

**MOORPARK CITY COUNCIL
AGENDA REPORT**

TO: Honorable City Council

FROM: Hugh R. Riley, Assistant City Manager

DATE: July 8, 2011 (CC Meeting of 07/20/11)

SUBJECT: Consider Selection of Artist for Public Art Project at the Ruben Castro Human Services Center and Agreement for Artistic Design, Fabrication, and Installation Services

BACKGROUND & DISCUSSION

The Ruben Castro Human Services Center (RCHSC) project consists of two buildings totaling approximately 25,000 square feet (the Facility). Building A is 10,000 square feet and is designed to house non-emergency medical services. Building B is approximately 15,000 square feet and has been planned as an "Under-One-Roof" facility for various social services, educational uses, and charitable services. The Moorpark Arts Commission has studied the plans for the new facility as a location for public art as part of the City's Art in Public Places Program.

On March 2, 2011, the City Council approved a Request for Qualifications and authorized a proposal review process for the Commission to prepare its recommendation to the City Council for the selection of an artist for the project. The overall design principles for the artwork, as recommended by the Arts Commission and included in the approved RFQ were:

- The theme "Family" is desirable, but the art is not limited to this concept.
- The art style is not limited or designated and may be historical, traditional or contemporary.
- The art may be of mediums including but not limited to metals, concrete, rock or paint.
- While the Human Resource Center is named after the individual Ruben Castro, the art should not be an individual likeness of him.
- No water feature will be considered.

The facility site plan was included with the RFQ along with several pictorial views of the buildings. While an ideal site for the artwork is the circular courtyard opening to the

southeast, other options for artwork site were discussed and considered including the corridor between Buildings A and B and the northwest and north east corners of the building site.

As a result of the RFQ, the City received responses from 46 different artists from across California. Staff review of the applications resulted in the elimination of six that were considered non-responsive or incomplete. The 40 remaining applications were examined by each commissioner and by the Assistant City Manager (the Committee). Each reviewer ranked their ten preferred applicants. Those lists were compared and the ten artists receiving the most votes were placed on a short list and presented to the entire group for further consideration.

At their regular meeting of May 17, 2011 the Committee developed a list of four finalists that were invited for an interview. Interviews were arranged at Special Commission Meetings on June 8 and June 16.

Those artists interviewed were: Carol Gold, Fairfax, CA and Stephen L. Rieman, Yucca Valley on June 8; and John Fisher, Ft. Bragg, CA and Miles Metzger, Mokelumne Hill, CA June 16. The artists were not asked to present their proposed sculpture but to be prepared to present their body of work. They were encouraged but not required to provide sketches representing their conceptual ideas for the project. During the hour-long interviews, the artists were given a three-dimensional tour of the RCHSC using the City's Building Image Modeling (BIM) Program. Each of the artists discussed their past work and their approach to this project and sketches or models representing their concept. Possible placement choices for the artwork were discussed at length.

On June 21, 2011, the Committee met to review the finalists and determine a priority placement for recommendation to the City Council. Each Commissioner shared their thoughts about each artist. The consideration centered on the probable acceptance and understanding of each piece of art by the community of all people that would be visiting the building. The characteristics of that community were discussed in detail. There was lengthy and in-depth discussion with many varying opinions and impressions expressed. At this point, Mr. Metzger's application was not considered further.

Discussion continued about the actual placement of the artwork. The Commission plans to revisit the placement of the art after an artist is selected by the Council. The selected artist can then participate in the placement and site preparation planning, working directly with the Commission and the facilities design/construction team.

A summary of the three finalists is presented below. Presentation materials and sketches are provided in Attachment 1.

Carol Gold: Carol works in cast bronze with designs sculpted initially in wax. Her work is characterized with distinctive and stylized flat figures with human extremity and facial features. Her figures present dramatic poses and simulated motion and mood. She strives to communicate her feelings about nature and human character through her

figures and animals. Balance and human interaction are recurrent themes in her sculptures. Her work is cast, finished and imported to the placement site.

Steven Rieman: Mr. Rieman's work attempts to ask questions about the balance between advancing technology and the preservation of the natural environment. He combines different methods, materials and ideas that express various contrasts and relationships. His goal is to create a delicate balance between competing natural and manmade influences that reveal their ever changing relationships. Mr. Rieman's sculptures include "bronze verde" (flat) supported by materials such as stone, stainless steel and other metals. His work is typically fashioned or fabricated offsite and then imported to the placement site.

John Fisher: Mr. Fisher is a traditional stone sculptor working in marble, granite or limestone. Unlike Gold and Rieman, Fisher's work is carved in place on site from a block of the selected material. The figures are very life-like with un-mistakable characteristics. His projects provide an opportunity for observers to watch the art being created and even to participate in its final formation. Such observers may be school classes, college art students, community groups. Mr. Fisher's projects include community outreach and on-site narrative by his team giving the community a chance to embrace the work as it is being created.

Generally the Committee agreed that the selected artist and resulting art piece should be consistent with the following: 1) should be readily understood by anyone looking at it thus eliminating any perceived misconceptions; 2) should reflect the diversity of service that will be found in this new community opportunity; and 3) Since every age, from newborn to senior citizen would be utilizing the facilities, these varied age differentials need to have clarification and acceptance from the beginning.

The Committee also favored the idea that John Fisher's creation would be created on site. The opportunity for the community to observe the artist at work was seen as an important advantage particularly for the Ruben Castro Human Services Center. The Committee felt this feature would help introduce the new facility as a whole and give visitors a sense of ownership in the sculpture and the new building.

The Committee's discussions were concluded with a simple ballot for the Commissioners to prioritize their choices for recommendation to the City Council. The resulting preferential order was: 1st choice, John Fisher; 2nd choice, Steven L. Rieman; and 3rd choice, Carol Gold. The final consensus of the Commission was to recommend that John Fisher be selected as the artist for the project.

FISCAL IMPACT

The project budget for the Ruben Castro Human Services Center includes \$138,943 for public art.

STAFF RECOMMENDATION

Award the project to John Fisher and authorize the City Manager to sign an Agreement for Artistic Design, Fabrication and Installation Services with costs including all expenses not to exceed \$138,000 and subject to final language approval by the City Manager and the City Attorney

ATTACHMENTS:

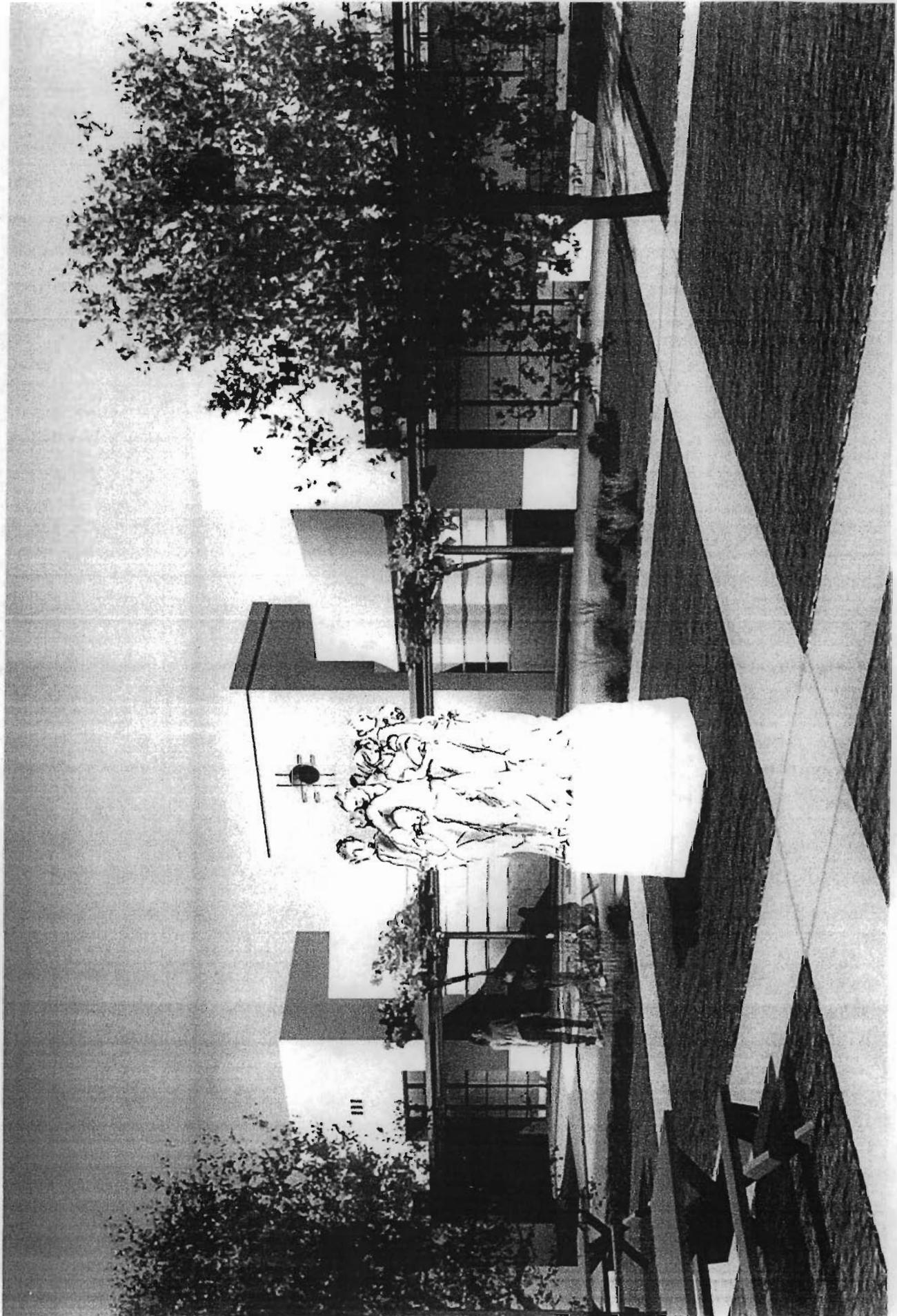
1. Artist's Materials
2. Draft Agreement for Artistic Design, Fabrication and Installation

ATTACHMENT 1

ARTIST'S MATERIALS

John Fisher







Claremont block with natural surfaces



The creative process appeals to everyone



"At the still point of a turning world"

On-site Public Carving
Temple Texas 1998 Scott and White Hospital



School children come to watch and learn



Towards the end, everyone gets to help



CITY OF CLAREMONT

Glenn D. Southard, City Manager

City Hall
207 Harvard Avenue
P.O. Box 880
Claremont, CA 91711-0880
FAX (909) 399-5492
www.ci.claremont.ca.us

City Manager • (909) 399-5441
City Clerk • (909) 399-5460
Personnel • (909) 399-5450
Community Information • (909) 399-5497

August 27, 2002

To Whom It May Concern:

I am pleased to have the opportunity to write a letter of recommendation for a very fine artist, John Fisher.

