EDUCATION:

- **Juris Doctor**, University of Miami School of Law Coral Gables, FL (December 1991).
- **Master of Public Administration**, University of Miami Graduate School, Coral Gables, FL (December 1991).
- **Bachelor of Arts in Psychology**, University of Miami College of Arts and Sciences, Coral Gables, FL (December 1986).

Frost Art Museum

Florida International University



Florida Botanical Gardens



Upper Keys Government Center

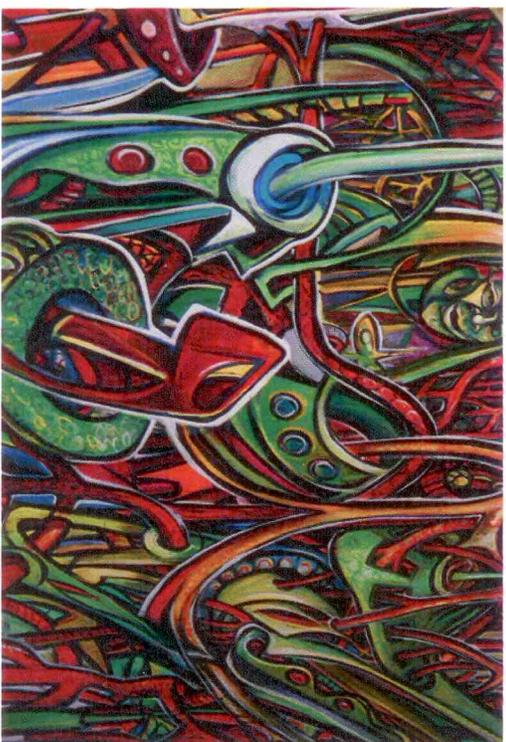


Other commissions

- World Bank
- White House
- South Pole Station
- Hunebed Center
Museum (The
Netherlands)



Local



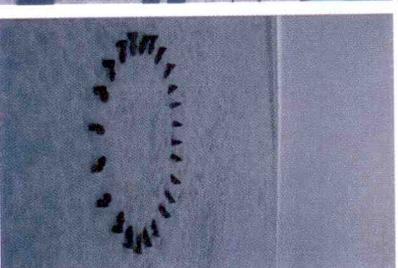
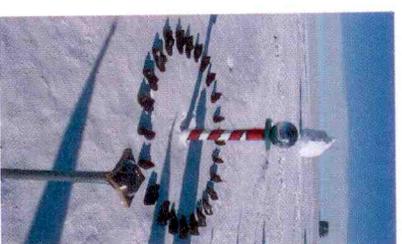
- Miami-Dade County Hall
- Miami City Hall
- Miami-Dade Juvenile Courthouse
- Miami Science Museum

Exhibits/Installations (local)

- Miami Art Museum, 2006
- Miami History, 2000
- Miami Science Museum, 2007
- Hollywood Art and Culture Center, 2010
- Bass Museum of Art, 2006
- Frost Art Museum, 2010



Other large scale installations

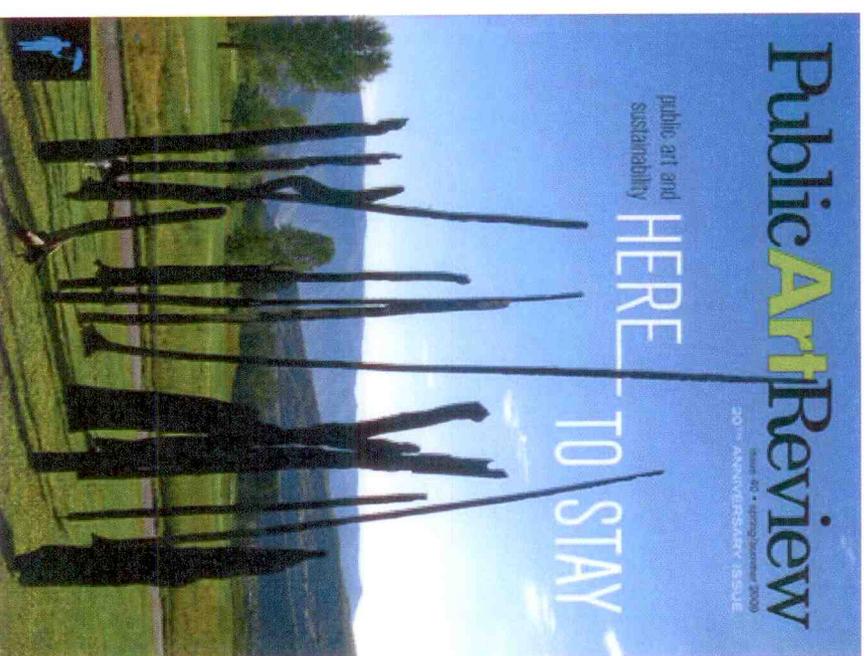


Publications & Media

- Art in America
- Public Art Review
- Arte al Dia

Television:

- Discovery Channel
- National Geographic



Xavier Cortada

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18 November 2010

Peter Boswell, Senior Curator, Miami Art Museum (Miami)
Daniel Perez, Principal, Perez and Perez Architects (Miami)
Malik Benjamin, Professor of Architecture, FIU (Miami)
Art in Public Places Professional Advisory Committee
Miami-Dade County Department of Cultural Affairs
111 N.W. First Street
Suite 600
Miami, FL 33128

RE: **Betty T. Ferguson Recreational Complex**

Dear Mr. Boswell, Mr. Perez, and Mr. Benjamin,

I am very happy to present “*Splash!*” as my proposal for the City of Miami Gardens—Betty Ferguson Recreational Complex Call to Artists. In this letter I will walk you through many of my ideas and thought process to conceptualize a unique, site-specific work of art for a pool. In doing so, I explored not just the relevance of the media used, but also gave thought to themes and ideas. Similarly, I took into account both the mind-set and placement of the viewing public. Moreover, I took the challenge to improving the acoustics very seriously and came up with a team of local experts second to none!

ARTIST’S STATEMENT

In approaching this commission thematically, at first, I was all over the map.

But then, on a recent visit to the pool, I saw a group of children cued up at the entrance. All, eager with anticipation to come inside. Nothing else mattered to them at that moment but sharing each other’s company in the water. In the slide. In the fun and splash.

I got it.

Through its name, its landscape and its programming, I realized the building itself already addressed the other points I had considered¹.

¹ First, I wanted to honor Betty Ferguson, a civic leader who I first met when I was more involved in community organizing and social justice issues. As their commissioner, she did much to represent the area’s residents and led them in the incorporation of this municipality. I still remember attending many of her UP-PAC (Unrepresented People’s Positive Action Council) Saturday morning meetings in the earlier part of the decade.

I didn't have to take myself so seriously in developing a piece of art that was to be viewed exclusively by a bathing suit clad audience.

Although it is monumental in scope, challenges viewers to think creatively, and --through its placement in space--helps viewers "visualize" the motion of light and sound waves, this work is ultimately about fun. About enjoying a day in summer or an afternoon at the end of the school day when Mom and Dad allow you to go in the pool. About relaxation and recreation.

About tuning out all the other noise, and coming to this happy zone.

Bathed with this splash of creativity, I was ready for a new narrative as I approached the work.

PROJECT NARRATIVE DESCRIPTION

The Call to Artists asks us to find creative solutions² for reducing the noise generated in this indoor pool. Because of the nature of the space, I knew that whatever medium I

Then, I wanted a piece to address the ecology of the place. Show the native species that would otherwise inhabit that very location and encourage visitors to explore how they can better coexist with nature. I thought about creating a piece where swimmers would "rise" from the ground through the canopy to the clouds as they swap a lap up the pool and then back to the ground as they swam back.

I even thought of creating a piece about education and inspiring words by Maya Angelou and other luminaries. This, after walking by an after-school class where students were quietly doing their homework.

² Initially, I thought of acoustic tiles hanging from the wall and ceilings, each wrapped with printed patterns. But soon realized that this was too common a solution for the space. Indeed, the novelty of printing an acoustic tile wore off the second I did a Google search on "printed acoustic tile." Among the myriad:

With **Printed Barrisol®**, plunge into another universe!
Create your own decoration thanks to digital printing on Barrisol® sheets.
It is possible to reproduce all photos, patterns or decors of your choice for a totally personalized atmosphere.

It felt as if I'd any work I did would be too decorative, too commercial looking. Further research showed an entire industry of manufacturers who shape, mould, color and create every form of acoustic panel desirable.

used it had to be substantial. Enough of it to be good enough for the loudest summer day! But it also had to be relevant: the form had to fit the function.

Different Vantage Points:

I also wanted pool viewers to look up as they were floating in the pool and see something extraordinary: A pixilated image of waves across the entire length of the ceiling.

I wanted them to swim a lap, or walk down the length of the pools and experience kinetic art.

I wanted them to stop at any point whether clinging to the edge of the pool or at the top of the slide and see a sculptural piece that was different from any vantage point.

So, I created a “**Splash!**”

Pool Noodles!

Ninety-eight rows each containing 78 pool noodles would create a grid across the entire surface of the ceiling (plus those in the Jacuzzi room). The tip of each 60-inch tall noodle would be painted a different color. The composite of all 7, 644 points would create a pixilated image of waves.

The pixilated pool noodles would be arranged at different heights across a plane (just below the trusses on the ceiling) in the room, creating an undulating effect to mimic wave action. It would be sculptural in nature.

Because the mass would be created through a series of rows of perpendicular lines with spaces between them, the effect of moving through space while seeing the work would be exhilarating: Experience kinetic art as you do the back stroke!

I didn't want to serve as an interior designer that simply parroted someone else's innovation. The use of acoustic tiles seemed as the easy way out.

Also, even if I were to surpass this challenge, the only way it would work was to hang the panels flat. Otherwise, they would look like we were hanging banners to block the air conditioning handlers and vents crowding the ceiling above.

The problem with hanging the panels flat is that they would accumulate too much dust. Also, the pattern would be broken with the myriad of lights popping through the ceiling. The fatal blow to the flat acoustic tile concept were the series of sprinklers high above the ceiling. A wall of flat panels would render them obsolete and would drench and ruin the panels if they were ever to be used.

I needed something with a high NRC (Noise reduction coefficient) that could withstand being drenched but also let the water from the sprinklers run through. And relevant to the site-specific project.

The pixilated pool noodles above would also serve as markers allowing those swimming laps across the pool to look up and see color-coded points letting them know where they are along the path.

Below the sea of pixilated pool noodles, sculpted foam would create a series of splashes. They would be coming in different directions: One would run the length of the lap. Another would come from the area near the Jacuzzi. Yet another would appear to be created by someone who just slid out of the slide.

Acoustically Sound

Importantly, the art piece is acoustically sound. In the attached letter, our consultant UM Professor Colby Leider states:

*After reviewing your proposal for suspending polystyrene tubes spaced 6" apart at various heights from the grid inside the Miami Gardens building, I believe that this concept will indeed deaden much of the ambient sound inside of the building. I will be happy to assess the absorption coefficients of the tubes, **but 8,000 of them will have an appreciable impact on lessing reflective sound while increasing acoustical diffusion.** Moreover, the placement of your giant foam "Splash" sculptures in the space will also help reduce the flutter echo generated by the walls. This will lead to enhanced intelligibility and sonic enjoyment of the space.*

Dr. Leider holds degrees in music composition and electrical engineering from Princeton, Dartmouth, and the University of Texas.

Naturally, the exact spacing and placement of the pixilated pool noodles and the foam splash sculptures would be determined in consultation with our Acoustic consultants, who will be conducting a battery of pre and post test on the site to map it acoustically.

Specifically, the acoustical consulting services will consist of before-and-after acoustical test and measurement of the interior of the Miami Gardens building (including RT60 reverberation time, impulse responses, absorption coefficients, frequency response, and intelligibility quotient), computer modeling (before and after proposed treatments are installed), and on-site assistance and verification of installed acoustical treatments.

