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3 **RESOLUTION NO. 2013-51**
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5 **A RESOLUTION OF THE VILLAGE COMMISSION**
6 **OF THE VILLAGE OF BISCAYNE PARK, FLORIDA;**
7 **AUTHORIZING THE MAYOR TO EXECUTE THE**
8 **PUBLIC ART AGREEMENT BETWEEN CECILIA**
9 **LUEZA AND THE VILLAGE OF BISCAYNE PARK**
10 **FOR THE COMMISSION OF A MURAL AT THE ED**
11 **BURKE RECREATION CENTER; PROVIDING FOR**
12 **AN EFFECTIVE DATE.**
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15 WHEREAS, on March 5th, 2013, Resolution 2013-08 was passed unanimously
16 authorizing the Village Manager to develop and issue an RFP for a mural design and
17 installation at the Ed Burke Recreation Center; and,
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19 WHEREAS, on May 27th, 2013, RFP 2013-04 Call to Artists Mural Project was issued
20 and eleven (11) qualified submissions were received by the deadline of July 22nd, 2013; and,
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22 WHEREAS, subsequently the eleven (11) qualified submissions were reviewed by art
23 professionals and were voted on by residents of Biscayne Park; and,
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25 WHEREAS, an appropriation of \$2,500 was included in the Fiscal Year 2013-14
26 annual budget that was adopted on September 24th, 2013, to fund the cost of the mural art
27 project; and,
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29 WHEREAS, on October 1st, 2013, the Village Commission reviewed and considered
30 the comments of the art professionals and the tally of votes, and the submission of Cecilia
31 Lueza was selected.
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34 NOW THEREFORE BE IT RESOLVED BY THE VILLAGE COMMISSION OF THE
35 VILLAGE OF BISCAYNE PARK, FLORIDA:
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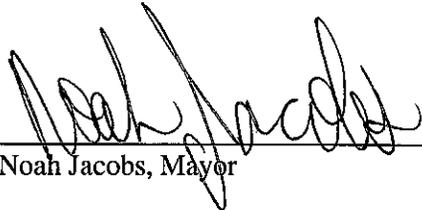
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38 **Section 1.** The foregoing "Whereas" clauses are hereby ratified and confirmed as
39 being true and correct and hereby made a specific part of this Resolution upon adoption hereof.
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41 **Section 2.** The Village Commission of the Village of Biscayne Park hereby
42 authorizes the Mayor to execute the Public Art Agreement between Cecilia Lueza and the
43 Village of Biscayne Park for the commission of the mural at the Ed Burke Recreation Center.
44 The Public Art Agreement, in substantial form, is attached and incorporated by reference into
45 this resolution as exhibit 1.
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47 **Section 3.** This Resolution shall become effective upon adoption.
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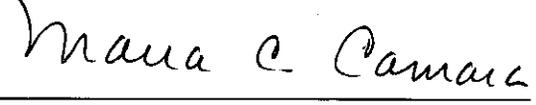
PASSED AND ADOPTED this 6th day of November, 2013.



Noah Jacobs, Mayor

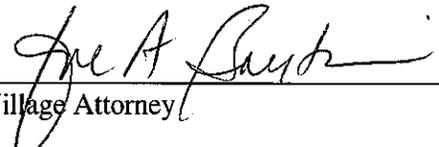
The foregoing resolution upon being put to a vote, the vote was as follows:

- Mayor Jacobs: Yes
- Vice Mayor Anderson: Yes
- Commissioner Cooper: Yes
- Commissioner Ross: Yes
- Commissioner Watts: Yes

Attest:


Maria C. Camara, Village Clerk

Approved as to form:



Village Attorney

PUBLIC ART AGREEMENT

This Agreement is made this 9 day of November, 2013, by the Village of Biscayne Park (hereinafter referred to as the "Village") and Cecilia Lueza (hereinafter referred to as the "Artist").

WHEREAS, on March 5, 2013, Resolution 2013-08 was unanimously approved authorizing the Village Manager to develop and issue an RFP for a mural design and installation at the Ed Burke Recreation Center; and,

WHEREAS, on May 27, 2013, RFP No. 2013-04 was issued, a Call to Artists, for a mural design on the outer wall of the racquetball court, which resulted in 11 submissions for consideration; and,

WHEREAS, at the October 1, 2013, regular commission meeting, after considering input from art professionals and resident voting, the Village Commission selected the submission of Artist, titled "Birds of South Florida" for the mural design; and,

WHEREAS, the Village has determined that Artist is qualified to create the art work desired based upon the skill, reputation and creativity of Artist, and Artist is willing and able to perform under the terms and conditions of this Agreement.