When first presented with the idea of a Symposium in Claremont, I was concerned about how the entire process would be orchestrated by both John and the volunteers involved. To my delight, the John Fisher project was developed, managed and executed without a glitch. The Claremont community embraced John and his family by providing housing, meals and transportation during their visit.

The Symposium provided the Claremont community with a wonderful sense of unity and accomplishment. John Fisher was capable of keeping to the task at hand, as well as indulging in dialogues with the daily visitors to the construction/creation site. He was a real trooper with the numerous challenges that faced the project, such as rain and cold weather.

John Fisher is a very skilled artist. With his engaging personality he was able to create a memorable and exciting experience for Claremont. Without reservation, I can recommend John Fisher as a talented sculptor and a genuine individual.

If you have any questions, please feel free to contact me.

Sincerely,

Glenn D. Southard
City Manager

BRYANT & SONS, LTD.

812 State Street
Santa Barbara, CA 93101
Telephone (805) 966-9187



October 1, 2004

To Whom It May Concern:

I am pleased to supply this letter of support for John Fisher. From the first time John came into my store in Santa Barbara to tell me about his work until the completion of his incredible sculpture last month, I have been impressed by his passion for art and caring for people. In his sculpture titled "90 Days", John has managed to capture the essence of our project which is helping the people of our community in their struggle to overcome drug addiction.

Many of our community members, young and old, have spent countless hours watching John work. He has been extremely gracious, always taking the time to teach and involve people in the process of sculpting. Countless children have been given a unique opportunity to be exposed to art in a way that few ever experience. It is an experience they will not soon forget.

Santa Barbara and its citizens have been so fortunate to be a part of this process and John's beautiful piece of art will be here forever for all who come after us to enjoy.

Sincerely,

A handwritten signature in black ink, appearing to read 'Bob Bryant'.

Bob Bryant
President



The Council on Alcoholism and Drug Abuse

An Affiliate of the National Council on Alcoholism and Drug Dependence, Inc.
P.O. Box 28 • Santa Barbara, CA 93102
(805) 963-1433 • FAX (805) 963-4099
www.cadasb.org



October 1, 2004

To Whom It May Concern:

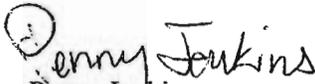
I am pleased to supply this letter of support for sculptor John Fisher. I had the privilege of working with John for three months from conception through completion of his public carving project in Santa Barbara, California during the summer of 2004. The Council on Alcoholism and Drug Abuse served as the fiscal agent and coordinating entity for a collaborative effort involving another non-profit organization, Elings Park, private individuals, businesses, and schools, which resulted in a 19-ton block of Carrara marble being transformed into an amazing work of art.

Observers of Santa Barbara's project were amazed that John was able, in a few short weeks of carving, to capture the essence of our cause and represent concepts so important to us.

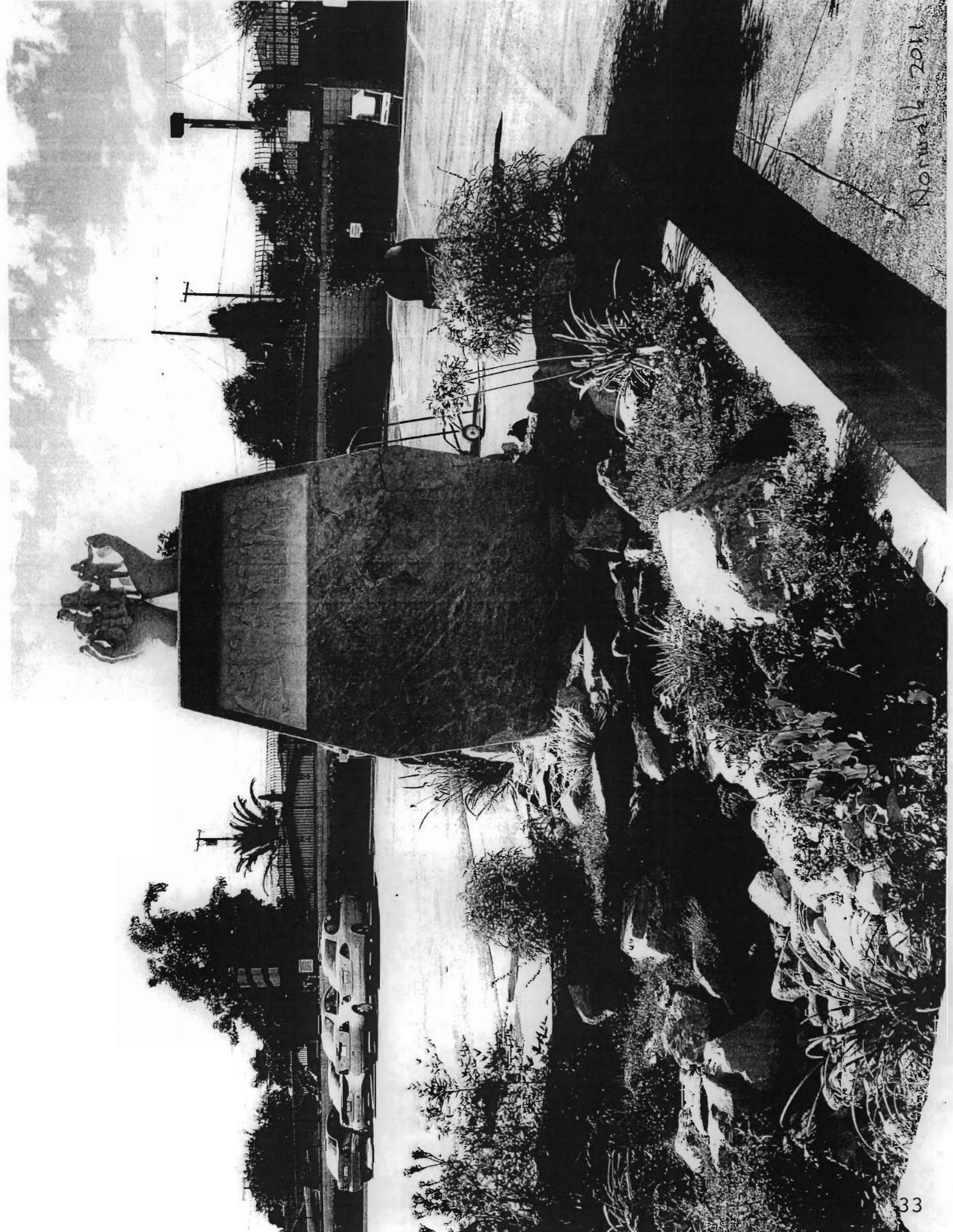
In my role as the Council's President, I also have a deep appreciation for John's ability to work with the challenges of social and fundraising events, marketing and media coverage, etc. John is a superb educator, articulate and interesting. He always took the time to meet with dozens of school classes, from preschool through college, as they came to watch and learn during the carving sessions. He managed all these distractions and interruptions of his creative process and never missed the opportunity to involve all those who came to the park to watch his progress.

John Fisher is thoughtful and spontaneous, driven by his passions and able to instill his love of art in others. He has had a profound impact on all who have met him this summer and his sculpture will remain in Santa Barbara as a constant reminder to all who see it, that hope and help is always available to those who struggle.

Sincerely,


Penny Jenkins
President

A United Way Agency

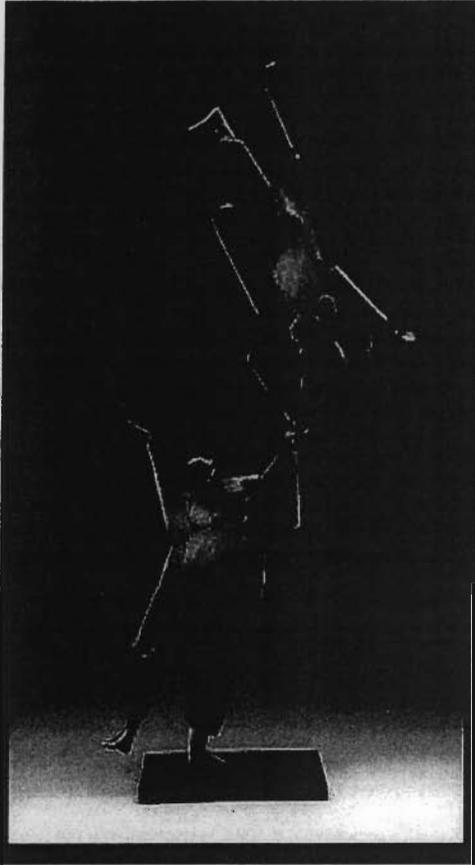


Normal 2011

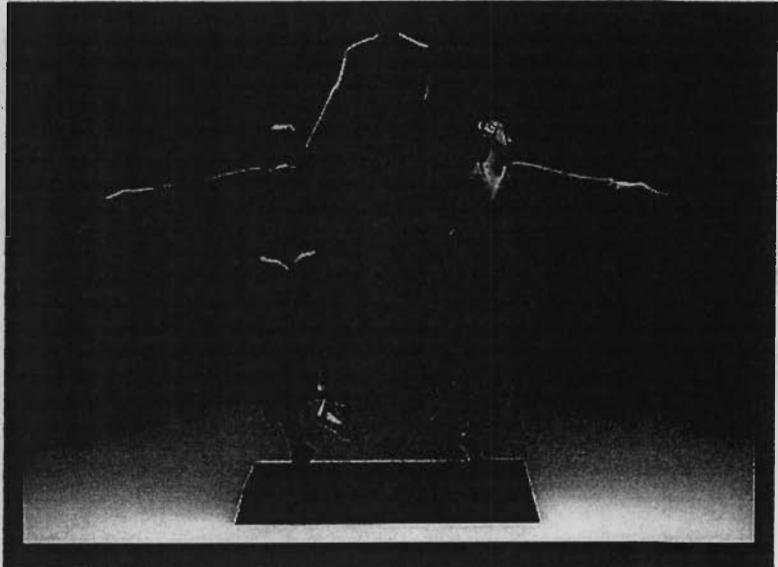
Carol Gold



CAROL GOLD SCULPTURE



Balancing, ltd. ed. bronze 35" x 15" x 10"