The 7,644 pixilated noodles will be spaced at distances and heights that will best serve to both diffuse the sound and absorb as it moves towards the ceiling. The lower hanging splash sculptures will be sized and placed at the most appropriate location to address flutter echo between parallel walls.

Durability

All works will be made of flame-retardant materials and/or treated so that they are fire safe. Likewise, materials will be used that meet the needs imposed by the environmental conditions onsite, including humidity and air quality. Similarly, the fabricator will work with the engineer to ensure that all codes and considerations are met in developing a solid piece of art so that its durability can meet the expected 50-year lifespan of the building.

DETAILED PROJECT BUDGET

Please see attached budget. The project will be completed within the timeline for a total cost of \$156,215 and will include the artist's fee (18%), the cost of fabrication and labor, engineering, installation, shipping delivery, insurance and other anticipated costs. Unless other cost savings can be achieved, contingencies --if any --- will be paid from artist's fees.

ANTICIPATED FABRICATION AND INSTALLATION SCHEDULES

"Splash!" will be installed within a maximum time frame of five months.

- During the first month, the artist will work with acoustic consultants to determine the best placement of the works and develop CAD drawings for fabricator.
- During the second month the artist will work with Engineer and Fabricator to plan for the creation and installation of the work.
- During the third and fourth month, the works will be created.
- During the fifth month, the works will be installed. There is no need to empty the pool to create this installation. If necessary, the team can work during hours to least disrupt the public's use of the pool.

PRELIMINARY MAINTENANCE PLAN

The artist will work with Art in Public Places to develop a Maintenance Plan. Because of the choice of materials used (pool noodles) that will be suspended from the ceiling and out of touch or direct light, the artist doesn't envision a heavy maintenance schedule. In the event there needs to be construction on the site (e.g., removal of the A/C vents), the work is easily moved. Since the work is to be created by suspending rows of noodles from galvanized cable held from walls at opposite sides of the room, it is relatively easy to take down and re-hang the entire installation.

In the unlikely case the art is destroyed by a natural disaster, the art can be fabricated once more. The artist will provide the client with a detailed diagram of the work, photo documentation of the fabrication and installation process, sources for materials, and specific instructions on how to replace the piece.

Other issues and concerns can be discussed and addressed at the artist executes the contract for the work.

SUB-CONTRACTORS

Fabricator

If selected for this commission, I will hire fabricator Damian Sarno to assemble a team, including an Engineer, to bring this project to life.

Mr. Sarno has been a fabricator for over twenty years. He has worked repeatedly as a contractor on projects for the Miami Science Museum. Indeed, just recently he installed my solo exhibit there: 90N/90S -- North and South Pole Installations. For 90N/90S, meticulously placing 360 identical flags on a grid inches apart.

For Phillipe Starck's building, the "Icon," on Fifth and Alton Rd in Miami Beach, Mr. Sarno created two fiber glass sculptures as covers for the lobby columns, each 25 feet high and ranging from 5 feet to 15 feet in diameter. The cost of that project exceeded \$100,000.

Other clients include Muvico of Boca Raton and local restaurants. Mr. Sarno also has an extensive experience in fabricating for the TV and Movie industries using a wide range of materials.

The Fabricator's address is:

Damian Sarno
601 NE 116th Street
Biscayne Park, FL 33161
305-725-3849

Acoustic Consultants

If selected, I will hire two acoustic consultants (Dr. Colby and Sound Engineer Christopher Dawson).

COLBY LEIDER, Ph.D.

Colby Leider currently works as **Director and Associate Professor of Music Engineering at the University of Miami**, and he serves as Associate Editor of *Computer Music Journal* (published by MIT Press). His research interests include digital audio signal processing, sound synthesis and spatialization, tuning systems, and alternate controllers for music-making, and he **has received research grants from the National Science Foundation, the NVIDIA Corporation, and the University of Miami.**

Dr. Leider, a composer and engineer, has received prizes and honors from the American Composers Forum, the Institut International de Musique Electroacoustique de Bourges, Princeton University, the International Computer Music Association, and Dartmouth College.

In 2005, Dr. Leider co-founded everglade records (everglade.org), a label devoted to acoustic ecology and experimental sound art. **He also works as an audio consultant** and as an expert in patent-infringement cases involving audio and new media technologies. **Dr. Leider holds degrees in music composition**

and electrical engineering from Princeton, Dartmouth, and the University of Texas, and he makes soap and helps raise 34 animals and two children near the Florida Everglades.

CHRISTOPHER DAWSON

Christopher Dawson is an audio engineer with over 23 years experience in live and recorded sound. He worked for **18 years as an audio engineer for Disney/MGM Studios**, and more recently has **done sound design and consulting for the Singapore Army's Interactive Museum in Singapore** as well as surround mixing and sound design for feature films. He holds a **Music Engineering Degree from the University of Miami**. Etc.....

The Acoustic Consultant's address is:

Colby Leider, Ph.D.
27000 Southwest 192nd Street
Redland, Florida 33031 USA

If selected, I will also hire an assistant to help with logistics of this mammoth undertaking, and a consultant to help with digital files and CAD drawings. The individuals are TBA.

THREE PROFESSIONAL REFERENCES

The following are references for three recent juried public art commissions:

Four Elements at the Frost: Aer, Ignis, Terra, Aqua³
(Permanent Art in State Buildings commission for the Frost Art Museum, Miami, FL)

Dr. Carol Damian, Director
The Patricia & Phillip Frost Art Museum
Florida International University, University Park
10975 SW 17th Street
Miami, FL 33199
305-348-2890 | damianc@fiu.edu | <http://thefrost.fiu.edu/>

³ The 40 foot tall works are inspired by the four elements of water, air, fire and earth, and will be rotated throughout the year in the museum's soaring atrium. The work was designed to complement the 46,000-square-foot building which is itself a work of art designed by Yann Weymouth, design director of Hellmuth, Obata Kassabaum (hok). The new Frost Art Museum cost \$16 million to build and includes nine galleries and 10,000 square feet of breath-taking gallery spaces. Cortada says that the tapestries composed in striking colors that relate to each element suggest "that if we look more closely at our surroundings, there are new worlds to discover. Indeed, inside the museum, there are works by artists who strive to push boundaries to further human understanding."

Native Canopy⁴

(Installation at the M. E. Nelson Government Center for the Upper Keys, Key Largo, FL)

Elizabeth S. Young, Executive Director
Fl. Keys Council of the Arts
1100 Simonton Street
Key West, FL. 33040
305-295-4369 | director@keysarts.com | www.keysarts.com

Reclamation Project: Pinellas County Coastal Reforestation⁵
(Public eco-art commission at the Florida Botanical Gardens)

Judith Powers, Director
Pinellas County Cultural Affairs
12520 Ulmerton Road, Largo, FL 33774-3602
Phone (727) 582-2506 FAX (727) 582-2550
jpowers@co.pinellas.fl.us
www.pinellasarts.org

Thank you so much for your time and dedication in serving as panelists on this committee. I hope I have done my part in convincing you how worthwhile this project is. I know that it is always a hard decision and that you will strive to do what you think is right given the information you have in front of you. I trust that whatever choice you make will be the right one.

Sincerely,

Xavier Cortada
Artist

cc: Brandan DeCaro, RA, Director Capital Projects, City of Miami Gardens
Members of the Miami Dade Art in Public Places Public Art Trust
Brandi Reddick, Miami-Dade Art in Public Places
Michael Spring, Director, Miami-Dade Dept. of Cultural Affairs

⁴ Cortada created the images for "Native Canopy" at the Nelson Center by photographing the shadow cast by native tree leaves and manipulating these with digital technology to create a series of eight unique, layered, colorful "digital tapestries." These exquisite tapestries will serve as reminders of place and markers of time: Climbing up the staircase could be like climbing the branch of a tree where one is coming up on "leaves." The experience can serve as an invitation to find a more balanced approach to coexisting with nature.

⁵ A participatory eco-art project aimed at reforest Pinellas County's coastal wetlands with mangroves. For more information on this eco-art project please see download "Reclamation Project: Coastal Reforestation" PDF at www.reclamationproject.net

Xavier Cortada

924 Lincoln Road • Studio 201 • Miami Beach, FL 33139

phone: 305-858-1323 email: xavier@cortada.com website: <http://www.cortada.com>

Miami Dade Art in Public Places

City of Miami Gardens: Betty T. Ferguson Recreational Complex

November 18, 2010

Budget

Development:

Artist's Fee (18% of budget)	\$ 27,360.00
Acoustic Testing and consulting fees (\$250/hr)	\$ 5,000.00
CAD and Digital Support (\$75 x 50 hrs)	\$ 3,750.00
Miscellaneous Materials	\$ 140.00
Artist's Assistant	\$ 9,250.00
Photodocumentation	\$ 750.00
Liability Insurance (Hartford)	\$ 1,470.00
Subtotal:	\$ 47,720.00

Fabrication and Installation:¹

Fabricator and Laborers (2,400 hours @ \$18.75 hr)	\$ 48,000.00
Materials & Equipment	
Foam	\$ 31,280.00
Hardware and equipment rental	\$ 11,500.00
Paint	\$ 2,500.00
Warehouse rental (4 months @ \$1500)	\$ 6,000.00
Engineer	\$ 5,000.00
Subtotal:	<u>\$104,280.00</u>

Total \$152,000.00

¹ The artist will contract with Damian Sarno and his team in fabricating and installing the work.



27000 Southwest 192nd Street
Redland, Florida 33031 USA

+1 786 281 1086
cleider@miami.edu

November 17, 2010

Xavier Cortada
924 Lincoln Road, Studio 201
Miami Beach, FL 33139

Dear Mr. Cortada,

I am happy to serve as Acoustic Consultant for the "Splash" project you are proposing to the Miami-Dade County Art in Public Places for the Miami Gardens. As the indoor pool building is constructed of concrete block, glass, and exposed tin roof, I understand your client wishes to lessen the overall reflected sound level produced by visitors.

After reviewing your proposal for suspending polystyrene tubes spaced 6" apart at various heights from the grid inside the Miami Gardens building, I believe that this concept will indeed deaden much of the ambient sound inside of the building. I will be happy to assess the absorption coefficients of the tubes, but 8,000 of them will have an appreciable impact on lessing reflective sound while increasing acoustical diffusion. Moreover, the placement of your giant foam "Splash" sculptures in the space will also help reduce the flutter echo generated by the walls. This will lead to enhanced intelligibility and sonic enjoyment of the space.

If you are awarded the commission, I will work with Audio Engineer Christopher Dawson to determine the correct placement of all your works in the space and ensure that the materials used have the correct properties to provide the most effective application of your sculptures, which would result in the most acoustically pleasing space.

My team will conduct on-site acoustical measurements and computer modeling of the space. Consulting fees and costs for providing acoustical measurements, digital models, etc., are outlined in an attachment.

I look forward to working with you!

Sincerely,

Colby Leider, Ph.D.
everglade audio labs

Director, Music Engineering Program
Associate Professor, Frost School of Music
University of Miami
1314 Miller Drive
Coral Gables, Florida 33124 USA

<http://mue.music.miami.edu>
<http://mue.music.miami.edu/~colby>



27000 Southwest 192nd Street
Redland, Florida 33031 USA

+1 786 281 1086
cleider@miami.edu

Project Proposal

Title: Splash
Client: Xavier Cortada
924 Lincoln Road, Studio 201
Miami Beach, FL 33139 USA

Scope of Services:

My team proposes to provide acoustical consulting services consisting of before-and-after acoustical test and measurement of the interior of the Miami Gardens building (including RT60 reverberation time, impulse-responses, absorption coefficients, frequency response, and intelligibility quotient), computer modeling (before and after your proposed treatments are installed), and on-site assistance and verification of installed acoustical treatments.

