



VILLAGE OF KEY BISCAYNE

Office of the Village Manager

Village Council
Robert Oldakowski, *Mayor*
Robert L. Vernon, *Vice Mayor*
Enrique Garcia
Steve Liedman
Jorge E. Mendia
Thomas Thornton
Patricia Weinman

Village Manager
Jacqueline R. Menendez

DT: January 3, 2007

TO: Honorable Mayor and Village Council

FR: Jacqueline R. Menendez, Village Manager

RE: Art in Public Places: Jose Bedia Contract

RECOMMENDATION

That the Village Council approve the Art in Public Places Board recommendation to enter into a contract with Jose Bedia for artwork.

ANALYSIS

The FY06/07 Budget provided funding for artwork that would be produced by Jose Bedia and installed in the concrete plazas as part of the Crandon Boulevard Phase 3 Project. The Art in Public Places Board has recommended approval of the attached contract which is summarized below:

1. The contract includes two (2) phases. The first phase provides \$40,000 for five (5) design and development *drawings* for artwork that will be embedded in concrete at five (5) plazas. Mr. Bedia will also provide a cost estimate to construct the artwork in each of the plazas. The drawings will be owned by the Village. The contract grants to the Village the right to use images of the artwork for educational, promotional, and informational purposes in any media, including but not limited to, printed post cards, posters, posting on our website and other related websites.
2. The second phase provides \$20,000 for the construction of the artwork. If Mr. Bedia's cost estimate exceeds \$20,000, then the construction work for the artwork will not commence until the Art in Public Places Board raises the additional money.

During the design phase of the artwork, construction of the Crandon Phase 3 work will proceed and that portion of each plaza which was to receive the artwork will be filled with sand or other material.

RESOLUTION NO. 2007 - _____

A CAPITAL PROJECT AUTHORIZING RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA; CONCERNING JOSE BEDIA ARTISTIC PROJECT (THE "ART PROJECT") TO BE INSTALLED IN CONNECTION WITH THE VILLAGE'S CRANDON BOULEVARD PHASE III PROJECT; PROVIDING FOR AUTHORIZATION OF THE ART PROJECT; APPROVING PROFESSIONAL SERVICES AGREEMENT FOR THE ART PROJECT; PROVIDING FOR IMPLEMENTATION OF THE ART PROJECT; PROVIDING FOR EFFECTIVE DATE.

WHEREAS, the Art in Public Places Board (the "Board") reviewed artists in the process of making a recommendation for the design of art work to be installed at selected plazas along Crandon Boulevard, based on the art project site selection criteria approved pursuant to Village Council Resolution 2003-38; and

WHEREAS, the Board has recommended that the Village authorize the design, construction and implementation of an artistic Art in Public Places project (the "Art Project") entitled "Jose Bedia Artwork " as designed by Jose Bedia; and

WHEREAS, funding for the Art Project is provided through the Permanent Artwork line item of the General Fund budget, and by the Crandon Phase III Project budget (for related concrete work) and, if necessary, through supplementary donations; and

WHEREAS, the Art Project serves to implement the provision of works of Art in Public Places as envisioned by Village Code Section 2-141; and

WHEREAS, the Village Council finds that the implementation of the Art Project at Crandon Boulevard is in the best interest of the Village; and

WHEREAS, the Village Council finds that the professional services of Jose Bedia are exempt from competitive purchasing procedures pursuant to Village Code Section 2-87(2), and

finds that the use of competitive bidding procedures for the purchase of the special metal frames and other components for the Art Project is impractical and that competitive bidding is hereby waived for such purchase pursuant to Village Code Section 2-85, and further hereby waives any other applicable competitive purchasing procedures for the Art Project in accordance with Section 2-85 of the Village Code.

NOW, THEREFORE, BE IT RESOLVED BY THE VILLAGE COUNCIL OF KEY BISCAWAYNE, FLORIDA AS FOLLOWS:

Section 1. Recitals Adopted. That each of the above-stated recitals is hereby adopted and confirmed.

Section 2. Agreement Approved. That the Village of Key Biscayne Agreement for Professional Services between the Village and NKISI, Inc., acting through Jose Bedia, in substantially the form attached hereto, is hereby approved, and the Village Manager is hereby authorized to execute the Agreement on behalf of the Village, subject to approval of the Village Attorney as to form and legal sufficiency.

Section 3. Implementation. That the Village Manager is hereby authorized to take any action which is necessary to implement the Agreement, this Resolution, and the Art Project, subject to the restriction that the total Art Project cost shall not exceed Sixty Thousand (\$60,000.00) Dollars, exclusive of the Village's Owner's Representative's fees, unless further authorized by the Village Council.

Section 4. Funding. That the funding for the Art Project shall be that which is specified in the Village Manager's Memorandum which accompanies this Resolution, and as described herein.