NOW THEREFORE, in consideration of the mutual benefits herein contained and the foregoing representations, which are incorporated by this reference into the Agreement, the Parties agree as follows:

1. CREATION AND INSTALLATION

- (a) The Village hereby grants Artist the exclusive right to paint a mural, the theme which is "Birds of South Florida" on the exterior wall of the racquetball court as indicated in the photograph of the wall attached hereto and made a part hereof.
- (b) Artist represents and warrants that the art work to be created will be an original work of art by Artist and that the art work will be a faithful rendition of the submitted design and approved by the Village. All changes to the artwork shall be first approved by the Village.
- (c) The Village hereby grants Artist and its agents the rights to come upon the property to prepare the wall for painting, to paint the wall and to preserve and maintain the painting. The right of access includes the right to barricade and scaffold as necessary or desirable to accomplish the preparation, painting, preservation and maintenance in a safe and efficient manner.
- (d) Artist agrees to start the art work no later than November 13, 2013, and to have the art work completely installed including all touch up work by November 18, 2013.

(e) If work on the mural is delayed by adverse weather conditions, or any other cause beyond the Artist's reasonable control, then the completion date shall be extended for such reasonable time as the parties may agree.

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

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

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

(i) The Village shall be responsible for preparing the wall for the artwork, pursuant to Artist's written specification submitted upon execution of this Agreement.

(j) The provisions of Section 1 is binding on the artist, his/her heirs, legal representatives, successors, subcontractors, vendors, and assigns. The Artist shall observe and comply with all federal, state, and local laws, ordinances, codes, orders, and regulations which in any manner affect those engaged or employed on the Work, the materials used in the Work, or the conduct of the Work. If any discrepancy or inconsistency should be discovered in this Agreement in relation to any such law, ordinance, code, order, or regulation, the Artist shall report the same in writing to the Building Official. The Artist shall indemnify, defend, and hold harmless the Village, the Building Official, and their officers, agents, and employees against all claims or liability arising from violation of any such law, ordinance, code, order, or regulation, whether by Artist or by its employees or subcontractors. Any particular law or regulation specified or referred to elsewhere in the Agreement Documents shall not in any way limit the obligation of the Artist to comply with all other provisions of federal, state, and local laws and regulations. Where an individual State act on occupational safety and health standards has been approved by Federal authority, then the provisions of said State act shall control.

(k) The Artist shall confine construction equipment, the storage of materials and equipment, and the operations of workers to (1) the Project site, (2) the land and areas identified in and permitted by the Agreement Documents, and (3) the other land and areas permitted by Laws and Regulations, rights of way, permits, and easements. The Artist shall assume full responsibility for any damage to any such land or area, or to the Village or occupant thereof or of any land or areas contiguous thereto, resulting from the performance of the Work. Should any claim be

made against the Village by any such Village or occupant because of the performance of the Work, the Artist shall promptly attempt to settle with such other party by agreement or otherwise resolve the claim through litigation. The Artist shall, to the fullest extent permitted by Laws and Regulations, indemnify, defend, and hold the Village harmless from and against all claims, damages, losses, and expenses (including, but not limited to attorneys, and other professionals, and court costs) arising directly, indirectly, or consequentially out of any action, legal or equitable, brought by any such other party against the Village to the extent based on a claim arising out of the Artist's performance of the Work.

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

a. all employees on the Work and other persons and organizations who may be affected thereby;

b. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the site; and

c. other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, mechanical equipment, electronics, instrumentation, and utilities not designated for removal, relocation, or replacement in the course of construction.

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

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

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

(2) AMOUNT OF PAYMENT:

(a) The Village agrees to pay Artist a total of two thousand five hundred dollars (\$2,500.00) within ten (10) days of completion of the mural, as determined by Artist and approved by the Village.

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

(3) INSURANCE AND INDEMNIFICATION:

(a) The Artist shall maintain liability insurance in the amount of one hundred thousand dollars (\$100,000.00) during any period of time that the Artist or its agents are working on the mural painting, its preparation, preservation and maintenance. The insurance policy shall name the Village as an additional insured, and the Artist shall provide proof of such insurance upon request of the Village.

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

(c) Except as set forth in this agreement, the costs for installation, including painting tools, laborer wages, workers compensation insurance and any other costs necessary for installation, shall be paid by Artist.