Fiesta, ltd. ed. bronze 29 1/2" x 36" x 9"

Simplicity is primary in Carol's continuous search for forms with which to best express the essence of motion and mood. Using wax as her creative medium, she strives to communicate her feelings about nature and human character through her figures and animals. Balance and human interaction are recurrent themes in her sculptures.

Carol's work has been exhibited throughout the US and Canada. Among numerous awards are those received from the National Sculpture Society and the North American Sculpture Exhibition. Public commissions include sculptures for the City of Bakersfield, CA, Benson Park, Loveland, CO and the Clinton Library in Little Rock, AK.

CONTACTS

Bronze Coast Gallery
Cannon Beach, OR
www.bronzecoastgallery.com

Coda Gallery
Palm Desert, CA
www.codagallery.com

Columbine Galleries
Loveland, CO
www.columbinensa.com

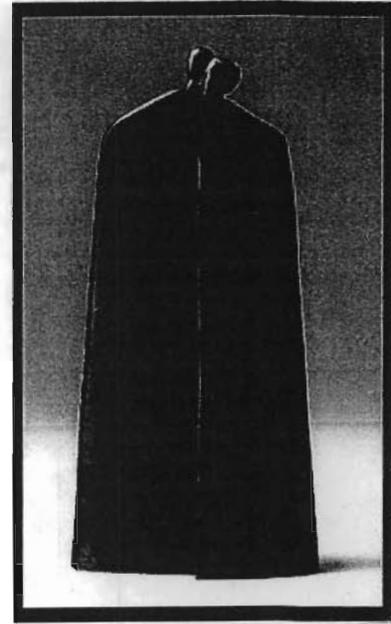
Gallery 822
Santa Fe, New Mexico
www.gallery822.com



Tranquility. ltd. ed. bronze 19" x 9 1/2" x 12"

Scottsdale Fine Art
Scottsdale AZ
www.scottsdalefineart.com

email the artist
carolgold@earthlink.net



Embrace. ltd. ed. bronze 14" x 7" x 3 1/2"

web design @ Avalon Arts Studio

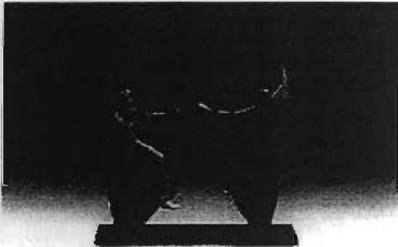


ARTIST

ADD TO FAVORITES ADD TO FAVORITES

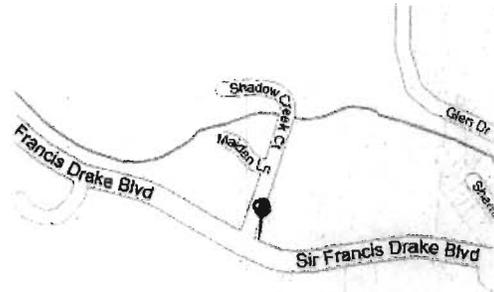
Carol Gold

sculptor



2901a Sir Francis
Drake Blvd.
Fairfax, CA 94930
United States
carolgold@earthlink.net
carolgoldsculpture.com

[Join Artist's Mailing List](#)



Map data ©2011 Google -

[Bigger map and directions](#)

I create my sculptures in wax and finish them in bronze.

Media:
Sculpture

How to see my art or contact me:

At the gallery:

Bronze Coast Gallery, Cannon Beach, OR

CODA Gallery, Palm Desert, CA

Columbine Gallery, Loveland, CO

On my website: carolgoldsculpture.com

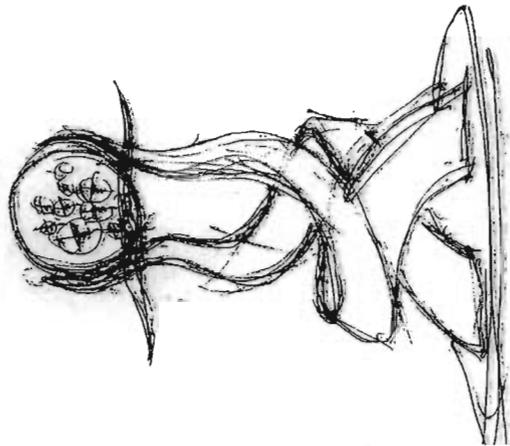
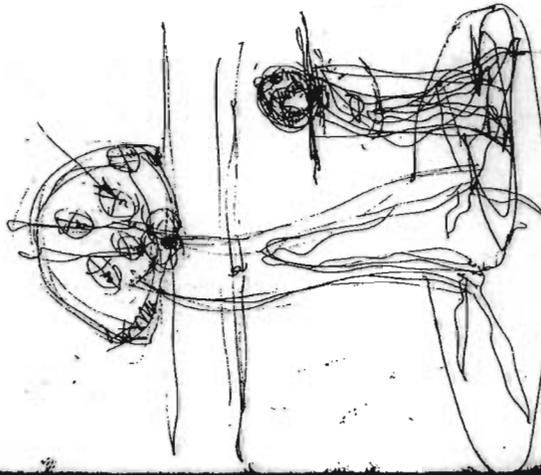
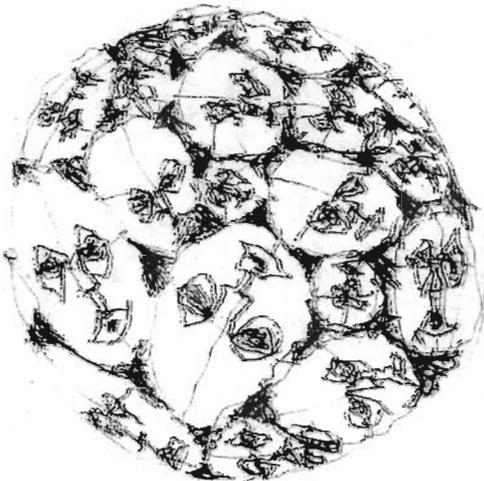
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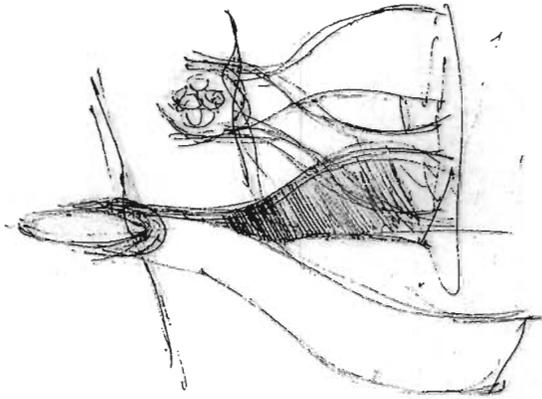
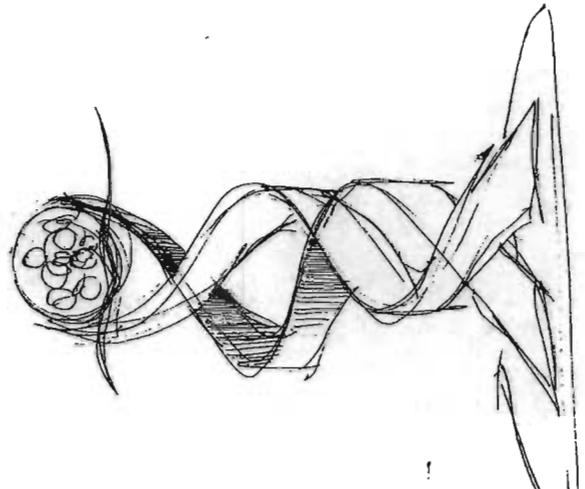
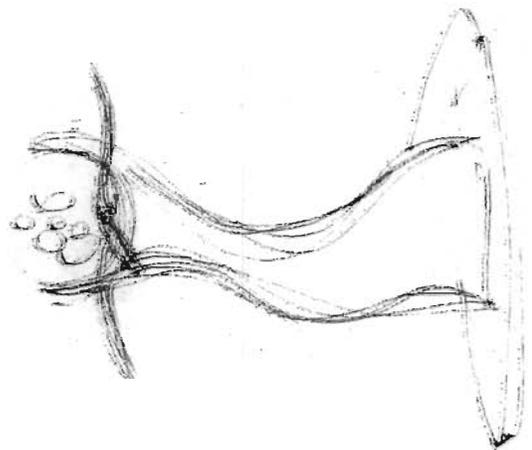
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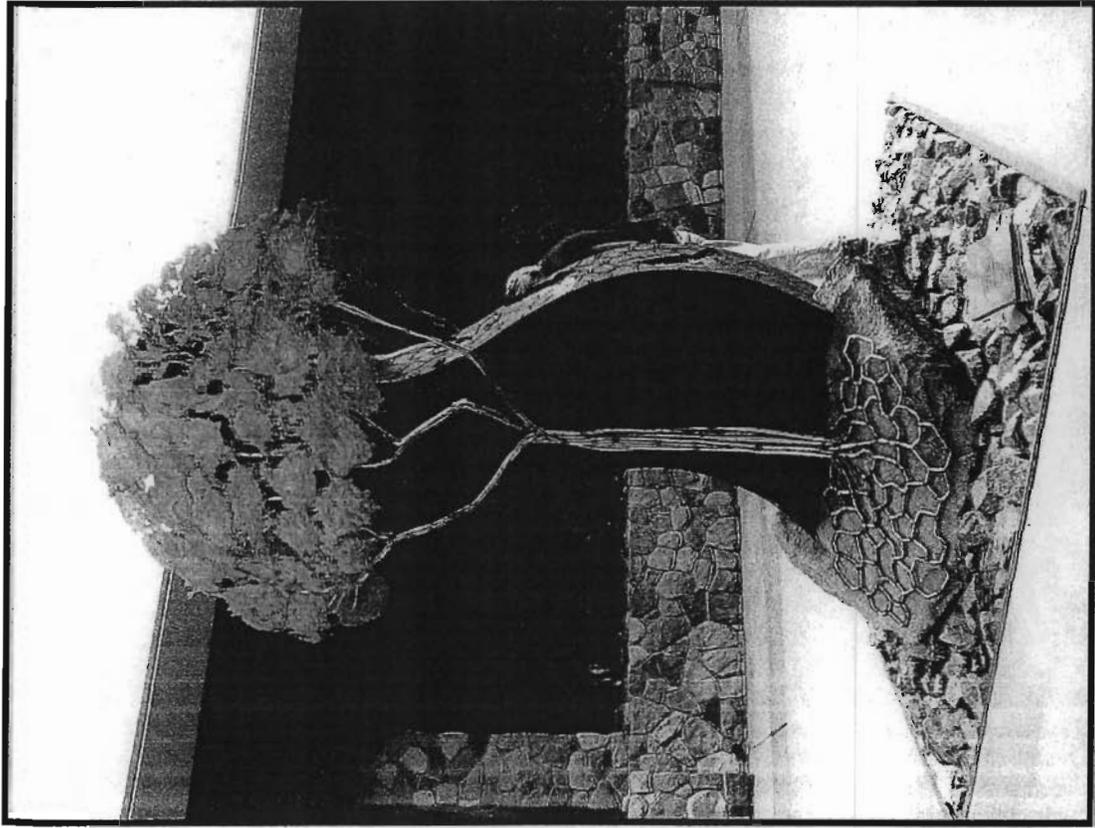
Map data ©2011 -