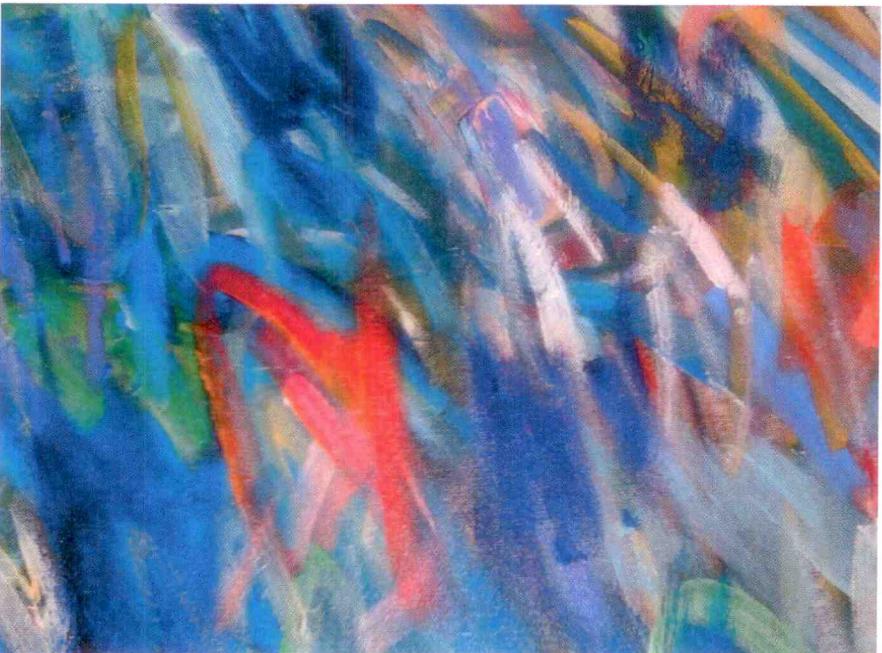
Compensation:

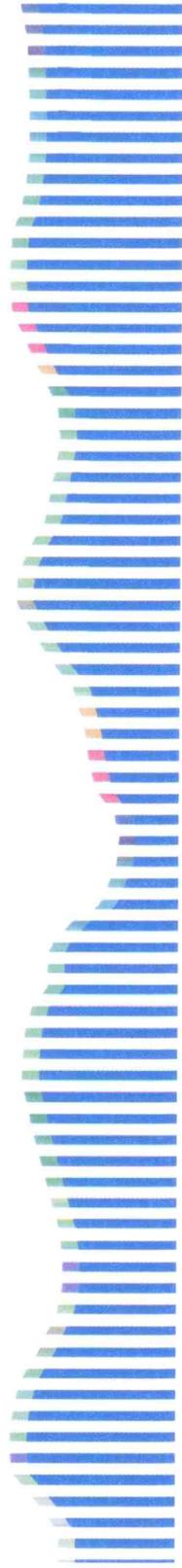
Our services are offered on an hourly basis of \$250. The total time estimated for completion of the above tasks is eight hours.

Deliverables:

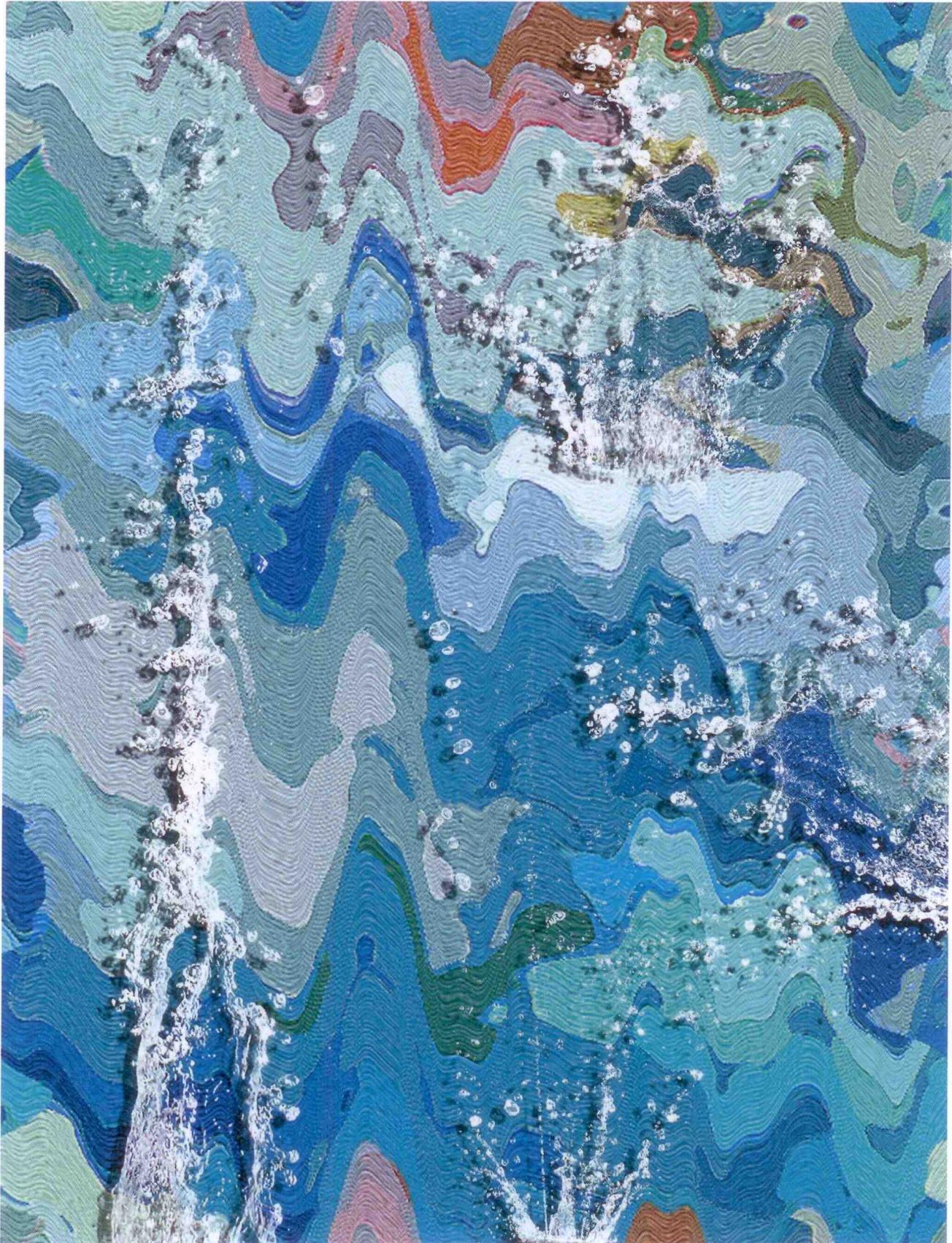
We will provide all before-and-after measurements of the space to you electronically and in print. Audio files of all acoustical measurements (e.g., impulse responses and frequency responses gathered via swept sine tones). We will also provide any necessary letters electronically and in print verifying the accuracy of the measurements.

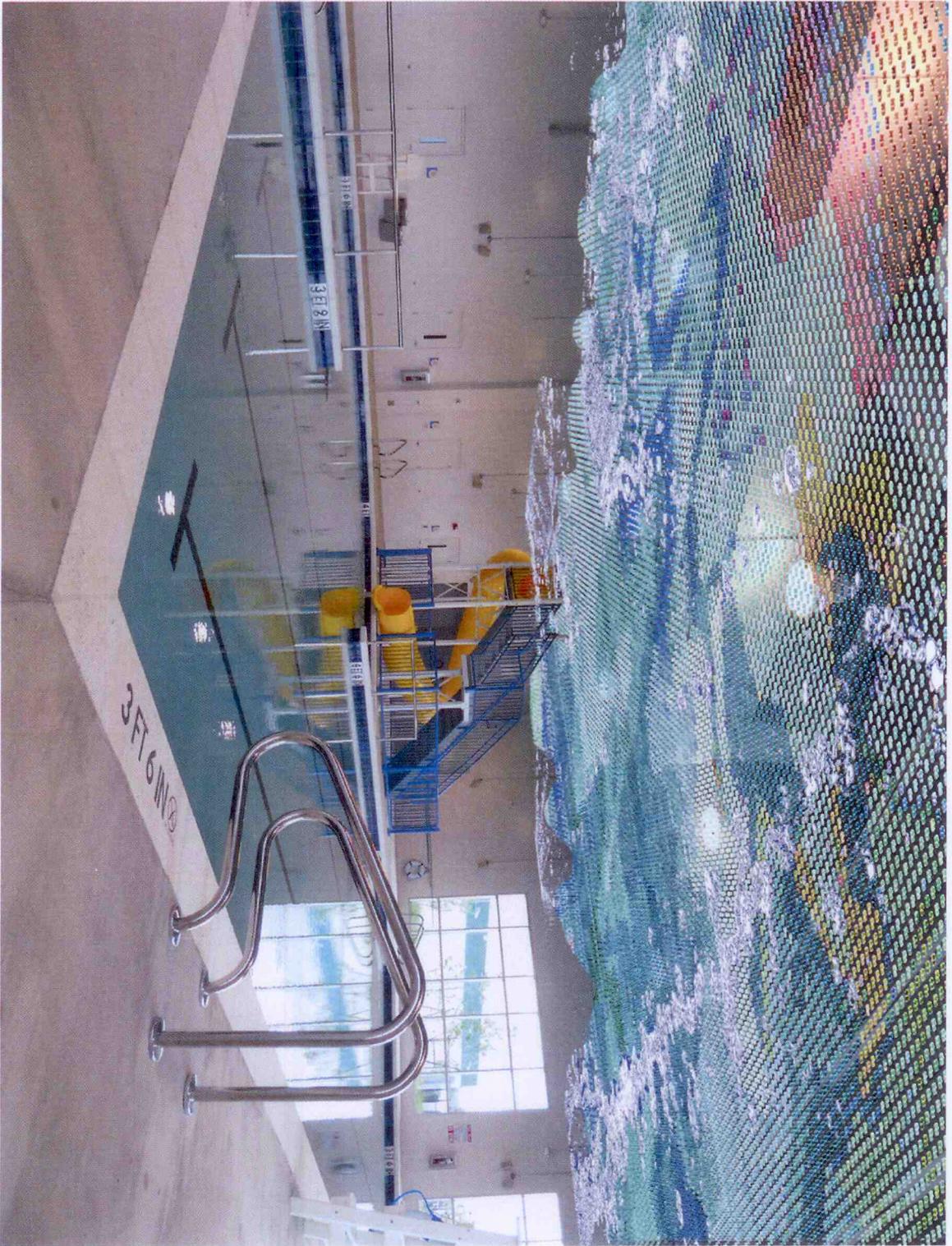
From painting to digital tapestry...