PASSED AND ADOPTED this _____ day of January 2007.

MAYOR ROBERT L. VERNON

ATTEST:

CONCHITA H. ALVAREZ, CMC,
VILLAGE CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

VILLAGE ATTORNEY

**VILLAGE OF KEY BISCAYNE
AGREEMENT
FOR
PROFESSIONAL SERVICES**

THIS AGREEMENT, is made and entered into this 9th day of January, 2007, by and between the VILLAGE OF KEY BISCAYNE (the “VILLAGE”) and NKISI, Inc., a Florida Corporation, (the “CONSULTANT”).

RECITALS:

The VILLAGE wants to engage the CONSULTANT to perform certain professional services for the VILLAGE’s Art In Public Places Program consisting of the design and implementation of concrete embedded art work (the “Art Project”) for up to five (5) plazas along Crandon Boulevard, which will be created and installed as part of Phase III of the Village's Crandon Boulevard project (the “Crandon Project”). The Art Project is entitled “Jose Bedia Artwork”.

CONSULTANT shall perform the services for the Art Project (the “Specified Services”) which are described in Exhibit “A”, a copy of which is attached hereto and incorporated herein.

In consideration of the mutual covenants and other provisions set forth in this Agreement, the parties agree as follows:

1. **SCOPE OF SERVICES**

A. The CONSULTANT agrees to provide the Specified Services upon written request from the Village Manager. Unless otherwise specified herein, the Specified Services shall be performed by Jose Bedia. CONSULTANT shall provide the Specified Services as an independent contractor for the VILLAGE. CONSULTANT shall coordinate the performance of its Specified Services with several other contractors who are providing related services to the VILLAGE, including:

1. M. Vila and Associates, Inc., the VILLAGE's construction contractor for the Crandon Project (the "Construction Contractor");
2. Cesar Trasobares, the VILLAGE's primary Art in Public Places Program consultant (the "Arts Consultant");
3. Paul Abbott of Skyline Management, Inc., the VILLAGE owner's representative (the "Village's Representative" or the "Owner's Representative");
4. C3TS, the Village's engineer for the Crandon Project (the "Village's Engineer").

Collectively, these parties are referred to as "Additional Contractors of the VILLAGE".

B. The CONSULTANT recognizes that, unless expressly provided by the Village Council, only the Village Manager is authorized to commit the expenditure of Village funds for the design, production, installation and implementation of the

Art Project.

2. **FEES FOR SERVICES**

A. The CONSULTANT agrees to charge the VILLAGE for the successful performance of the Specified Services which are provided by CONSULTANT, in accordance with the fee and cost schedule of:

- (a) Forty Thousand (\$40,000.00) Dollar fee for the complete design, prototype production, preparation of fabrication standards and preparation of detailed cost estimation for the Art Project (including five (5) designs-one for each plaza), production of original drawings of the approved designs for the VILLAGE's Art Collection, and supervision of the work of installing the Art Project, and
- (b) Twenty Thousand (\$20,000.00) Dollars allocated for the cost of fabrication and insured delivery of the metal Art Project implementation forms for the Art Project (the "Components") to VILLAGE, , and the full implementation, final completion, and final inspection of the Art Project;

for a total fee and cost (the sum of (a) and (b)) not to exceed Sixty Thousand (\$60,000.00) Dollars.

B. Fees pursuant to paragraph 2(A)(a) above shall be paid to Consultant pursuant to the following schedule:

- (a) Ten Thousand (\$10,000.00) Dollars upon execution of this Agreement by both parties; and
- (b) Fifteen Thousand (\$15,000.00) Dollars upon approval by the Village Council of the completion of the design, prototype production, fabrication standards and cost estimation, for the Art Project; and

- (c) Ten Thousand (\$10,000.00) upon delivery of original drawings for the VILLAGE's art collection and acceptance by the Art in Public Places Board; and
- (d) Five Thousand (\$5,000.00) upon completion of the supervision of the successful installation of the Art Project.

C. Costs pursuant to paragraph 2(A)(b) above shall be paid pursuant to the following schedule:

- (a) Five Thousand (\$5,000.00) Dollars payable to CONSULTANT for use as a deposit for fabrication and purchase of the Components, upon authorization by the VILLAGE's Representative pursuant to paragraph 2(d) of Exhibit "A"; and
- (b) Ten Thousand (\$10,000.00) Dollars payable upon delivery and installation of Components in two of the five plaza sites and approval of the work by the Art in Public Places Board; and
- (c) The remaining Five Thousand (\$5,000.00) Dollars payable upon final Art Project completion and acceptance by the Art in Public Places Board.

Village shall pay the above described costs which are listed in (a) , (b), and (c) above, directly to the applicable fabricators and/or installers, instead of to Consultant, unless otherwise mutually agreed by Village and Consultant.