Steven Rieman



Thumbnail sketches for Ruben Castro Human Services Center SLR 5/2011





The Desert Willow sculpture concept took its inspiration from the desert willow tree. It is a discrete work that is in harmony with the both the landscape and architectural elements of the Westin's Desert Willow plaza entry.

The work is fabricated of handsome metals that will age gracefully. Bronze with a verde patina references the tree canopy. Stainless steel forms the trunk and root structure that reach around the large (5000lbs) boulder that provides the sculpture's base. A weathered steel, curving column (approx. 10' tall, 3' wide by 2' deep) is both visually handsome and provides structural soundness for the tree forms. Birds in flight are in bronze verde revealed on the narrow sides of the column.

Some beginning questions for me as I develop a concept for the Ruben Castro Human Services Center.

Referencing "Family"

Distant/close up view

Interactive opportunities/seating

Kinetic

Contextualize with architecture and landscape (Is there a landscape plan?)

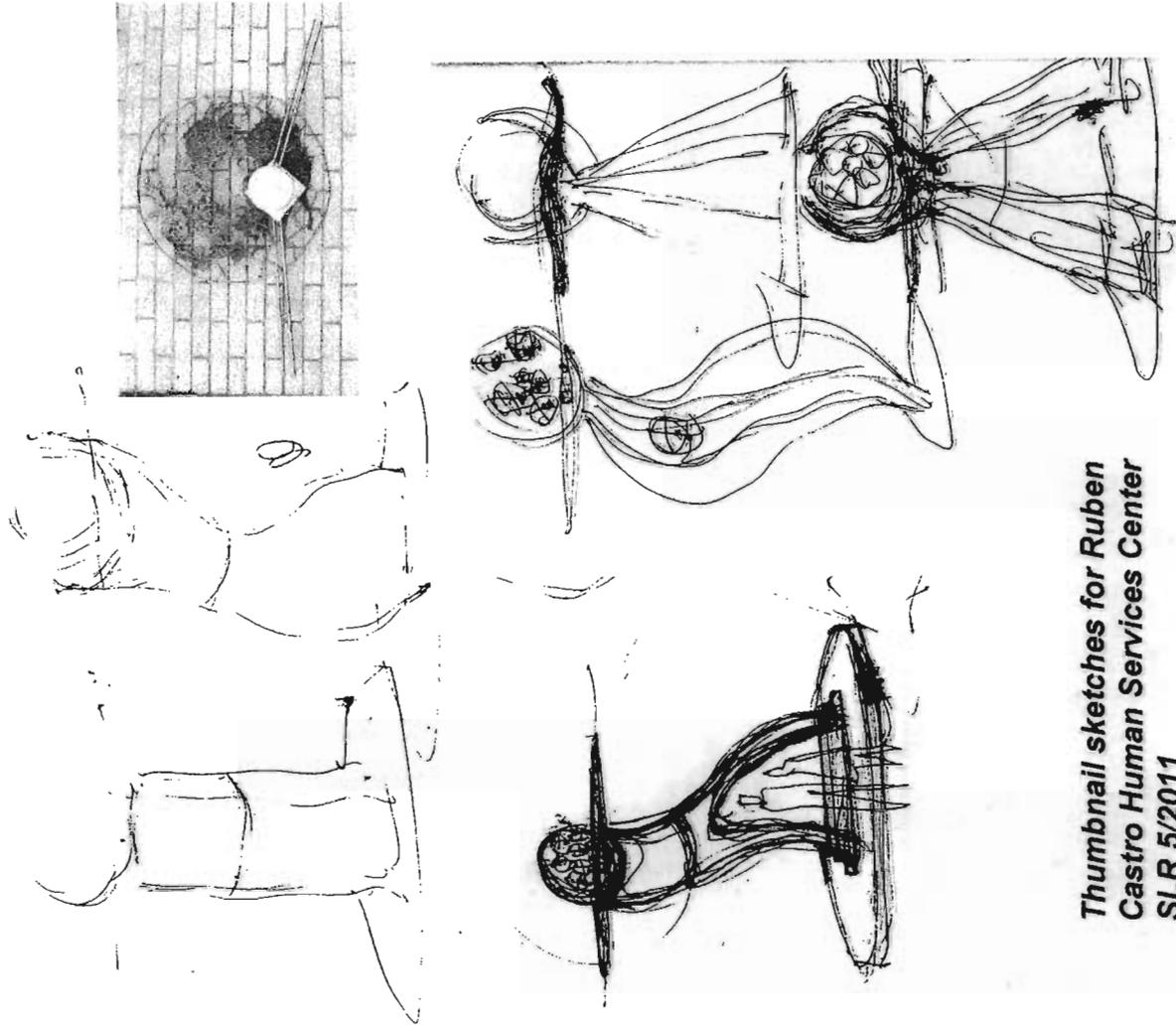
Culturally diverse/inclusive

Referential with representative details

How does it meet my personal demand for form and content blended with the goals of the commissioning entity?

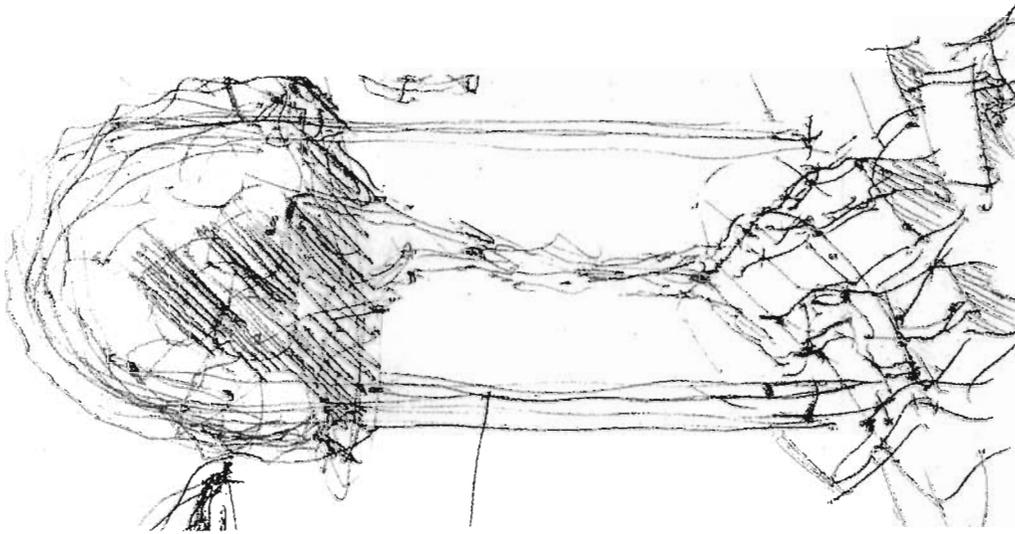
Material combinations that age gracefully

Possible community engagement in final project development—for instance--text incorporated within project.