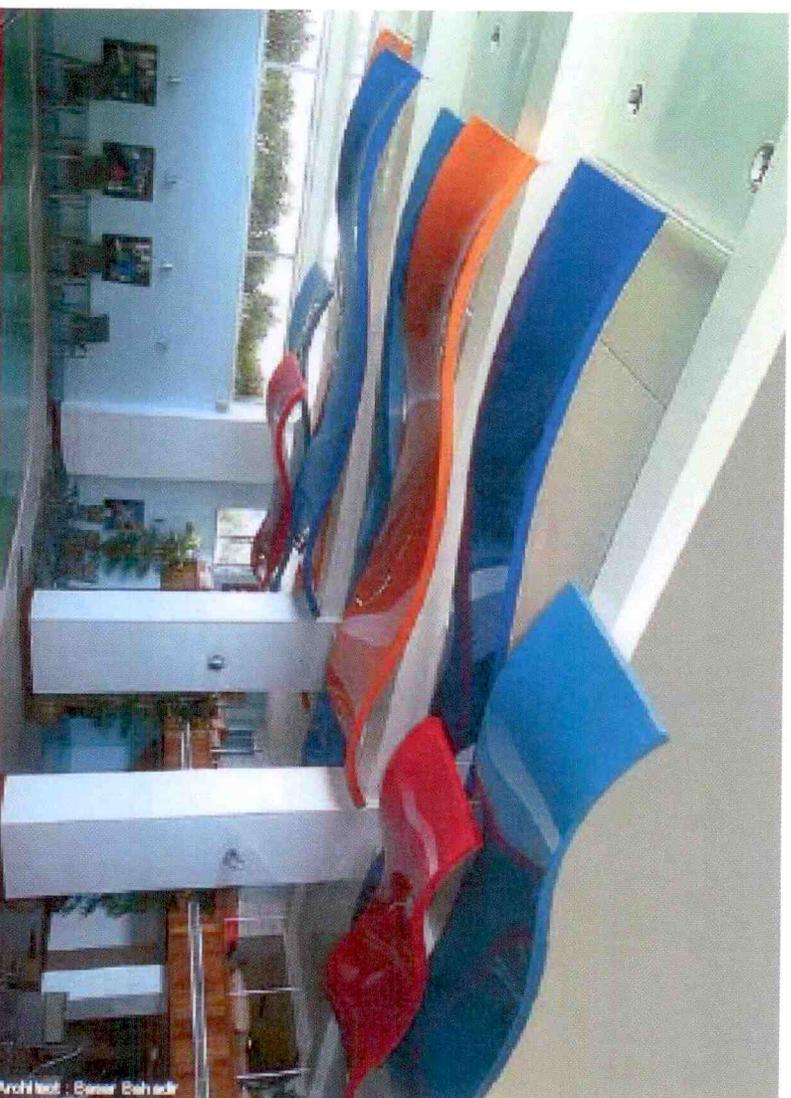


Swimming Pool

Due to the flexibility of the Barrisol® sheet, the Barrisol® Star® profiles and rails, the creation of forms and 3D shapes is totally possible.

All architectural forms can be created.

Dare to create a 3D ceiling to enhance the design of your swimming pool and admire an original, surprising and unique design.

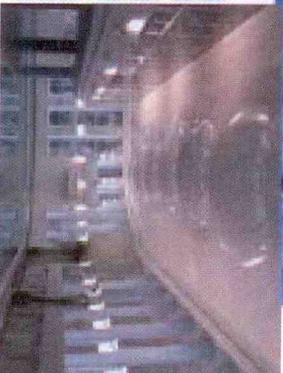


Architect : Steve Behrler

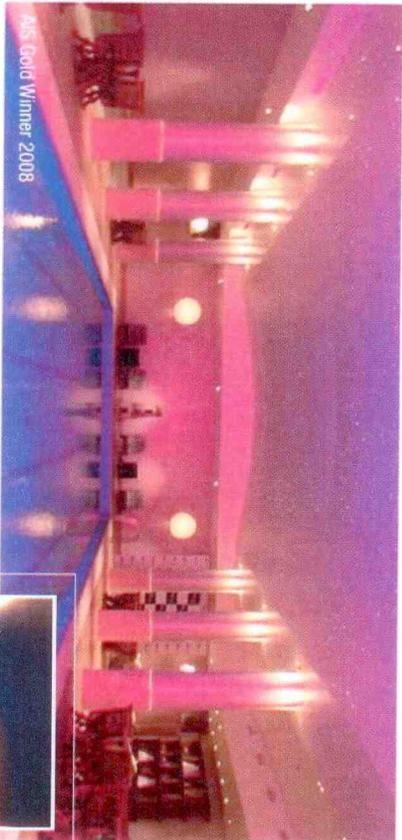


Architect : Murat Nader

Realisation : Normalis® Barrisol®



Shapes and volumes



Pools & Spas Hotels & Local Authorities

The Stretch Fabric Material is suitable to install in all types of Spa & Swimming Pool environments including Private Health Clubs and Local Authority Sectors.

Stretch Ceilings offer increased light reflection, improved acoustics, decorative finishes and a maintenance free, water impermeable ceiling that will not require any ongoing decoration. The material will not crack or flake and is clean, hygienic, non toxic and 100% recyclable.

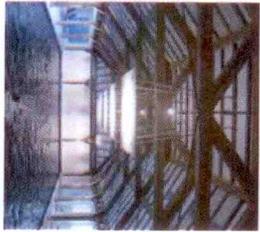
The system is able to cover up to 50 sqm in one piece, although with the use of the intermediate joining rail can easily cover 1000's of sqm. The total swimming pool 'hat' can therefore be provided with a practical and functional ceiling system, with a minimum of background support, unnecessary weight, joints or disruption.

Stretch Ceilings can accommodate most types of fittings and features such as down lights, grilles, sprinklers, smoke detectors and for an added dimension fibre optic lighting can be applied to the system whilst keeping the water impermeable surface intact.

The material has been tested to NF EN 14716 § 4.1.3

Stretch Ceilings workmanship was recognised with a Gold Award from the Association of Interior Specialists for the installation carried out at the Heymarket Hotel, London.

www.stretchceilings.co.uk



FALSE CEILINGS



Figure 1
Acoustic and thermal insulation using Celent P2 panels in industrial buildings



Figure 2
700x1000mm and false ceiling sound-absorbing in a conference room. The Celent panels used are Celent AB 25 mm thick painted in various colors



Figure 3
False ceiling in a swimming pool. The Celent panels used are Celent AB 25 mm thick

SOUND ABSORBING

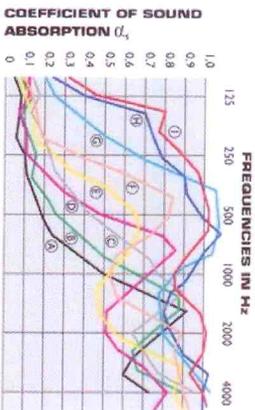
Celent panels can be classified as natural sound absorbers. The panels disperse sound through their cellular structure by progressively reducing its energy, and transforming this into heat. They offer a high level of sound-absorption, particularly at higher frequencies (shrill sounds), which are the most common. Absorption increases with greater thickness and when coupled with a layer of mineral wool. A good level of absorption at lower frequencies (medium-low tones) is obtained by using two layered panels with polystyrene (CELENT P2). The product also offers further features that are important for sound absorbing facings:

- thermal inertia, transparency and the ability to absorb excess humidity, which guarantee a high standard of living conditions;
- absolute fire-resistance and absence of dripping, dense fumes and toxic gases in the event of fire, which make it a safe material;
- non-deformability (even in the presence of high levels of humidity), strength and unlimited duration, which make it suitable for use in severe conditions, such as in swimming pools, gyms, schools and industrial buildings.

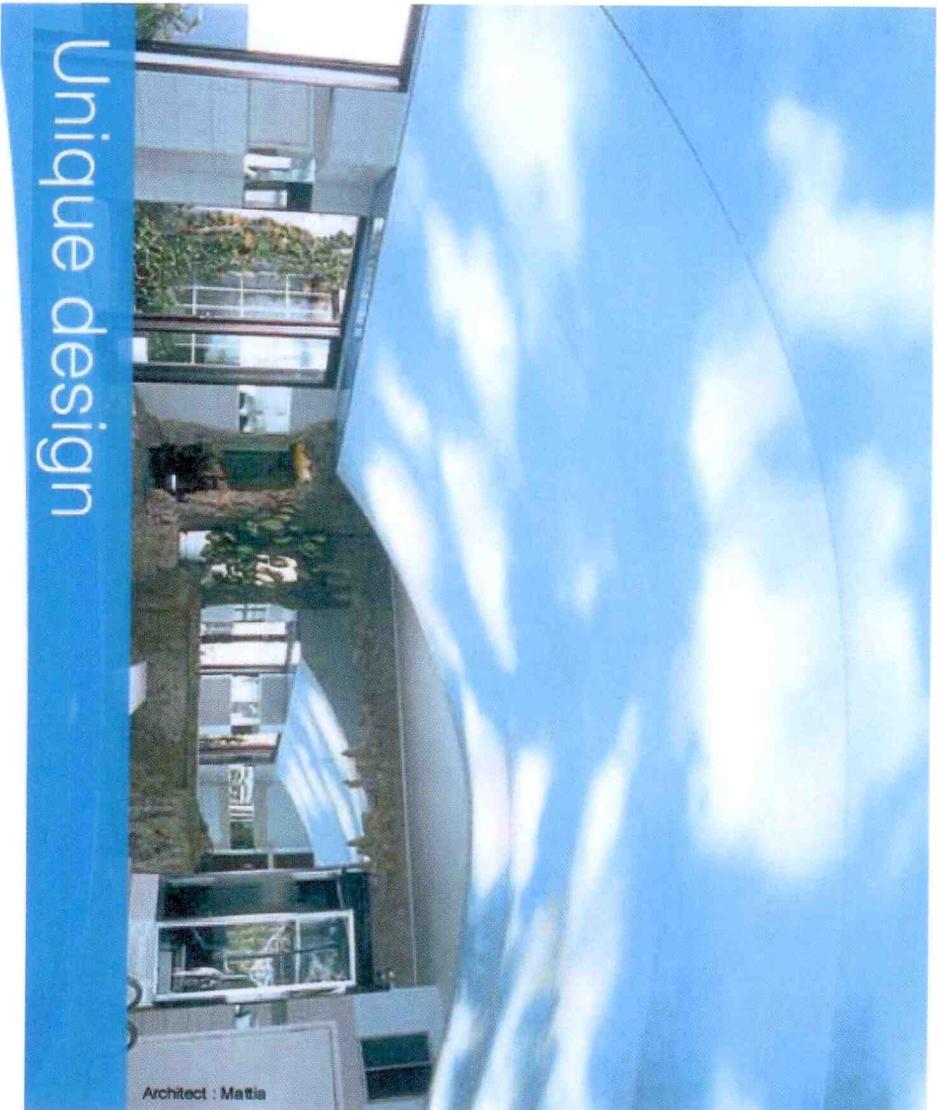
The panels are used to adjust sound in gyms, schools, discotheques, concert halls, studios, etc. The many projects carried out have always given excellent results. Furthermore, panels used to face walls and ceilings reduce noise levels in industrial buildings. The panels are resistant to shock and dynamic impacts (hit by balls, EN 13964).

Panels used for false ceilings and sound-absorbing facings come in two versions:

- for normal structures: Celent NB
- for thinner structures: Celent A, Celent AB, Celent ABE

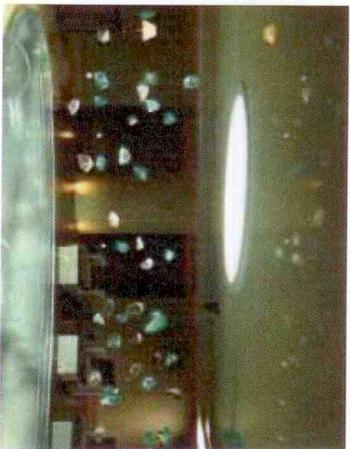


Line	Panel thick	125	250	500	1000	2000	4000	$\alpha_{w,avg}$
A	25 mm adhering	0.08	0.11	0.18	0.50	0.80	0.72	0.40
B	35 mm adhering	0.13	0.15	0.25	0.65	0.74	0.90	0.47
C	50 mm adhering	0.17	0.22	0.42	0.78	0.85	0.95	0.53
D	25 mm with cavity ≥ 24 mm	0.12	0.11	0.48	0.72	0.51	0.82	0.46
E	35 mm with cavity ≥ 50 mm	0.10	0.25	0.67	0.55	0.56	0.86	0.50
F	50 mm with cavity ≥ 50 mm	0.13	0.39	0.82	0.53	0.89	0.90	0.81
G	25 mm with cavity ~ 40 mm and mineral wool ~ 40 mm	0.25	0.67	1.08	0.86	0.81	1.04	0.79