D. However, in the event that work in the design phase described in paragraph (2) (A) (a) above, indicates that a total amount of Twenty Thousand

(\$20,000.00) will not be sufficient to cover all of the work included in paragraph (2) (A) (b) then all work shall stop until the Art in Public Places Board secures the necessary funding to complete the work. The parties recognize that Consultant is not responsible for cost overruns or increases in budget due to insufficient funds being initially available to complete the Art Project. Further, it is recognized that the Consultant is not responsible for the ultimate cost of the Art Project. Although the Consultant shall design, provide prototypes, indicate how to fabricate the design and provide detailed cost estimates, and perform all of its other obligations hereunder, the Consultant is not responsible for any cost overruns or for the inability to design an Art Project which complies with the budgeted funding level.

3. **TERM**

The duration of the term of this Agreement shall commence on January 9, 2007 and shall end on September 30, 2007, unless extended by the Village Manager or earlier terminated pursuant to paragraph 7.

4. **RECORDS; USE OF DESIGN; ETC.**

A. The final Art Project design and all related drawings shall be the property of the VILLAGE for use at the Art Project site and for display by the Village at Village facilities.

B. CONSULTANT hereby grants to VILLAGE the right to use images of the CONSULTANT's work, Jose Bedia's work, and the Art Project for educational,

promotional and informational purposes, in any media, including but not limited to, printed post cards, posters, and posting on the VILLAGE's websites and other related websites authorized by VILLAGE.

C. VILLAGE hereby reserves the right to install a plaque or sign with information about the CONSULTANT, Jose Bedia, the Art Project, and the VILLAGE's Art in Public Places Board.

D. CONSULTANT and VILLAGE agree that if the Art Project is altered so that, in the CONSULTANT's reasonable opinion, the integrity of the Art Project, as a work of art, is damaged, the CONSULTANT may choose to have its name and the name of Jose Bedia disassociated with the Art Project and have any reference to CONSULTANT or Jose Bedia removed from the Art Project.

5. **ASSIGNMENT**

This Agreement shall not be assignable by the CONSULTANT.

6. **PROHIBITION AGAINST CONTINGENT FEES**

The CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT, to solicit or secure this Agreement, and that it has not paid or agreed to pay any person(s), company, corporation, individual or firm, other than a bona fide employee working solely for the CONSULTANT any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the

award or making of this Agreement.

7. **TERMINATION**

This Agreement may be terminated by the VILLAGE upon twenty (20) days written notice with or without cause and by the CONSULTANT upon sixty (60) days written notice with or without cause. If this Agreement is terminated, the CONSULTANT shall be paid in accordance with the provisions of Exhibit "A" and Paragraph 2 above, for all acceptable work performed up to the date of termination, subject to the provisions of Paragraph 2 (D) above if applicable.

8. **NONEXCLUSIVE AGREEMENT**

The services to be provided by the CONSULTANT pursuant to this Agreement shall be nonexclusive and nothing herein shall preclude the VILLAGE from engaging other firms to perform similar services for the benefit of the VILLAGE within the VILLAGE'S sole and absolute discretion.

9. **ENTIRE AGREEMENT**

The parties hereby agree that this is the entire agreement between the parties. This Agreement cannot be amended or modified without the express written consent of the parties. The Village Manager shall act for Village hereunder.

10. **WARRANTIES OF CONSULTANT**

The CONSULTANT hereby represents that it possesses the special artistic, creative and practical skills which are essential for the Art Project and warrants that

at all times during the term of this Agreement it shall maintain in good standing any required licenses, certifications and permits required under Federal, State and local laws which are necessary for CONSULTANT to perform the Specified Services.

11. **NOTICES**

All notices and communications to the VILLAGE or CONSULTANT shall be in writing and shall be deemed to have been properly given if transmitted by registered or certified mail or hand delivery. All notices and communications shall be effective upon receipt. Notices shall be addressed as follows:

Village: Jacqueline R. Menendez
Village Manager
Village of Key Biscayne
88 West McIntyre Street
Key Biscayne, FL 33149

With a copy to: David M. Wolpin, Esq.
Village Attorney
Weiss Serota Helfman Pastoriza
Cole & Boniske, P.A.
2525 Ponce De Leon Blvd., Suite 700
Coral Gables, Florida 33134

Consultant: NKISI, Inc.
6501 S.W. 59th Street
South Miami, Florida 33143
ATTN: Jose Bedia

With a copy to: Dennis Scholl, Esq.
Roth and Scholl
866 South Dixie Highway
Coral Gables, Florida 33146

12. **NO LIABILITY OF CONSULTANT, ETC.**

Subject to CONSULTANT's satisfactory performance in accordance with CONSULTANT's responsibilities under this Agreement, the VILLAGE hereby agrees to defend, indemnify, and hold harmless CONSULTANT from any claim by or liability to any other person concerning any personal injury sustained by such person which claim or liability results from the display of the Art Project. This covenant of the VILLAGE shall be subject to the monetary limits of Section 768.28 (5), Florida Statutes, which statute generally governs the liability of the VILLAGE, and shall be applicable regardless of whether or not such monetary limits would otherwise be applicable.