(4) COPYRIGHT: Upon final payment by the Village to Artist, Artist will assign his or her copyright interests in the art work to the Village and the Village will become copyright holder for all purposes, with the exception that Artist retains the right to reproduce the art work for all noncommercial purposes such as reproducing the image for Artist's portfolio.

(5) TERMINATION: Either party may terminate this Agreement for cause if the other party fails to perform any material obligation hereunder. In the event Artist abandons the art work, defaults on any material term of this Agreement or otherwise causes it to be terminated without cause prior to completion of the work, Artist shall not be entitled to recover further compensation from the Village, and Artist shall be liable for any additional costs that the Village has to assume because Artist terminated without cause. Termination is effective upon two days prior written notice.

(6) REPRESENTATIVE OF VILLAGE AND ARTISTS. Village Representative. It is recognized that questions in the day-to-day conduct of this agreement will arise. The Village designates the Village Clerk, as the person to whom all communications pertaining to the day-to-

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

(7) **ATTORNEY'S FEES AND WAIVER OF JURY TRIAL.** The Village does not waive sovereign immunity for any claim for breach of Agreement or for an award of prejudgment interest; provided, however, that in any action arising out of or to enforce this agreement, the prevailing party shall be entitled to its reasonable attorney's fees and costs in any state or federal administrative, circuit court and appellate court proceedings. In the event of any litigation arising out of this agreement or project agreement, each party hereby knowingly, irrevocably, voluntarily, and intentionally waives its right to trial by jury in State or Federal Court proceedings in respect to any action, proceeding, lawsuit or counterclaim based upon the Contract Documents or the performance of the Work there under.

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

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

Consent To Jurisdiction and Governing Law. The parties submit to the jurisdiction of any Florida state or federal court in any action or proceeding arising out of relating to this agreement or any project agreement. Venue of any action to enforce this agreement or any project agreement shall be in Miami-Dade County. This agreement and any project agreement shall be construed in accordance with and governed by the laws of the State of Florida.

(10) **HEADINGS AND DRAFTINGS.** Headings are for convenience of reference only and shall not be considered in any interpretation of this agreement. In the event a court must interpret any word or provision of this contract, the word or provision shall not be construed against either party by reason of drafting or negotiating this contract.

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

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

(13) COUNTERPARTS. This agreement may be executed in several counterparts, each of which shall be deemed original and such counterparts shall constitute one and the same instrument.

(14) SHANNON MELENDI ACT. The Artist shall comply with the "Shannon Melendi Act of Miami-Dade County", which is incorporated by reference for the purpose of conducting background investigations for all principals, members, employees, and/or volunteers or participants ("Volunteers") associated with the operational activities for the Artist. Required background investigations shall be completed in accordance with the Act. All agents, employees and subcontractor of the Artist retained to perform services pursuant to this bid shall comply with all laws of the United States concerning work eligibility and comply with the Shannon Melendi Act, as adopted by the Village. All employees and subcontractors of Artist shall be properly screened as required under the Act.

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

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

THE VILLAGE OF BISCAYNE PARK
a municipal corporation, organized and
existing under the laws of the State of
Florida

By: _____

Noah Jacobs
Noah Jacobs, Mayor

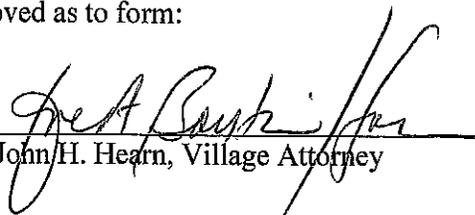
ATTEST:

Maria C. Camara

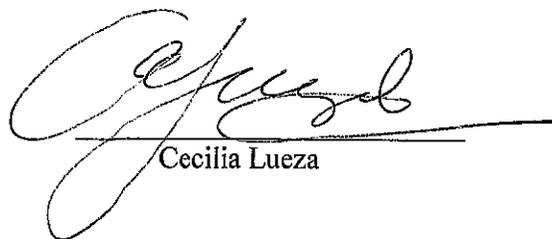
Maria C. Camara, Village Clerk

Approved as to form:

By:


John H. Hearn, Village Attorney

ARTIST:


Cecilia Lueza

ATTACHMENTS

Exterior Wall of the Racquetball Court at the Ed Burke Recreation Center:



Mural Design Submitted by Cecilia Lueza titled "Birds of South Florida"

of Decoy Park Mural Project

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