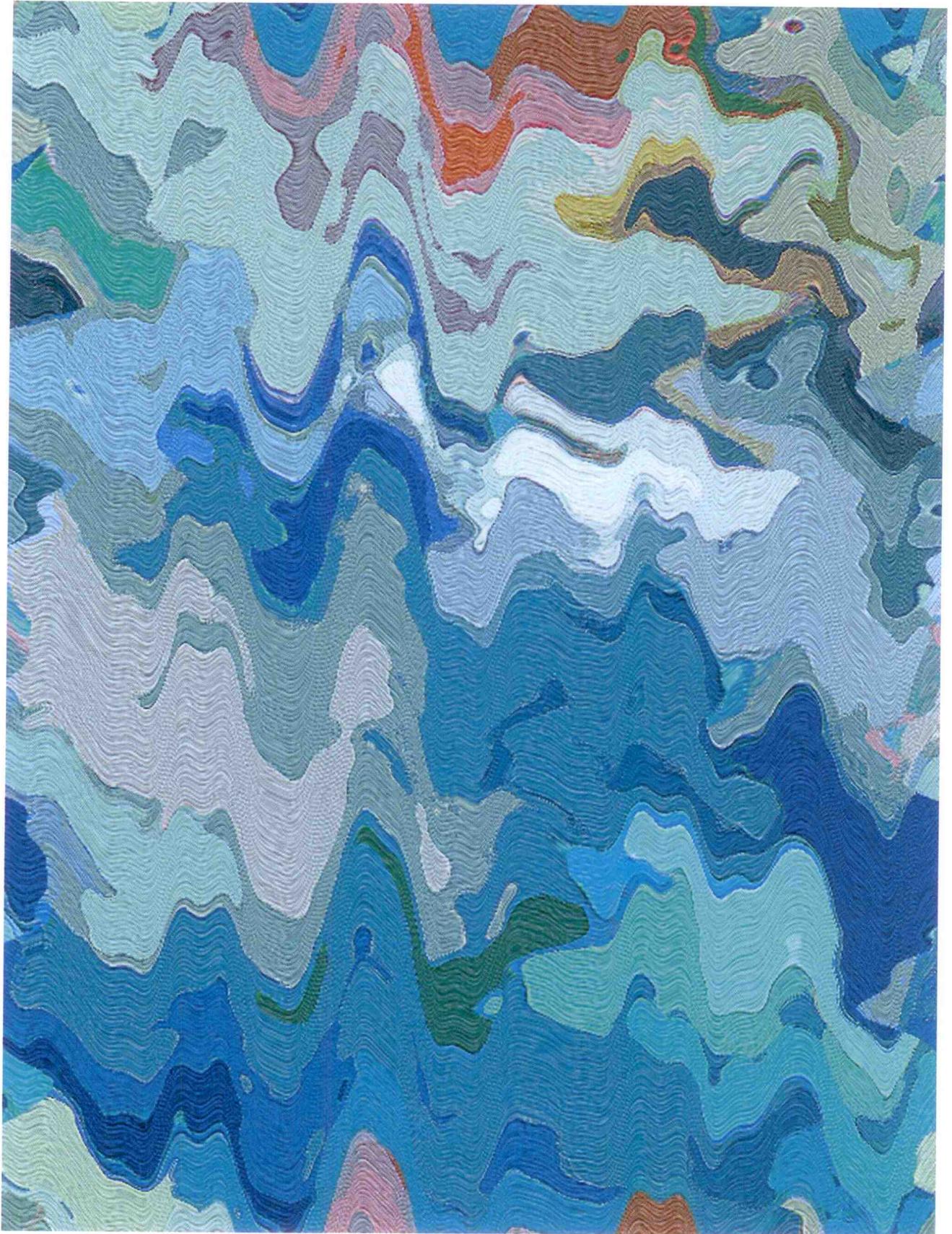


Architect : Mattia

With **Printed Barrisol®**, plunge into another universe!
Create your own decoration thanks to digital printing on Barrisol® sheets.
It is possible to reproduce all photos, patterns or decors of your choice for a totally personalized atmosphere. Your printed ceiling can be combined with Barrisol® Lighting solutions to create an unique backlit atmosphere.
With Printed Barrisol®, the only limit is your imagination!



Architect : The Syntax Group UK



PROFESSIONAL ARTIST SERVICES AGREEMENT

BETWEEN
CITY OF MIAMI GARDENS

AND
XAVIER CORTADA, INC.

FOR
PHASE I – DESIGN SERVICES

&
PHASE II – FABRICATION & INSTALLATION SERVICES

FOR THE
BETTY T. FERGUSON RECREATIONAL COMPLEX – AQUATIC CENTER

THIS PROFESSIONAL ARTIST SERVICES AGREEMENT FOR PHASE – I DESIGN SERVICES AND PHASE II – FABRICATION & INSTALLATION SERVICES (“**Agreement**”), is made and entered into this ____ day of _____, 2010, by and between the City of Miami Gardens and hereinafter referred to as the "**City**," and Xavier Cortada, Inc. hereinafter referred to as the "**Artist**."

WITNESSETH:

WHEREAS, the City is implementing a public art program as set forth in Section 2-11.15 of the Code of Miami-Dade County, allocating certain funds for the acquisition of art works for public places and authorizing the Miami-Dade County Art in Public Places Trust, hereinafter referred to as the "**Trust**," to approve the selection of artists and make payments for the design, fabrication and installation of works of art; and

WHEREAS, funds for art have been allocated in accordance with Section 2-11.15 of the Code of Miami-Dade County from City of Miami Gardens Funds; and procedures duly adopted by the County; and

WHEREAS, the Artist was selected for the Betty T. Ferguson Recreational Complex – Aquatic Center Project by the Trust through procedures duly adopted by the City under **City Resolution No. 2010-09-1191**; and

WHEREAS, the Artist is commissioned for the Betty T. Ferguson Recreational Complex – Aquatic Center Project by the City through procedures duly adopted by the City under **City Resolution No. 2011-XX-XXXX**, approving a Contract with the Artist as set forth herein;

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

NOW THEREFORE, in consideration of the premises and the mutual covenants herein contained, the parties agree as follows:

DEFINITIONS

WORDS AND TERMS

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

"**Architect**" means the Architect of Record and Primary Design Architectural Firm of CPZ Architects, Inc., 4316 West Broward Blvd., Plantation, FL 33317, contracted by the City of Miami Gardens for the new Betty T. Ferguson Recreational Complex – Aquatic Center (the "**Project**").

Artist

"**Artist**" means Xavier Cortada, Inc.. An essential and irrevocable condition of this agreement is the direct involvement and responsibility of the Artist identified as "lead artist" for all creative and/or artistic related elements of the Work. Under no circumstances may such responsibility be assigned and/or transferred to any other party.

Construction Manager at Risk

"**Construction Manager at Risk**" refers to N & J Construction, Inc, a business entity selected and contracted by the City of Miami Gardens to implement the construction of the new Betty T. Ferguson Recreational Complex – Aquatic Center.

Construction Project Team

"**Team**" refers to the collaborative forces of the Architect, Construction Manager at Risk, Miami-Dade County, City of Miami Gardens, and any of their related subcontractors.

Consultants

"**Consultants**" means design, engineering or other professional consultants contracted by the City of Miami Gardens and/or the Architect or the Construction Manager at Risk as part of the Project team with which the Artist may be required to interact for purposes of completing the Services as described in this Agreement.

City

"**City**" means City of Miami Gardens, Florida.

County

"**County**" means Miami-Dade County, Florida.

Director

"**Director**" means the Director of the City of Miami Gardens Department of Capital Improvement Projects. The Director may designate a member(s) of his staff for the purposes of working with the Artist on the Work. The authority of the Director described in this Contract will not be delegated to the designated staff person.

Phase II Services

"**Phase II Services**" means those services, in whole or in part, as described under Article I, Section 1.1 and Section 1.3 of this Agreement.

Schematic Design Documents, Design Development Documents and Construction Documents

"**Schematic Design Documents,**" "**Design Development Documents**" and "**Construction Documents**" means the Instruments of Service for the design resolution and the fabrication and installation of the Work as described in Article I of this Agreement.

Services

"**Services**" means the Scope of Services described in Article I of this Agreement.

Site

"**Site**" means the Betty T. Ferguson Recreational Complex located in the vicinity of at 3000 NW 199th St, Miami Gardens, FL 33056.

Trust

"**Trust**" means Miami-Dade County Art in Public Places Trust.

Work

"**Work**" means the Approved Artist's Proposal in its final format (Refer to Exhibit C), which complete concept includes a series of suspended artistic acoustical panels for the 8,313 square foot indoor aquatic center, for which functionality and durability within a corrosive environment shall be of the utmost importance. The "L" shaped pool, which features a bright yellow circular slide and 17' soaring ceilings, will be utilized for recreational swimming and aquatic aerobics. It is imperative that the Artist work collaboratively with a reputable manufacturer with indoor pool installation experience to implement the design and installation of the acoustical panel system. It is also preferred that the panel system be installed predominately above the concrete deck area surrounding the edge of the pool for ease of installation and maintenance. The Artist may wish to consider the aesthetic qualities of the MiMo influenced architecture of the center.

Work Plan

"**Work Plan**" refers to an Artist's outline and schedule of proposed activities in sequential order describing the means and methods proposed for completion of the Work in each of its phases, including the listing of potential subcontractors, vendors, and or fabricators hired by the Artist with their respective relationship to the artwork project (Design / Fabrication / Installation.)

ARTICLE I

SCOPE OF SERVICES

1.1 BASIC SERVICES - PHASE I Design

The Artist shall perform all services, including travel, and furnish all supplies, materials and equipment as necessary for the completion of the following specific tasks:

- 1.1.A) Schematic Design Documents - The Artist shall prepare a refined narrative (the "Artist's Proposal Statement") describing the Artist's design intent, drawings, models, graphic or other visual representation of the Work, together with such other data and graphic material as is necessary to portray the Site preparation and permit the Director to assess its feasibility and compliance with applicable statutes and ordinances; and a preliminary project budget (the "Budget") outlining "Probable Construction Costs" for the fabrication, delivery, site preparation and installation of the Work (Exhibit C). The Budget will include applicable headings for all work to be performed by the Artist and any work to be subcontracted by the Artist, as well as any specialty items such as mock-up samples and models anticipated by the Artist to be part of the costs to fabricate and install the Work. The proposal shall be developed within a not-to-exceed budget of **\$152,000.00** which shall be inclusive of Services to be performed by the Artist, from Schematic Design and Design Development through fabrication and installation. Documentation for the Schematic Design Phase of work shall include a listing of potential entities/vendors to be engaged by the Artist and a preliminary breakdown of each proposed portion of their work.
- 1.1.B) Design Development Phase. The Artist shall perform Design Development services to include but not be limited to the following: development of sketch models, research of structural and fabrication engineering requirements for compliance with applicable codes and standards and other related functional attributes of the intended design (as may be applicable), research and determination of the types and sources of materials for the Work, development of prototypes, testing of mock-up(s) if needed for verification of compliance with wind and stress tolerance requirements (all in accordance with the Florida Building Code and other applicable codes and standards), development of a final presentation prototype or working model for review by the Director. In addition to the above-referenced services, the Artist shall, prior to completion of the Design Development Phase, refine the Scope of the Work and complete a Budget Reconciliation Review and submit these written documents to the Director.

The Budget Reconciliation Review will include the drafting by the Artist of a Preliminary Working Budget detailing cost breakdowns for major components of the work, all in sufficient form as to allow the Director to verify fiscal feasibility of the Work as refined under the Design Development Phase. Cost allocations shall be projected to a target completion date of the Work to be mutually agreed upon by the Artist and the Director and Construction Project Team. The Preliminary Working Budget shall include an allocation for permit fees, the cost of surety bonds (Refer to Exhibit D - Performance and Payment Bond) and Insurance in accordance with County requirements as described in Section 4.13. The Preliminary Working Budget shall not exceed the total construction budget amount described in 1.2.E below, unless approved by the Director in writing.

The Artist shall conduct research and recommend sources for materials and/or fabricators for the Work, all in sufficient form to allow the Director to verify compliance with applicable codes and standards, and related long-term maintenance requirements for each proposed design. Preliminary Material Samples shall be furnished and be subject to the Director's approval prior to fabrication in an appropriate scale that allows the Director to properly assess the aesthetic and workmanship quality intended of the finished product. The Artist may be requested to submit up to two (2) samples for each proposed fabrication material and up to (1) sample for proposed technology-based elements of the Work, at no additional cost to the City, which materials will be retained by the City.