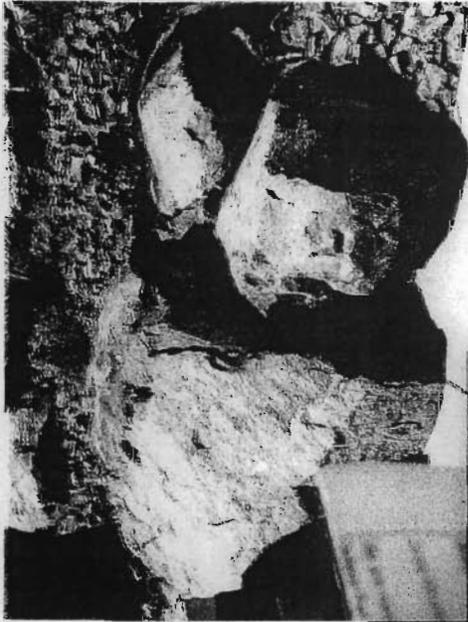


Thumbnail sketches for Ruben Castro Human Services Center SLR 5/2011

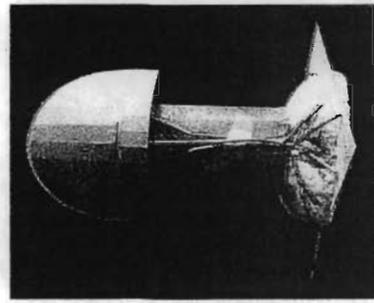
The recently completed work at the Westin Willow offers an example of how Steve works through a project.



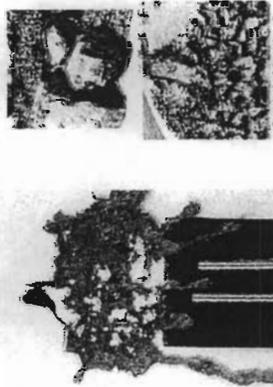
Some early Westin Willow concept sketches.



Steve's very first site visit revealed the architectural details and landscape elements that the sculpture needed to live with. And, Starwood had asked that a proposal based on the Desert Willow be submitted for their entry plaza.



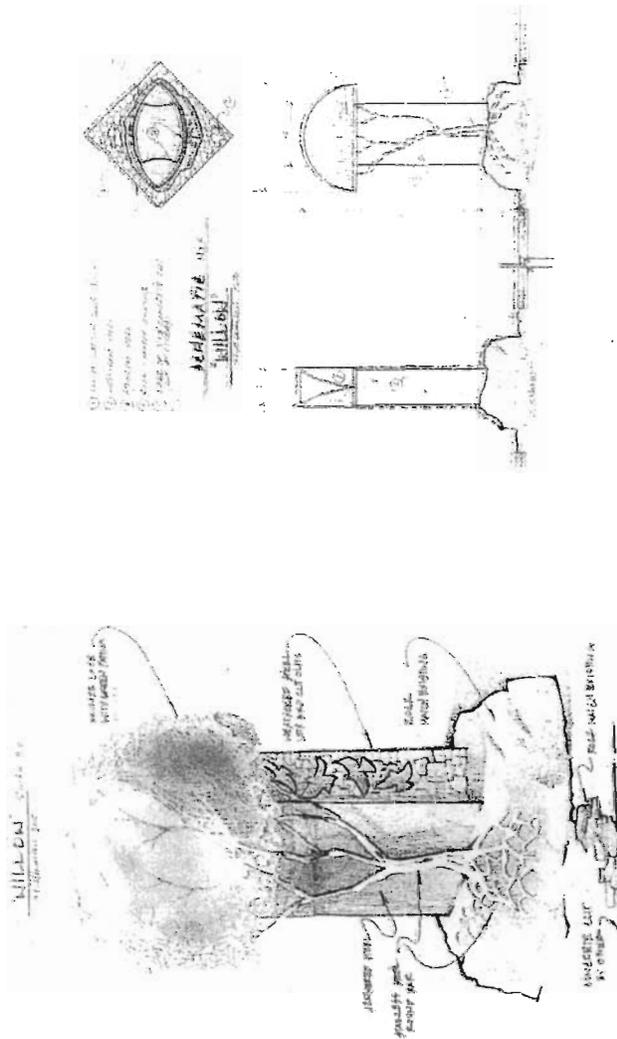
Quick 3 D study model



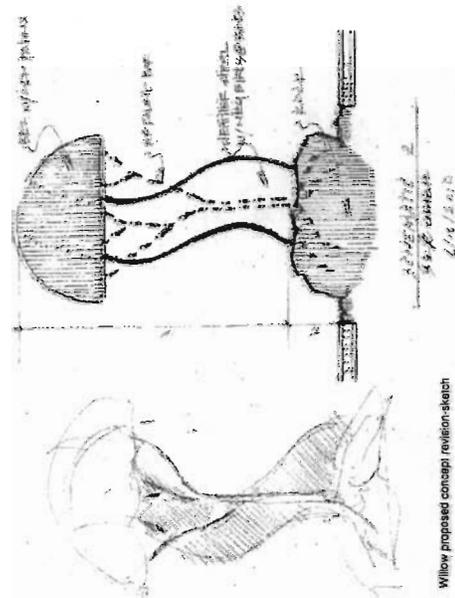
Examples of existing stone on site

Materials story board

Steve was engaged by Starwood to submit a specific proposal. After the initial concept was submitted, Steve and the architect discussed a modification and a second concept sketch was submitted and approved. Starwood determined they would like to contract for the sculpture and a fully detailed model was not necessary to further communicate the work.