13. **GOVERNING LAW**

This Agreement shall be construed in accordance with the laws of the State of Florida. Venue for any litigation hereunder shall be in Miami-Dade County, Florida. The parties hereby knowingly and voluntarily waive any right to a trial by jury of any claim which in any way arises hereunder between them.

IN WITNESS WHEREOF, the parties hereto have accepted, made and executed this Agreement upon the terms and conditions above stated on the day and

year first above written.

CONSULTANT:

NKISI, INC.

VILLAGE:

VILLAGE OF KEY BISCAYNE

By: _____

Name: Jose Bedia

Title: _____

By: _____

Name: Jacqueline R. Menendez,

Title: Village Manager

Attest: _____

Village Clerk

Approved as to Form and Legal Sufficiency:

Village Attorney

EXHIBIT "A"

A. SPECIFIED SERVICES

1. CONSULTANT shall finalize and provide to VILLAGE the CONSULTANT's design for the Project which is entitled "Jose Bedia Artwork", all in a manner by which CONSULTANT obtains the approval of the VILLAGE's Art in Public Places Board.
2.
 - a. CONSULTANT will arrange for fabrication of the Components which are to be utilized as an essential means of creating the Art Project designed by CONSULTANT, so as to assure quality control and any other details which are necessary to comply with the design.
 - b. CONSULTANT shall arrange for the Components fabricator to ship materials, all properly labeled, to a designated location which is approved by the VILLAGE's Representative.
 - c. CONSULTANT shall require the Components fabricator to provide casualty insurance covering the risk of loss of the Components prior to receipt of the Components by the VILLAGE or the VILLAGE's Construction Contractor at the Art Project site. Upon acceptance of the delivery of the Components by the VILLAGE or by the VILLAGE's Construction Contractor at the Art Project Site, the risk of loss concerning the Components shall thereafter shift to the VILLAGE or to the VILLAGE's Construction Contractor, as determined by the contractual relationship between the VILLAGE and VILLAGE's Construction Contractor.
 - d. CONSULTANT recognizes that CONSULTANT's selection and use of the fabricator of the Components, the total cost of the Components to be charged by the fabricator for the Components manufactured for the VILLAGE, and the terms and conditions of the sale, delivery and acceptance of the Components shall be subject to the prior written approval of the VILLAGE's Representative.

- e. CONSULTANT recognizes that the VILLAGE has the right to require the Components to be re-fabricated in the event of damage or destruction.
3. CONSULTANT and/or CONSULTANT's technical assistant shall directly supervise the installation of the Components working with the VILLAGE's Construction Contractor (or other designee of VILLAGE) and VILLAGE's Representative.
4. CONSULTANT shall provide for Jose Bedia to attend the dedication ceremony for the Art Project. He shall be reasonably compensated to present a public presentation about his work as part of the VILLAGE's Art in Public Places Board's Speakers' Series, as approved by the Village Manager.
5. CONSULTANT recognizes that the VILLAGE's Construction Contractor or alternatively a general contractor approved by the Village Manager, may, if determined to be necessary by VILLAGE, utilize the services of the VILLAGE's Engineer in order to further develop detailed technical plans of the CONSULTANT's design of the Art Project. The detailed technical plans shall conform with the Florida Building Code and any other code for which compliance is required for issuance of building permits.
6. CONSULTANT recognizes that the VILLAGE's Construction Contractor or alternatively a general contractor approved by the Village Manager, will, except as otherwise specified herein, install the Art Project and construct or arrange for the construction of all complimentary elements of the work for the Art Project, including concrete work, in accordance with the detailed technical drawings of the above-referenced engineer.
7. CONSULTANT recognizes that, unless otherwise determined by the Village Manager, the VILLAGE's Construction Contractor will: (1) assume responsibility for providing liability insurance coverage at the Crandon Project site throughout the Art Project's construction and installation process; and (2) provide for any necessary temporary fencing and safety barriers or signage; each in accordance with the existing construction agreement between the VILLAGE and

VILLAGE's Construction Contractor by which the Crandon Project is being constructed.

8. CONSULTANT, acting by and through Jose Bedia, shall provide all necessary artistic, creative and coordination services in order to assist the VILLAGE and the Additional Contractors of the VILLAGE in connection with the design, permitting, installation and successful completion of the Project.