As part of the Design Development package the Artist shall develop a Maintenance Program Narrative. The Maintenance Program Narrative shall include a projected cost estimate for replacement parts of the Work (as may be applicable), allowances for the Artist's fee for maintenance (where applicable), and anticipated maintenance procedural requirements for no less than a ten (10) year period from completion of the Work to ensure the proper care and upkeep of the Work. The Artist shall make recommendations based on the latest resources and technologies available at the time that the Maintenance Program Narrative is drafted, with special attention to the logistics and fiscal constraints inherent in the facility where the artwork is to be located. Both parties hereto agree that the Maintenance Program Narrative shall constitute a "working" maintenance plan and may be modified upon request by the Director during the construction phase.

- 1.1.C) Construction Documents and Administration. Upon completion of the Design Development Phase described above, and upon notice to proceed by the Director, the Artist shall finalize Construction Documents for the Work and be engaged in related construction administration activities to include but not be limited to the following: coordination with the

Construction Project Team's architectural/engineering consultants hired for purposes of completing verification of logistical requirements with respect to architectural, structural, electrical engineering considerations for the Site, and conducting site visits for coordination and planning with the Construction Project Team of construction phase of the Work. The Artist will submit to the Director a detailed Budget the form outlined in 1.1.B. In addition, the Artist will submit a **Schedule** ("Project Schedule") for fabrication and installation of the Work that is coordinated with the Construction Project Team's updated and approved construction schedule. All costs associated with this phase of work are inclusive in the Artist's Budget.

- 1.1.D) Construction Documents Format. The Work is to be incorporated into the building and the design is to include all documents by discipline as required by the Florida Building Code to procure a permit to construct the Work from the Authorities Having Jurisdiction (AHJ) - City of Miami Gardens, Building Department. The Artist shall provide three (3) original signed and sealed sets of architectural and engineering drawings, along with engineering calculations and other support documentation for the Work as may be applicable for the Artist to process the plan review by the AHJ. All architectural, engineered drawings, and calculations shall be signed and sealed by appropriately licensed Florida architect (s) or engineer(s). The Artist shall provide manufacturer's product information, specifications, cut sheets, product warranty, material safety data sheets, etc. as may be appropriate to complete the submittals package and inform the Director with respect to the nature and quality of materials being proposed by the Artist for the Work.

1.2 PROCEDURE – PHASE I Design

The Artist shall determine/refine the artistic expression, size, material, texture, color, location and method of fabrication of the Work, all subject to review and acceptance by the Director for compliance with the City's intent for the Project, any related project feasibility considerations as may be applicable, as provided below:

- 1.2.A) Promptly after the approval by the City of the Conceptual Design Proposal, Work Plan, and preliminary project budget, the Artist shall meet with the Director and the Construction Project Team in order to coordinate the process and schedule milestones for the completion of critical tasks and delivery of submittals pursuant to the Services to be performed under this Agreement.
- 1.2.B) The Artist shall coordinate the completion of the Services outlined in this Agreement with the schedule approved by Director, and shall complete the Instruments of Services for Phase I – Design on or before **February 1, 2011**.

- 1.2.C) All required submittals shall be delivered to the Director in sufficient form to allow for review, comments, and acceptance of the material. Submittals may be delivered for preliminary review in an acceptable electronic format (PDF). All submittals are subject to review and comments by the Director, the Director's designated staff, and the Construction Project Team.
- 1.2.D) Timeframe for completing the review and acceptance of submittals is at the sole discretion of the Director. However, a reasonable time of 10 working days shall be anticipated for completion of each required review.
- 1.2.E) The Artist shall, upon completion of the Services outlined in this Agreement and prior to final payment, submit to the Director a **Schedule** which **shall be coordinated with the Construction Project Team's then current updated and approved construction schedule** and finalized **Budget of Probable Construction Costs** for the Work and negotiate an agreement for Phase II Services for the Work to include Fabrication, Installation and/or Construction Management Services, which total aggregate amount **shall not exceed \$52,000.00.**
- 1.2.F) The Artist shall, upon completion of the Services outlined in this Agreement and prior to final payment, submit proof to the Director, final releases of claims from each of its subconsultants, subcontractors, vendors, and material suppliers, or a Consent of Surety that satisfies the requirements of Section 10-35 Code, Miami-Dade County, Florida.

1.3 BASIC SERVICES – PHASE II Fabrication and Installation

It is anticipated that based on the satisfactory completion of Phase I Design Services and notice of acceptance by the Director, basic services for Phase II Fabrication and Installation may be negotiated by and between the Artist and the Director, including additional fee and costs as are appropriate. Negotiations for Phase II Services may commence during performance of this Agreement or after the completion of the Services outlined herein, if mutually agreed upon in writing by the Artist and the City. The Phase II negotiated services, if approved by the City, will be incorporated into this Agreement by form of an Amendment and/or Addendum as deemed appropriate by the Director. The following Basic Services may be contracted in whole or in part as a result of the Director's acceptance of the Phase I Design Services and may be negotiated at a later date:

- 1.3.A) Fabrication of the Work: when the Work is to be fabricated and installed by the Artist.

- 1.3.B) Construction Management Services: to include the on-site observation and monitoring of the progress, process, and quality of installation of the of the Work, when the Work is to be installed under the Construction Manager at Risk contract, and which involves the Artist's making periodic trips to the site to assist the Director and the Construction Project Team in verifying compliance with the Construction Documents and the Artistic Design Intent as developed for the Work.
- 1.3.C) Installation: of special items or of the Work when deemed by the Director as not able or desirable to be completed by any party other than the Artist.
- 1.3.D) Review and Approval: of Artist's design-related construction material samples, shop drawings and/or other third party submissions for conformance with the Construction Documents and the Artist's Design Intent as developed for the Work.
- 1.3.E) Documentation & Reporting: to include providing the Director and the Construction Project Team with field reports documenting site activity observed with any recommendations necessary to assure conformance to Construction Documents and the Artist's Design Intent as developed for the Work.
- 1.3.F) Documentation of the Work. The Artist shall, upon installation of the Work and on or before submittal of a final request for payment, deliver to the Director the following documentation of the Work for the City:
- 1.3.F.1) Two (2) CDs containing high resolution (image size not smaller than 5x7 with a resolution of at least 300 dpi) and low resolution digital photographs (4x6 size at 100 dpi) of the completed Work, taken from at least three (3) different viewpoints, for a total of no less than twelve (12) images;
- 1.3.F.2) Two (2) sets of at least four (4) different 8" x 10" color photographic prints that best represent the completed Work;
- 1.3.F.3) Three (3) copies of each booklet, brochure, catalogue, print or invitation notice, if any, prepared by or at the direction and control of the Artist, pertaining to the Work performed under the terms of this Agreement; and
- 1.3.F.4) One (1) full set of "as built" drawings as well as any and all construction, fabrication and installation specifications, drawings or other documentation pertaining to the Work.

Electronic files and photographs shall be of acceptable professional quality in the determination of the Director and shall be properly marked.

1.4 PROCEDURE – PHASE II Fabrication and Installation

Authorization to proceed with Phase II is contingent upon successful completion of Phase I – Design and on the new Betty T. Ferguson Recreational Complex – Aquatic Center project generating the funding for this artwork commission. Additional terms and conditions for Phase II Work may be incorporated into this Agreement via Amendment or Addendum as deemed appropriate by the Director, and approved by the City, and as particularly described below:

- 1.4.A) Promptly after the execution of the Phase II Agreement, the Artist shall meet with the Director, the Construction Project Team, and any other party related to the project to coordinate the fabrication and installation process and schedule milestones for the completion of tasks pursuant to the Services to be performed under the Phase II Agreement.
- 1.4.B) The Artist shall coordinate the completion of the Services outlined in the Phase II Agreement with the Construction Project Team’s updated and approved construction schedule and shall update the Schedule for the Work in coordination with updates made by the Construction Project Team to the construction schedule for the new Betty T. Ferguson Recreational Complex – Aquatic Center. The Artist shall submit to the Director for approval each updated Schedule for the Work.
- 1.4.C) Immediately upon receipt of the Notice to Proceed for Phase II, the Artist shall begin fabrication of the Work to be completed and installed within the timeframe set forth in the Schedule.
- 1.4.D) During the performance of Phase II Services, the Artist shall submit proof to the Director, of releases of claim for every progress payment made by the Artist to his/her fabricators, contractors, and or any other entity hired by the Artist for purposes of completing the Work. The Artist shall fully comply with this requirement prior to submittal of a final payment request for services outlined in Phase II Agreement.

ARTICLE II

COMPENSATION

2.1 FIRM FIXED PRICE

The City shall pay the Artist a Fixed Fee (the "**Artist's Fixed Fee**") for PHASE I - Design in the fixed fee amount of ONE HUNDRED THOUSAND DOLLARS & NO CENTS (**\$100,000**) (the "**Contract Amount**"). 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, CONSULTING FEES, AND/OR ANY RELATED OVERHEAD EXPENSES AND TRAVEL.

2.2 METHOD OF PAYMENT

2.2.A) Artist's Fixed Fee for Design Development

The City shall pay the Artist the Fixed Fee for Design Development Services for the Work in the following installments:

- 2.2.A.1) \$15,000 upon execution of this Agreement, completion of the Project Orientation Meeting, submittal of the Work Plan and Preliminary Project Budget, verification and approval by the Director, and invoice by the Artist.
- 2.2.A.2) \$20,000 upon Artist submittal to the Director of proof of agreement with local A/E, and Notice to Proceed for A/E Design Services, verification and approval by the Director, and invoice by the Artist.
- 2.2.A.3) \$25,000 upon the date that the Artist submits to the Director a substantially complete set of Design Documents, verification and approval by the Director, and invoice by the Artist.
- 2.2.A.4) \$20,000 upon the date that the Artist notifies to the City the completion of 60% Construction Documents, submittal of documentation for verification and approval by the Director, and invoice by the Artist.
- 2.2.A.5) \$20,000 upon the date that the Artist delivers to the City a complete and permittable Construction Document Set (as set forth in Section 1.1.D), verification and acceptance by the Director, and invoice by the Artist.

2.2.B) Phase II – Fabrication & Installation

Disbursement of payments due to the Artist for Phase II – Fabrication & Installation Services shall be determined by the Director and the Artist upon completion and acceptance by the Director of Phase I – Design and incorporated herein as an

addendum (Phase II Payment Schedule Addendum), in accordance with applicable provisions set forth in this Agreement. The Artist's Fee for Phase II shall be negotiated by the Artist and the Director subject to the finalized scope of services submitted by the Artist and approved by the Director and incorporated as an addendum to this Agreement. The Director reserves the right to either itemize fees payable under Phase II or issue the Addendum based on a lump sum amount, which cumulative amount shall not exceed the Contract Amount stipulated under Section 1.2.E above. The Artist shall be responsible for procuring the services of a licensed subcontractor to procure all necessary permits, bonding and insurance as needed for any of the Work.

Eligibility for payment shall be subject to verification by the Director that each stage has been completed in accordance with this Agreement.

ARTICLE III

TIME OF PERFORMANCE

3.1 DURATION

The Services to be required of the Artist as set forth in Article I, Scope of Services, shall commence upon the execution of this Agreement and shall be completed and installed in adherence with the Schedule for completion of the Work and in coordination with the construction schedule established and maintained by the Construction Project Team for the new Betty T. Ferguson Recreational Complex – Aquatic Center. It is the Artist's explicit responsibility to monitor and coordinate all aspects of scheduling in conjunction with the Construction Project Team. Discrepancies in scheduling that may result in Artist's claims for extension of time and/or additional compensation must be documented pursuant to Section 4.17 of this Agreement. Receipt by the Artist of a fully executed copy of this Agreement shall constitute the Notice to Proceed with the Work as outlined in this Agreement.