Proposal sketches and preliminary details



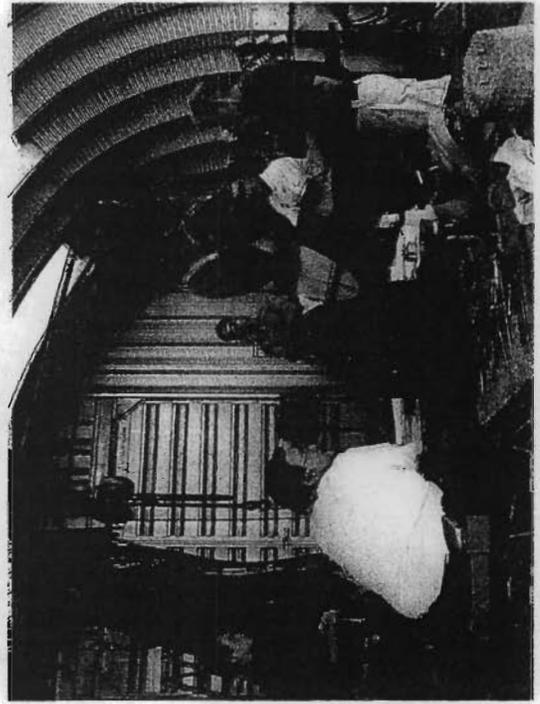
Willow proposed concept revision sketch

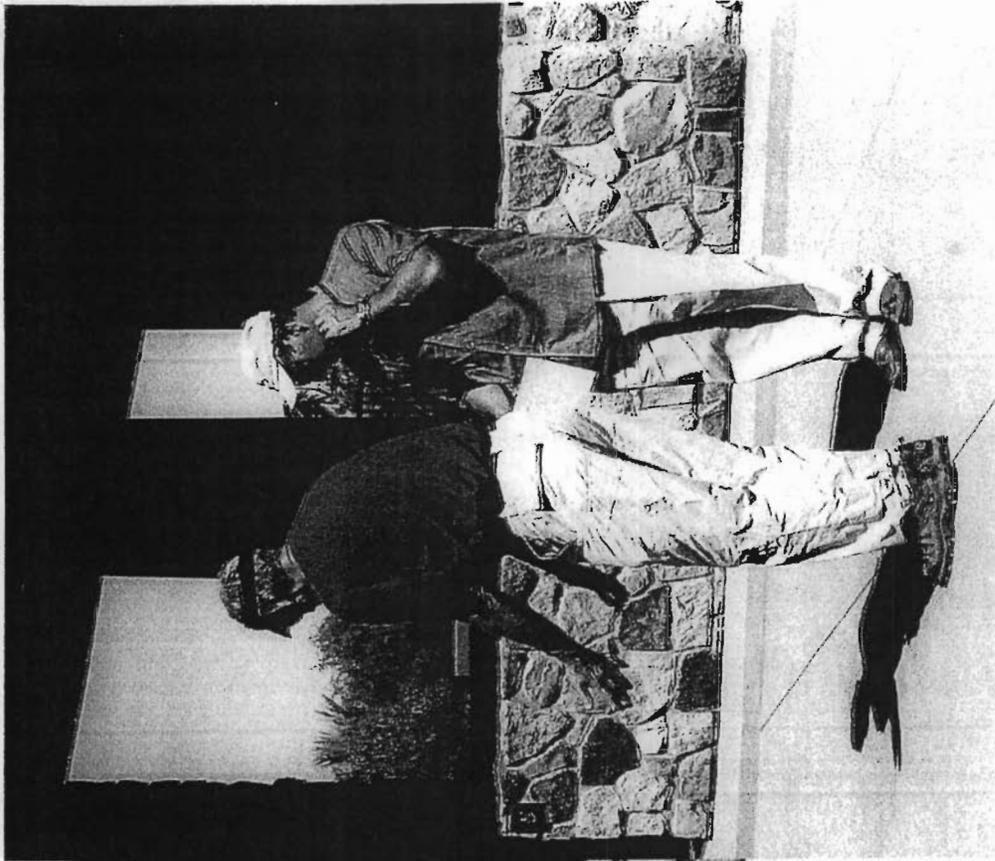
Modified mast structure



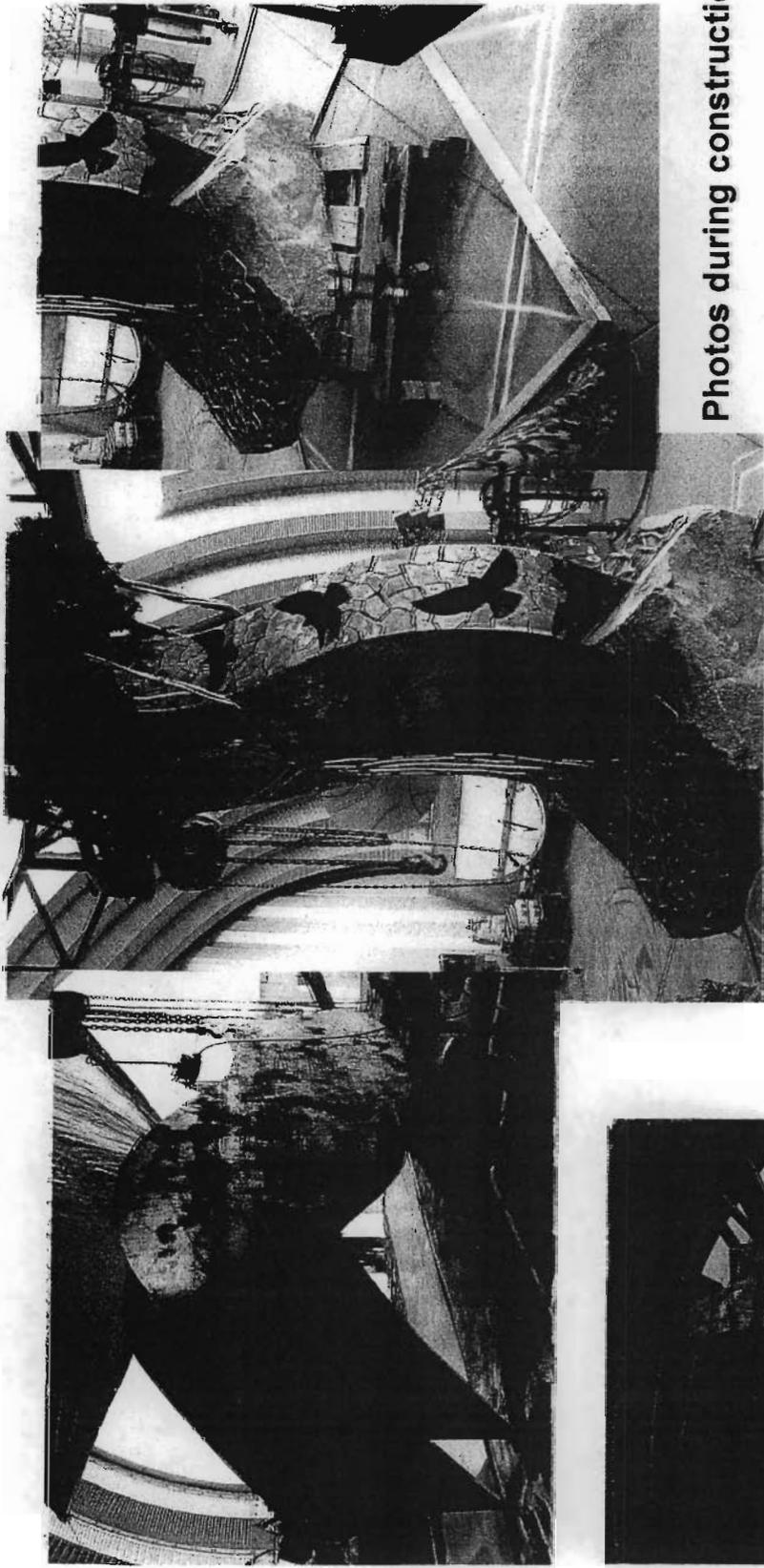
The Starwood Vacation Ownership's architectural director from Florida and his California team including civil engineer, the Palm Desert Westin Willow's architect, and the facility managers made a studio visit during construction.

A site visit gets everyone comfortable, especially if the responsibilities of sculpture construction and site preparation have been divided up.

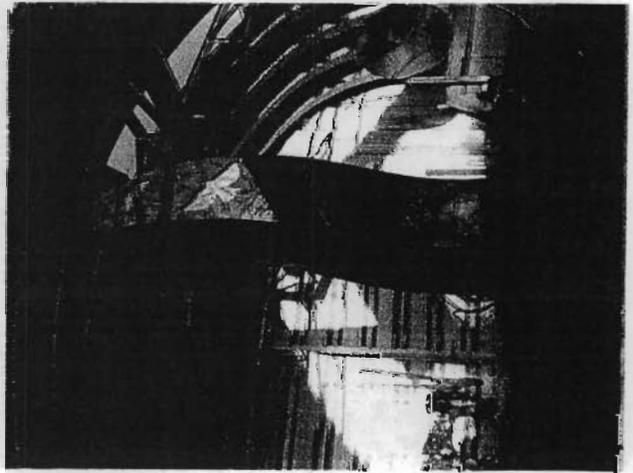




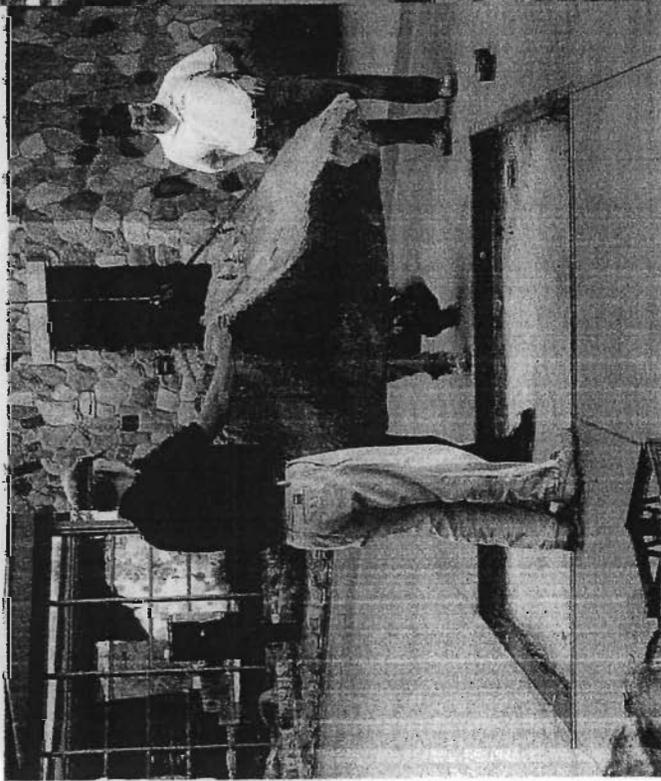
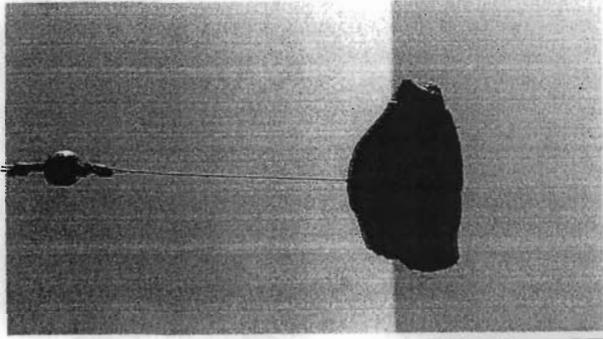
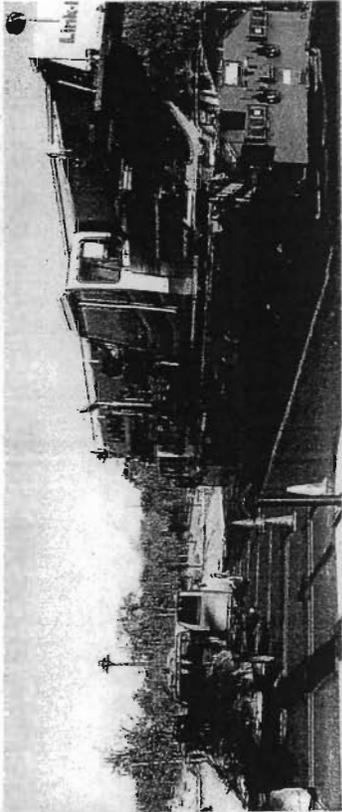
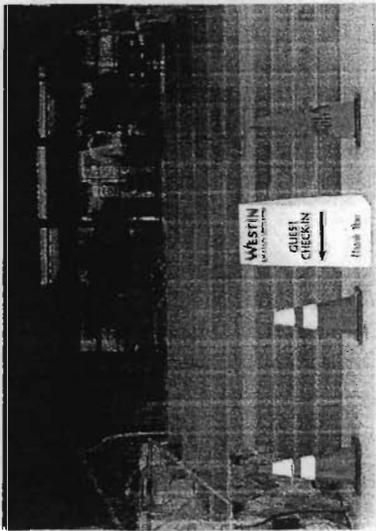
Architects and Steve meet back up at the Westin Willow site to discuss site modifications to be made for the sculpture's installation.



Photos during construction



Installation hardware ready to go



Westin Willow install 11/16/2010

STEVEN L. RIEMAN 1188 TAHOE AVE., YUCCA VALLEY, CA 92284 ph(760)364-3455
email: riemans@riemansculpture.com website: www.riemansculpture.com

Artist Statement

My work attempts to ask questions about the balance between advancing technology and the preservation of the natural environment. I find myself caught up in the incredible possibilities of a high tech world, yet recognizing the real possibility of destroying the natural world along the way making the technological advances meaningless and without value.

In my search for the means to visually communicate my feelings, I combine methods, materials and ideas that express various contrasts and relationships. My goal is to create a delicate balance, between competing natural and manmade influences, that in some way reveal their ever changing relationships.



ATTACHMENT 2

AGREEMENT FOR ARTISTIC DESIGN, FABRICATION, AND INSTALLATION SERVICES BETWEEN CITY OF MOORPARK AND _____

THIS AGREEMENT, made and entered into this ____ day of _____, 2011, between the City of Moorpark, a municipal corporation, hereinafter referred to as "CITY", and _____, an individual, hereinafter referred to as "ARTIST".

WITNESSETH:

WHEREAS, CITY has a need for certain artistic design, fabrication, and installation services to create public art ("Artwork") at the Ruben Castro Human Services Center located at 610 Spring Road ("Project Site"); and

WHEREAS, CITY desires to contract for such services with a private artist; and

WHEREAS, CITY wishes to retain ARTIST for said services consistent with a scope of work proposal dated _____, which is attached hereto as Exhibit A and incorporated herein by this reference as though set forth in full.

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

CITY does hereby retain ARTIST as an independent contractor in a contractual capacity to perform the services set forth in Exhibit A and in accordance with the terms and conditions hereinafter set forth herein and with the authorities and responsibility ordinarily granted to this type of work. In the event there is a conflict between the provisions of Exhibit A and this Agreement, the language contained in this Agreement shall take precedence.

I. COMPENSATION AND SERVICES

The ARTIST shall receive, and shall not exceed, one hundred thirty-eight thousand dollars (\$138,000.00) for work directly related to the services set forth in Exhibit A. ARTIST shall complete the tasks according to the schedule of performance, which is also set forth in Exhibit A. ARTIST shall submit payment requests as provided in subsection H. of Section III.

II. TERMINATION

This Agreement will terminate upon completion of the services list in Exhibit A, unless earlier terminated with or without cause by either party at any time with no less than ten (10) days written notice to ARTIST by CITY and no less than thirty (30) days written notice to CITY by ARTIST.

In the event of an early termination, ARTIST shall be compensated for such services up to the date of termination. Such compensation for work in progress shall be limited to actual services performed.

III. GENERAL CONDITIONS

- A. CITY shall not be called upon to assume any liability for the direct payment of any salary, wage or other compensation to any person employed by ARTIST performing services hereunder for CITY.
- B. ARTIST is and shall at all times remain as to CITY a wholly independent contractor. Neither CITY nor any of its officers, employees, servants, or agents shall have control over the conduct of ARTIST or any of the ARTIST's officers, employees, or agents, except as herein set forth.
- C. At the time of termination of this Agreement, all CITY files including but not limited to original documents, designs, drawings, reports, logos, compact disks, computer files, notes or other related materials, whether prepared by ARTIST or his subcontractor(s), or obtained in the course of providing the services to be performed pursuant to this Agreement shall be given to CITY upon twenty-four (24) hours notice.
- D. ARTIST agrees to defend, indemnify, protect and hold CITY, its agents, officers and employees, harmless from and against all claims asserted, or liability established for damages or injuries to any person or property including to ARTIST's employees, agents, representatives or subcontractors, or judgments arising directly or indirectly out of obligations, work or services herein undertaken, which arise from, are connected with, are caused or claimed to be caused by the acts or omissions of the ARTIST, or the ARTIST's employees, agents, representatives or subcontractors. The obligation to indemnify shall be effective even if the passive negligence of the CITY, its agents, officers or employees contributes to the loss or claim.

The ARTIST further agrees that the duty to defend includes attorneys fees and all costs associated with enforcement of this indemnification provision, defense of any claims arising from this Project; and, where a conflict of interest exists, or may exist between the ARTIST and the CITY, the reasonable value of attorneys fees and all costs if the CITY chooses, at its own election, to conduct its own defense or participate in its own defense of any claim related to this Project. The ARTIST's duty to indemnify and hold harmless shall not include any claims or liability arising from the established active negligence, sole negligence, or willful misconduct of the CITY, its agents, officers or employees.

Without in any way limiting the generality of the foregoing, the ARTIST represents and warrants that any materials or deliverables, including but not limited to the Artwork Design and the Artwork (Works), provided under this contract are either original, not encumbered and do not infringe upon the copyright, trademark, patent or other intellectual property rights of any

third party, or are in the public domain. If deliverables, materials or Works provided hereunder become the subject of a claim, suit or allegation of copyright, trademark or patent infringement, CITY shall have the right, in its sole discretion, to require ARTIST to produce, at ARTIST's own expense, new non-infringing materials, deliverables or Works as a means of remedying any claim of infringement in addition to any other remedy available to the CITY under law or equity. ARTIST further agrees to indemnify and hold harmless the CITY, its officers, employees and agents from and against any and all claims, actions, costs, judgments or damages of any type alleging or threatening that any materials, deliverables, supplies, equipment, services or Works provided under this contract infringe the copyright, trademark, patent or other intellectual property or proprietary rights of any third party (Third Party Claims of Infringement). If a Third Party Claim of Infringement is threatened or made before ARTIST receives payment under this contract, CITY shall be entitled, upon written notice to ARTIST, to withhold some or all of such payment.

The CITY does not and shall not waive any rights that it may have against the ARTIST by reason of this Section, because of the acceptance by the CITY, or the deposit with the CITY, of any insurance policy or certificate required pursuant to this agreement between the ARTIST and the CITY. The hold harmless and indemnification provisions shall apply regardless of whether or not said insurance policies are determined to be applicable to any losses, liabilities, damages, costs and expenses described in this Section.

- E. In the event ARTIST hires employees other than officers, then ARTIST shall provide workers' compensation insurance as required by the California Labor Code. If any class of employees engaged by ARTIST in work under this agreement is protected by the workers' compensation law, ARTIST shall provide adequate insurance for the protection of such employees consistent with the insurance coverage requirements in Exhibit B, attached hereto and incorporated herein by this reference as though set forth in full.
- F. ARTIST shall maintain prior to the beginning of and for the duration of this Agreement general liability and automobile insurance coverage as specified in Exhibit B, attached hereto and incorporated herein by this reference as though set forth in full.
- G. ARTIST shall not assign this Agreement or any of the rights, duties, or obligations hereunder. It is understood and acknowledged by the parties that ARTIST is uniquely qualified to perform the services provided for in this Agreement.
- H. Payment to ARTIST shall be made by CITY within thirty (30) days of receipt of invoice, except for those which are contested or questioned and returned by CITY, with written explanation within thirty (30) days of receipt

of invoice. ARTIST shall provide to CITY a written response to any invoice contested or questioned and further, upon request of CITY, provide CITY with any and all documents related to any invoice. Invoices shall be submitted on a monthly basis at the end of each month.

- I. Any notice to be given pursuant to this Agreement shall be in writing and all such notices and any other document to be delivered shall be delivered by personal service or by deposit in the United States mail, certified or registered, return receipt requested, with postage prepaid, and addressed to the party for who intended as follows:

To: City of Moorpark
Attn: City Manager
799 Moorpark Avenue
Moorpark, CA 93021

To: _____

Either party may, from time to time, by written notice to the other, designate a different address, which shall be substituted for the one above specified. Notices, payments and other documents shall be deemed delivered upon receipt by personal service or upon deposit in the United States mail.

Nothing contained in this Agreement shall be deemed, construed, or represented by CITY or ARTIST or by any third person to create the relationship of principal or agent, or of a partnership, or of a joint venture, or of any other association of any kind or nature between CITY and ARTIST.

- J. This Agreement constitutes the entire agreement of the parties concerning the subject matter hereto and all prior written agreements or understandings, oral or written, are hereby merged herein. This Agreement shall not be amended in any way except by a writing expressly purporting to be such an amendment, signed and acknowledged by both of the parties hereto.
- K. Should interpretation of this Agreement, or any portion thereof be necessary, it is deemed that this Agreement was prepared by the parties jointly and equally, and shall not be interpreted against either party on the ground that a party prepared the Agreement or caused it to be prepared.
- L. No waiver of any provision of this Agreement shall be deemed, or shall constitute a continuing or subsequent waiver of the same provision. No waiver shall be binding, unless executed in writing by the party making the waiver.

- M. In the event any action, suit or proceeding is brought for the enforcement of, or the declaration of any right or obligation pursuant to this Agreement or as a result of any alleged breach of any provision of this agreement, the prevailing party shall be entitled to recover its costs and expenses, including reasonable attorneys' fees, from the losing party, and any judgment or decree rendered in such a proceeding shall include an award thereof.
- N. Cases involving a dispute between CITY and ARTIST may be decided by an arbitrator if both sides agree in writing to arbitration and on the arbitrator selected, with costs proportional to the judgment of the arbitrator.
- O. This Agreement is made, entered into, executed in Ventura County, California, and any action filed in any court or for arbitration for the interpretation, enforcement or other action to herein, shall be filed in the applicable court in Ventura County, California.
- P. The captions and headings of the various Articles and Paragraphs of this Agreement are for convenience and identification only and shall not be deemed to limit or define the content of the respective Articles and Paragraphs hereof.
- Q. ARTIST agrees that he/she has no interest, nor shall he/she acquire any interest, directly or indirectly, which will conflict in any manner or degree with the performance of the services hereunder. ARTIST further agrees that he/she has not contracted with nor is performing any services directly or indirectly, with the developer(s) and/or property owner(s) and/or firm(s) and/or partnerships and/or public agencies owning property and/or processing an entitlement application for property in the City of Moorpark or its Area of Interest, and further agrees that he/she shall provide no service or enter into any agreement with any developer(s) and/or property owner(s) and/or firms(s) and/or partnership(s) and/or public agency(ies) owning property and/or processing an entitlement application for property in the City of Moorpark or its Area of Interest, prior to completion of the term of this Agreement.

With the exception of Section I. (Compensation and Services) of this Agreement, neither ARTIST nor any member of his immediate family shall have any economic interest, or acquire or receive any economic interest, directly or indirectly in any manner or degree arising out of the performance of this Agreement, including, but not limited to, economic interests in any performance or production at the theater during the term of this Agreement.

ARTIST further agrees he/she shall provide no service or enter into any agreement with any individual or entity that has an agreement to provide services, materials, or equipment to City of Moorpark without the prior written consent of the City Manager.

ARTIST also agrees he/she will not accept a gift from any person or entity doing business with the CITY. For purposes of this Agreement, a gift is defined as provided for in Government Code Section 87300 et seq. and Title 2, Division 6, California Code of Regulations, Section 18730 and amendments or supplementary thereto.