3.2 CONSTRUCTION DELAYS

In the event that the Artist completes fabrication or procurement of the Work in accordance with the above-referenced Schedule and is delayed from installing it on or before the time specified in the Schedule as a result of the construction of the Site not being sufficiently complete to reasonably permit installation of the Work therein, the Artist shall be reimbursed for reasonable storage costs and any additional compensation related to the delay, incurred for the period between the time specified in the Schedule for installation and the date upon which construction of the Site is sufficiently complete to reasonably permit installation of the Work. All Artist's delay claims seeking additional compensation must be documented to the Director's satisfaction pursuant to Section 4.17 of this Agreement.

3.3 EARLY COMPLETION OF THE ARTIST SERVICES

In the event that the Artist completes Services as set forth in Article I prior to the time specified in the Schedule for installation, and, as a result thereof, incurs storage costs, the Artist shall bear the full cost of such storage.

3.4 DELAY BY ARTIST

In the event the Artist causes a delay that impacts the construction schedule, the Artist shall have the duty to accelerate his services to mitigate the delay at no additional cost to the City. If the Artist is unable to mitigate the delay in an acceptable and effective manner, the Director may terminate this Agreement pursuant to Section 4.6.B of this Agreement.

ARTICLE IV

GENERAL CONDITIONS-PHASE I & II

4.1 OWNERSHIP OF INSTRUMENTS OF SERVICE

Upon completion of the Services, all design materials including but not limited to renderings, models, mock ups, plans, samples and other documentation as outlined under Section 1.3.F, developed by the Artist and delivered to the Director for the purpose of this Agreement, shall become the property of the City. All material data and documentation as described herein shall be delivered to the Director prior to completion of the Agreement and final payment to the Artist. The Artist shall retain sole ownership of the copyright to the Work. The City reserves the right to appropriate use of all material data and documentation for public exhibition, publication, and or recordkeeping purposes of the City.

4.2 TIME EXTENSIONS

A reasonable extension of contract time, at no additional cost to the City, will be granted by the Director in the event there is a delay on the part of the Construction Project Team or should conditions beyond the Artist's control or Acts of God render performance of its duties impossible. Where such conditions arise, the Artist shall so notify the Director in writing with an explanation describing the circumstances that do not permit him/her to complete the Services as described in this Agreement in the time allotted. In such event, the parties hereto understand and agree that the Director shall be the sole judge of what constitutes "beyond the Artist's control". An Artist's claim for a compensable time extension shall follow the procedures outlined under Section 4.17 of this Agreement.

4.3 WARRANTY OF ORIGINALITY

The Artist warrants that the tangible objects it delivers to the City 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. The Artist shall not reproduce in any scale this Work and or a substantially similar Work without the Director's explicit written consent.

4.4 ASSIGNMENT, TRANSFER OR SUBCONTRACTING

A material element of this Agreement is the personal skill, judgment and creativity of the lead Artist. Therefore, the Artist shall not assign, transfer or subcontract the creative and artistic portions of the Work to another party without the prior written approval of the Director.

4.5 INDEPENDENT CONTRACTOR

The Artist is an independent contractor and nothing in this Agreement shall be construed as constituting the Artist an employee, agent or representative of the City. Any employee of the City shall not supervise the Artist, nor shall the Artist exercise supervision over any employee or officials of the City. There are no third party beneficiaries to this Agreement.

4.6 TERMINATION AND SUSPENSION OF SERVICES

The services to be performed under this Agreement may be terminated by either party, subject to written notice submitted thirty (30) days from termination, provided that attempts to reconcile the reason for termination have been undertaken but failed. The notice shall specify whether the termination is for convenience or cause.

4.6.A) Termination for Convenience

4.6.A.1) If termination for convenience by the City, the Artist shall have an equitable adjustment in the fee (without allowance for an anticipated profit on unperformed services) in which event the City shall have the right at its discretion to possession and transfer of title to the sketches, design, and models already produced and submitted or produced for submission by the Artist under this Agreement prior to the date of termination, provided that no right to fabricate or execute the Work shall pass to the City.

4.6.A.2) If termination for convenience by the Artist, the Artist shall remit to the City a sum equal to all payments (if any) made to the Artist pursuant to this Agreement prior to termination. The City shall revert title of the Work to the Artist and return any material data and or work in progress to the extent that such return does not impact City property.

4.6.B.) Termination for Cause

If either party to this Agreement shall willfully or negligently fail to fulfill in a timely and proper manner, or otherwise violate, any of the

covenants, agreements or stipulations material to this Agreement, the other party shall thereupon have the right to terminate this Agreement by giving written notice to the defaulting party of its intent to terminate specifying the grounds for termination. The defaulting party shall have thirty (30) days after receipt of the notice to cure the default. If it is not cured, then this Agreement shall terminate.

4.6.B.1) If default by the City, the City shall promptly compensate the Artist for all services properly performed by the Artist prior to termination.

4.6.B.2) If default by the Artist, all finished and unfinished drawings, sketches, photographs, maquettes, prototypes, or other work products prepared and submitted by the Artist under this Agreement shall at the City's option become its property, provided that no right to fabricate and or execute the Work shall pass to the City. The City shall promptly compensate the Artist for all services performed satisfactorily by the Artist prior to termination.

4.6.B.3) Notwithstanding any of these conditions, the Artist shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of this Agreement by the Artist, and the City may reasonably withhold payments to the Artist until such time as the exact amount of such damages due the City from the Artist are determined.

4.6.C.) **Suspension of Services**

The Director may at any time suspend this Agreement for a period not exceeding one hundred twenty (120) days or such further period to which the parties may agree, by giving written notice to the Artist of such suspension, which all shall become effective upon receipt by the Artist of the written suspension notice. An equitable adjustment shall be made in the time of performance of the Services, and the Agreement shall be modified accordingly, if the suspension results in an increase in the time required for performance of the Services and compensation payable to the Artist under Article II shall be modified in accordance with costs, if any, as demonstrated and documented pursuant to Section 4.17 by the Artist to result directly from such suspension.

4.7 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.

4.8 CODE COMPLIANCE

All work shall be done in compliance with Florida Building Code. The approval of the structural acceptability of the artwork shall be determined in consultation with the governing Authorities Having Jurisdiction (AHJ) – City of Miami Gardens Building Department officials to assure compatibility with all applicable statutes and regulations.

4.9 EQUAL EMPLOYMENT OPPORTUNITY AND NON-DISCRIMINATION

In connection with the execution of this Agreement, the Artist shall not discriminate against employees or applicants for employment because of race, religion, color, age, sex, ancestry, marital status, physical handicap, place of birth, sexual orientation, or national origin. The Artist shall take affirmative actions to ensure that applicants are employed, and that employees are treated during their employment, without regard to their race, religion, color, sex, age, ancestry, marital status, physical handicap, place of birth, sexual orientation, or national origin. Such actions shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment, or recruitment advertising; and selection for training, including apprenticeship.

4.10 ON SITE SUPERVISION

The Artist will be personally involved in all phases of the Work's development, fabrication and installation. The Artist shall be on site periodically during the time that the Work is being installed as required to ensure that the Work is being installed in accordance with the Artist's Design Intent.

4.11 FINAL ACCEPTANCE

When the Artist's Services have been completed, the Artist shall so advise the Director in writing. Within thirty (30) days of receipt of such notice the Director shall give the Artist notice in writing of any services that have yet to be satisfactorily completed ("Punch List".) Upon completion of such Punch List services, the Artist shall notify the Director, and within thirty (30) days of receipt of such notice, the Director shall give the Artist written notice of final acceptance or notice of the specified unfinished Punch List services. Final acceptance shall not constitute a waiver or abandonment of any rights or remedies available to the City under any other section of this Agreement.

4.12 RISK OF LOSS

The Artist shall bear the full risk of loss of or damage to the Work until the Services have been completed and the Work installed and accepted by the Director. The Artist shall take such measures and precautions as are necessary to protect the Work from loss or damage.

4.13 INSURANCE

Prior to commencement of Phase II – Fabrication and Installation services, the Artist shall furnish or cause its Contractor to furnish to the City of Miami Gardens, c/o Department of Capital Improvement Projects, 1515 NW 167th Street, #200,

Miami Gardens, Florida 33169, Certificate(s) of Insurance which indicate that insurance coverage has been obtained which meets the requirements as outlined below:

- A) Worker's Compensation Insurance for all employees as required by Florida Statute 440.
- B) Public Liability Insurance on a comprehensive basis in an amount not less than \$500,000 combined single limit per occurrence for bodily injury and property damage. City of Miami Gardens must be shown as an additional insured with respect to this coverage.
- C) Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in connection with the work, in an amount not less than \$300,000 combined single limit per occurrence for bodily injury and property damage.
- D) Owner's Protective Liability Insurance-issued in the name of City of Miami Gardens as sole insured, in an amount as indicated in (B) above. This policy must be endorsed to indicate that any premium whether deposit or final, shall be the sole obligation of the Artist and/or its Contractor.

All insurance policies required above shall be issued by companies authorized to do business under the laws of the State of Florida, with the following qualifications:

The company must be rated no less than "B" as to management, and no less than "Class V" as to financial strength, by the latest edition of Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the approval of the County Risk Management Division.

or

The company must hold a valid Florida Certificate of Authority as shown in the latest "List of All Insurance Companies Authorized or Approved to Do Business in Florida" issued by the State of Florida Department of Insurance and are members of the Florida Guaranty Fund.

Certificates will indicate that no modification or change in insurance shall be made without (30) days written advance notice to the Certificate Holder.

4.14 INDEMNITY

Except as specified in subparagraph 4.21(d) below, the terms of which shall govern and control, the Artist shall defend, indemnify and hold the City and its officers, employees, agents and instrumentalities from any and all liability, losses and damages, including attorney's fees and costs of defense, which the City or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits or causes of actions or proceedings of any kind of nature arising out of, relating to or resulting from the negligent performance or willful misconduct of the Artist or its employees, agents, servants, partners, principals or subcontractors. The Artist shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or action of any kind or nature in the name of the City, where applicable, including appellate proceedings, and shall pay all costs, judgments and attorneys fees which may issue thereon. The Artist expressly understands and agrees that any insurance protection required by this agreement or otherwise provided by the Artist shall in no way limit the responsibility to indemnify, keep and save harmless and defend the City or its officers, employees, agents and instrumentalities as herein provided.

4.15 LISTING OF FIRST-TIER SUBCONTRACTORS & MATERIAL SUPPLIERS

Prior to ordering any material supplies or commencing fabrication of the Work, the Artist shall provide the Director a listing of all contractors the Artist intends to hire for purposes of completing the Services of this Agreement and any material supplier sources the Artist intends to utilize for major components of the Work. "Major Components" shall mean single source material purchases that represent twenty percent (20%) or more of the total estimated construction material costs for the Work as identified in the Artist's Statement of Probable Construction Cost. The Artist shall identify the type of work each first-tier subcontractor is to perform and the estimated value thereof. Upon submittal of the list by the Artist and approval by the Director, the Artist shall not thereafter make any change to the approved list without prior written approval by the Director.

4.16 CHANGES/ADDITIONAL SERVICES

The Artist and the City may, from time to time, agree on changes in the nature of or in the time of Services. Such agreement shall be in writing and signed by both parties. The Director can act without further approval by the City if the cost and risk to the City are not affected. The Director shall act without approval of the City to modify the Compensation Schedule provided that the total payments on the project do not exceed the stipulated amount under Section 2.1 and the Director receives a signed acceptance from the Artist of the modified Payment Schedule. Any Services requested of the Artist by the City outside those outlined in the terms of this Agreement, or changes requested by the City to the Work or the timetable for completion which materially expands the scope of work are considered Additional Services. The City and Artist agree to mutually assess any Additional Services and equitably adjust the amount of compensation accordingly. The City retains the right for equitable credit, to be consistent with

the terms and conditions as described herein, for changes in the Work which result in a reduction of the scope of work as outlined in this Agreement.

4.17 CLAIMS FOR ADDITIONAL COMPENSATION

- 4.17.A) No claims for additional compensation, time extension or for any other relief under the Agreement shall be recognized, processed, or treated in any manner unless the same is presented in accordance with this Article. Failure to present and process any claim in accordance with this Article shall be conclusively deemed a waiver, abandonment or relinquishment of any such claim, it being expressly understood and agreed that the timely presentation of claims, in sufficient detail to allow proper investigation and prompt resolution thereof, is essential to the administration of this Agreement.

- 4.17.B) Each and every claim shall be made in writing and delivered to the Director as soon as reasonably practicable after the event, occurrence or non-occurrence which gives rise to such claim, however, in no event later than 10 days after the event or occurrence. Verbal, telephone or facsimile notice shall be given in those instances where delay in presenting the claim would result in the conditions causing the claim to change, thereby requiring an immediate need to examine the job site or other conditions to ascertain the nature of the claim before the condition(s) disappear or become unobservable. Any such oral or facsimile notice shall be followed, at the earliest practicable time, but in no event more than 10 days after the event causing the claim, by written confirmation of the claim information

- 4.17.C) Each and every claim shall state:
 - 4.17.C.1. The date of the event or occurrence giving rise to the claim. In the case of a claim arising from a claimed nonperformance, the date when it is claimed that performance should have occurred shall be stated.

 - 4.17.C.2. The exact nature of the claim, including sufficient detail to identify the basis for the claim, including by way of example only, such detail as job site location, affected trades, contract clauses relied upon, schedule references, correspondence or any other details reasonably necessary to state the claim

 - 4.17.C.3. The claim shall clearly state whether additional monies are part of the claim. If known, the dollar

value associated with the claim shall be stated. If unknown, the notice shall indicate the types of expenses, costs or other monetary items that are reasonably expected to be part of the claim amount.

- 4.17.C.4. The claimed items of additional compensation shall be properly documented and supported with copies of invoices, time sheets, rental agreements, crew sheets and the like.
- 4.17.C.5. Any claim for additional monies that also involves a request for an Agreement time extension shall be submitted together with the amount of time being requested and the supporting data including applicable scheduling references supporting the claim.
- 4.17.C.6. No reservation of rights will be effective to preserve any claims that are not fully documented and submitted in accordance with requirements of this Agreement. Failure of the Artist to make a specific reservation of rights regarding any such disputed amounts within the Request for Partial Payment or the Request for Final Payment shall be construed as a waiver, abandonment and relinquishment of all claims for additional monies resulting from the claim,
- 4.17.D) The currently approved schedule(s) for the Work shall be the basis for interpreting any and all time-associated provisions of the Agreement including proposed time extensions. Proposed time extensions must include a time impact analysis (TIA), clearly showing the impact on the current schedule, and conclusively proving the validity of the proposed extension
- 4.17.E) Director and or his designee shall be allowed full and complete access to all personnel, documents, work sites or other information reasonably necessary to investigate any claim. Within 60 days after a claim has been received, the claim shall either be recognized or if the claim is not recognized within 60 days it shall be deemed denied. If the claim is recognized, the parties shall attempt to negotiate a satisfactory settlement of the claim, which settlement shall be included in a subsequent amendment and or addendum to this Agreement to be approved by the City. If the parties fail to reach an agreement on a recognized claim, the City shall pay to the Artist the amount of money it deems reasonable to compensate the Artist for the recognized claim.

- 4.17.F) The Artist shall not cease work on account of any denied claim or any recognized claim upon which an agreement cannot be reached.
- 4.17.G) With regard to any and all claims for additional compensation resulting from delays to the Work, the Artist assumes all risk for the following items, none of which shall be the subject of any claim and none of which shall be compensated for except as they may have been included in the compensation for indirect costs.
- (1) Home office expenses or any direct costs incurred
 - (2) Loss of anticipated profits on this or any other project
 - (3) Loss of bonding capacity or capability
 - (4) Losses due to other projects not bid on
 - (5) Loss of business opportunities.
 - (6) Loss of productivity on this or any other project
 - (7) Loss of interest income on funds not paid
 - (8) Costs to prepare, negotiate or prosecute claims
 - (9) Costs spent to achieve compliance with applicable laws and ordinances

4.18 RIGHT OF DECISION

All Services shall be performed by the Artist at the sole direction of and to the reasonable satisfaction of the Director who shall decide all claims, questions or disputes concerning the prosecution and fulfillment of the Services hereunder, and the character, quality, amount and value thereof, and the Director's decisions thereon shall be conclusive and binding upon the parties hereto unless such determination is clearly arbitrary or unreasonable. All decisions of the Director shall be written and transmitted, pursuant to Section 4.19 to the Artist. In the event that the Artist does not concur in the judgments of the Director, the Artist shall present his written objections to the Department of Capital Improvement Projects Assistant City Manager within thirty (30) days from the date of the Artist's receipt of such written decision. The Director and the Artist shall abide by the decision of the Assistant City Manager.

4.19 NOTICES

All communications relating to the day-to-day activities shall be exchanged between the Artist, or his authorized representative, and the Director or authorized representative of the City. Such authorized representatives shall be designated in writing promptly upon commencement of the Services. Any notices, reports, or other written communications from the Artist to the City shall be considered delivered when posted or delivered in person to the Director. Any notices, reports, or other communications from the City to the Artist shall be considered delivered when posted to the Artist at the last address left on file with the City, or delivered in person to said Artist or his authorized representative.

Until changed by notice in writing, all such notices and communications shall be addressed as follows:

If to the City:

Brandan DeCaro, Director
City of Miami Gardens, Department of
Capital Improvement Projects
1515 NW 167th Street, #200
Miami Gardens, FL 33169
E-mail: cgoetzman @miamigardens-fl.gov

If to the Artist:

Xavier Cortada, Inc.

3621 SW 3rd Ave
Miami, FL 33145
xavier@cortada.com

4.20 SURVIVING COVENANTS

The covenants and obligations set forth in this Article IV, Section 4.20 shall survive the completion of installation of the Work and shall continue for a period ending on the twentieth anniversary of the Artist's death.

- 4.20.A) Maintenance of the Work. The City recognizes that although normal maintenance of the Work will involve simple and relatively inexpensive procedures, such maintenance on a regular basis is essential to the integrity and authenticity of the Work. The City shall assure such regular maintenance according to the written specifications of the Artist, and shall protect and maintain the Work against the ravages of time, vandalism and the elements, and to the extent practicable shall make all significant repairs and restorations of the Work in accordance with Section 4.20(E) below.
- 4.20.B) Notice. The City shall at its expense prepare and install at the Site, pursuant to the written instructions and subsequent approval of the Artist, a tasteful public notice including the Artists' name, and shall maintain such notice in good repair against the ravages of time, vandalism and the elements.
- 4.20.C) Permanent Record. Issuance of Final Payment for the Work shall indicate to the Artist the official acceptance and adoption of provisions of this Article IV, Section 4.20 by the Miami-Dade Art in Public Places Trust. The Trust shall ensure that the City maintains in an appropriate place a permanent record of this Agreement, such resolution and the location and history of the Work.
- 4.20.D) Alteration of the Site or of the Work. It is an inherent nature of any site to be vulnerable to physical alterations of varying degrees that may arise out of a functional need consistent with its intended design and usage and/or the operational requirements of the Site.

Respectively, the integrity and authenticity of the Work may become compromised by an alteration of the Site if the Work is an integral component of the Site. It is with the express understanding above that the Artist hereby agrees to waive all rights to monetary compensation for any acts arising out of operational requirements which may cause alterations to the Site and/or the Work.

The City shall notify the Artist of any proposed alteration of the Work or of the Site that would affect the intended character and appearance of the Work, and shall consult with the Artist in the planning of any such alteration. If any such alteration of the Site or of the Work is made without the express written approval of the Artist, the Artist may elect, upon a minimum forty-eight (48) hours written notice to the Director, to enter upon the Site and at the expense of the City remove or obliterate the public notice referred to in Section 4.20(B) above, as well as any signature or other emblem identifying the Artist with the Work, and may take such other action as he/she may choose in order to disavow the Work.

- 4.20.E) Repairs & Restorations of the Work. The City shall have the right to determine when and if repairs and restorations to the Work will be made. During the Artist's lifetime, the Artist shall have the right to approve all repairs and restorations of a significant nature. If the Artist fails or refuses to approve any repair or restoration, the City shall have the right to make such repair or restoration. To the extent practical, the Artist shall be given the opportunity to make or personally supervise significant repairs and restorations and the Artist may, at the discretion of the City, be paid a reasonable fee for any such service, provided that both parties prior to the execution of such services mutually agree upon the fee in writing.
- 4.20.F) Changes of Address. The Artist shall notify the City of changes of address and telephone/fax numbers, and his/her failure to do so, if such failure prevents the City from locating him/her, shall be deemed a waiver by the Artist of his/her rights to enforce those provisions of this Agreement that require the express approval of the Artist.
- 4.20.G) Copyright Transfer. The Artist shall notify the City of a transfer in the ownership of the copyright and provide name, title, current address and telephone/fax numbers to the City in such event. Any transfer of copyright must carry with it the requirement for the City's right to appropriate use of all material data and documentation for public exhibition, publication, and or recordkeeping purposes of the City.

4.21 MISCELLANEOUS CONDITIONS

- 4.21.A) Project Coordination. The Artist and/or his subcontractor(s) will conduct their operations in coordination with the Construction Project Team so as to minimize any impact on the progress of other work by others. The Artist and/or his subcontractor(s) may be required from time to time to attend site coordination meetings and provide the Director upon request updated schedules for the Work.
- 4.21.B) Notice of Potential Project Delays and or Claims for Additional Compensation. The Artist shall notify the Director in writing of any potential claims for construction delays and/or for additional compensation which may arise within the scope of this Agreement pursuant to the conditions set forth in Section 4.17. Failure to do so shall constitute a waiver of the claim.
- 4.21.C) Site Inspections/Site Conditions/Staging Requirements. Prior to mobilization, the Artist and/or his subcontractor(s) shall visit and inspect the Site. Subsequent to such inspection and throughout the course of the Work the Artist shall notify the Director of any storage, access, power, water and other requirements for proper installation of the Work that are not to be provided by the Artist. The Artist shall notify the Director in writing of any adverse Site conditions that may impede or otherwise impact the smooth and normal progress of the Work and which require resolution before proceeding with any portion of the Work. The Artist shall provide such notice within a reasonable amount of time so as to allow the Director to properly coordinate with the field and not create any delays to the construction schedule.
- 4.21.D) Job Safety. The Artist and/or his subcontractor(s) are responsible for compliance with OSHA and/or other Federal, State, County or City safety requirements and shall ensure said compliance is maintained throughout the duration of the Work.
- 4.21.E) Restricted "Off" Work Hours. Where applicable, the Artist and/or his subcontractor(s) shall observe and comply with any Restricted "Off" Work Hours requirements. Artist shall submit to the Director in writing any request(s) to perform work other than during "normal work hours" and said request shall be subject to approval by the Construction Management Team.

(THIS SPACE IS LEFT INTENTIONALLY BLANK)

4.22 ENTIRETY OF AGREEMENT

This writing embodies the entire Agreement and understanding between the parties hereto, and there are no other agreements and understandings, oral or written, with reference to the subject matter hereof that are not merged herein and superseded hereby. No alteration, change, or modification of the terms of the Agreement shall be valid unless made in writing and signed by both parties hereto and approved by appropriate formal action of the City. This Agreement, regardless of where executed, shall be governed by and construed according to the laws of the State of Florida.

IN WITNESS WHEREOF the parties hereto have executed these presents this _____ day of _____, 2010.

ATTEST:
RONETTA TAYLOR, CMC

CITY OF MIAMI GARDENS, FLORIDA

BY: _____
CITY CLERK

BY: _____
CITY MANAGER

ATTEST:

BY: _____
ARTIST

WITNESS