- R. ARTIST agrees that he/she shall not provide a reference or response to personnel and work experience related inquiries pertaining to any current or prior employees of CITY and shall refer all such matters to the CITY's Human Resources office.
- S. If any portion of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.
- T. ARTIST shall provide bi-monthly progress reports to the CITY detailing the ARTIST's activities.
- U. The ARTIST retains all copyrights to any and all of the ARTIST's Submissions and, except as provided below, to the Artwork:

Irrevocable License to Reproduce for Non-Commercial Purposes. The ARTIST hereby grants the CITY, without charge to the CITY, irrevocable license to make, or cause to be made, photographs and other two-dimensional reproductions of the Artwork or the Artwork Design for educational, public relations, tourist and arts promotional purposes without payment of a royalty to the ARTIST. For the purposes of this Agreement, the following are among those deemed to be permissible reproductions for the above cited purposes: in brochures and pamphlets pertaining to the CITY or State; in exhibition catalogues, books, slides, photographs, postcards, posters, and calendars; in art magazines, art books and art and news sections of newspapers; in general books and magazines not primarily devoted to art; as well as on slides, CDs, DVDs, film strips, video, computer websites and television.

- V. The Artwork may be removed from the Project Site at any time. The ARTIST and the CITY, acknowledge that the ARTIST may have certain rights under the federal Visual Artists Rights Act of 1990 (VARA). The ARTIST acknowledges and understands that the installation of the artwork at the Project Site may subject the Artwork to destruction, distortion, mutilation, or other modification due to the acts of third parties or to its removal, repair, maintenance, storage, or transfer of ownership.
- W. In consideration of the mutual covenants and conditions in this Agreement, and except as otherwise provided for in this Agreement, the ARTIST agrees to waive any right that the ARTIST may have under

(VARA) to prevent the removal of the Artwork, or the destruction, distortion, mutilation, or other modification of the Artwork which arises from, is connected with, or is caused or claimed to be caused by the removal, repair, maintenance, storage, or transfer of ownership of the Artwork by the CITY or CITY elected officials, officers, employees, agents, or representatives, or the presence of the Artwork at the Project Site.

- X. The ARTIST and CITY acknowledge that the ARTIST may have certain rights under California Civil Code Section 987 which are not preempted by VARA. In consideration of the mutual covenants and conditions in this Agreement, the ARTIST waives any rights which the ARTIST or the ARTIST's heirs, beneficiaries, devisees, or personal representatives may have under California Civil Code Section 987 to prevent the removal, destruction, distortion, mutilation, or other modification of the Artwork.

- Y. ARTIST's VARA rights under this Agreement shall cease with the ARTIST's death and do not extend to the ARTIST's heirs, successors or assigns.

IV. RESPONSIBLE INDIVIDUAL

The individual directly responsible for ARTIST's overall performance of the Agreement provisions herein above set forth shall be _____.

The individual directly responsible for the CITY shall be the City Manager or his/her designee.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

CITY OF MOORPARK

ARTIST

By _____
Steven Kueny
City Manager

(type in ARTIST name)

ATTEST: _____
Maureen Benson
City Clerk

EXHIBIT A

ARTISTIC DESIGN, FABRICATION, AND INSTALLATION SERVICES SCOPE OF WORK AND SCHEDULE OF PERFORMANCE

The overall design principles for the artwork shall be consistent with the preliminary artist illustration approved by the City Council on July 20, 2011, except such revisions as may be approved by CITY for the final art work design. Design fees; travel expenses; all materials and fabrication costs; lighting and signage (if necessary), insurance costs; site or building preparation costs; traffic control costs; engineering expenses; shipping, transportation, and delivery of all art elements to the site; installation; any applicable permit fees and taxes; and any other expenses related to the design, fabrication, installation, and documentation are all included for the agreed upon compensation amount in Section I. (Compensation and Services of this Agreement, and as further described below.

Scope of Work for Artistic Design, Fabrication and Installation Services includes:

- Research, which includes examining the site, reviewing pertinent documents, meeting with the building's architect, CITY staff, and members of the community including user groups if required by CITY.
- Creation and submission of final art work design plan for CITY approval, with dimensions, materials, and site plan location included, consistent with preliminary proposal submitted for review of CITY's Arts Commission and approved by City Council.
- If required by CITY, creation and submission of construction documents for CITY approval prior to initiation of any construction activity, including prior to purchase, transportation, and delivery of materials.
- Participation in the approval process for construction documents, if necessary.
- Fabrication onsite with a public viewing and participation process to be approved by CITY prior to initiation of onsite work.
- Installation of all art elements included in final CITY approved art work design plan.
- Submission of documentation images during construction and of final constructed art work.
- Submission of a recommended maintenance report prior to notice of completion.
- Participation in ribbon-cutting ceremony and/or outreach to press.
- Coordination with CITY staff and representatives, as needed.

The Schedule of Performance is as follows:

To be added prior to execution of Agreement.

The CITY reserves the right to further revise this scope of work prior to execution of Agreement.

Exhibit "B"

INSURANCE REQUIREMENTS

Prior to the beginning of and throughout the duration of the Agreement, ARTIST will maintain insurance in conformance with the requirements set forth below. ARTIST will use existing coverage to comply with these requirements. If that existing coverage does not meet the requirements set forth here, it will be amended to do so. ARTIST acknowledges that the insurance coverage and policy limits set forth in this section constitute the minimum amount of coverage required. Any insurance proceeds available to CITY in excess of the limits and coverage required in this agreement and which is applicable to a given loss, will be available to CITY.

ARTIST shall provide the following types and amounts of insurance:

1. Commercial General Liability Insurance using Insurance Services Office "Commercial General Liability" policy form CG 00 01 or the equivalent. Defense costs must be paid in addition to limits. There shall be no cross liability exclusion for claims or suits by one insured against another. Limits shall be no less than \$1,000,000 per occurrence for all covered losses and no less than \$2,000,000 general aggregate.

ARTIST's policy shall contain no endorsements limiting coverage beyond the basic policy coverage grant for any of the following:

- Explosion, collapse or underground hazard (XCU)
- Products and completed operations
- Pollution liability
- Contractual liability

Coverage shall be applicable to CITY for injury to employees of ARTIST's, subcontractors or others involved in the project. Policy shall be endorsed to provide a separate limit applicable in this project.

2. Worker's Compensation on a state-approved policy form providing statutory benefits as required by law with employer's liability limits no less than \$1,000,000 per accident for all covered losses. ARTIST shall procure and maintain during the life of the contract, worker's compensation insurance or a valid certificate of consent to self-insure for all its employees engaged in or at the site of the project; and in case any of the work is sublet, the ARTIST shall require all subcontractors to similarly provide worker's compensation insurance for all the latter's employees unless such employees are covered by protection afforded by worker's compensation insurance carried by the ARTIST.

By submitting a bid pursuant to these specifications, ARTIST hereby certifies that it is aware of the provisions of Section 3700 et seq. of the Labor Code which require every employer to be insured against liability for Worker's Compensation.

In the event the Worker's Compensation Insurance submitted by the ARTIST becomes inoperative any time before the completion of the work, all work shall immediately cease until a new policy is obtained and any time so lost shall not entitle the ARTIST to any extension of time. Certificates shall unequivocally provide at least thirty (30) days written notice by certified mail to the CITY prior to cancellation or modification.

3. Business Auto Coverage on ISO Business Auto Coverage form CA 00 01 06 92 including symbol 1 (Any Auto) or the exact equivalent. Limits shall be no less than \$1,000,000 per accident, combined single limit. If ARTIST owns no vehicles, this requirement may be satisfied by a non-owned auto endorsement to the general liability policy described above. If ARTIST or ARTIST's employees will use personal autos in any way on this project, ARTIST shall provide evidence of personal auto liability coverage for each such person.
4. Excess or Umbrella Liability Insurance (Over Primary) if used to meet limit requirements, shall provide coverage at least as broad as specified for the underlying coverages. Any such coverage provided under an umbrella liability policy shall include a drop down provision providing primary coverage above a maximum \$25,000 self-insured retention for liability not covered by primary but covered by the umbrella. Coverage shall be provided on a "pay on behalf" basis, with defense costs payable in addition to policy limits. There shall be no cross liability exclusion precluding coverage for claims or suits by one insured against another. Coverage shall be applicable to CITY for injury to employees of ARTIST, subcontractors or others involved in the Work. The scope of coverage provided is subject to approval of CITY following receipt of proof of insurance as required herein. Limits are subject to review but in no event less than \$1,000,000 per occurrence and aggregate.

Insurance procured pursuant to these requirements shall be written by insurers that are admitted carriers in the state of California and with an A.M. Best rating of A- or better and a minimum financial size VII.

ARTIST and CITY agree as follows:

1. ARTIST agrees to endorse the third party general liability coverage required herein to include as additional insured CITY, its officials, employees and agents, using standard ISO endorsement No. CG 2010 with an edition date of 1985. ARTIST also agrees to require all contractors, subcontractors, and any one else involved in any way with the project contemplated by this Agreement to do likewise.
2. Any waiver of subrogation express or implied on the part of CITY to any party involved in this Agreement or related documents applies only to the extent of insurance proceeds actually paid. CITY, having required that it be named as an

additional insured to all insurance coverage required herein, expressly retains the right to subrogate against any party for sums not paid by insurance. For its part, ARTIST agrees to waive subrogation rights against CITY regardless of the applicability of any insurance proceeds, and to require all contractors, subcontractors or others involved in any way with the project(s) contemplated by this agreement, to do likewise.

3. All insurance coverage maintained or procured by ARTIST or required of others by ARTIST pursuant to this Agreement shall be endorsed to delete the subrogation condition as to CITY, or to specifically allow ARTIST or others providing insurance herein to waive subrogation prior to a loss. This endorsement shall be obtained regardless of existing policy wording that may appear to allow such waivers.
4. It is agreed by ARTIST and CITY that insurance provided pursuant to these requirements is not intended by any party to be limited to providing coverage for the vicarious liability of CITY or to the supervisory role, if any, of CITY. All insurance coverage provided pursuant to this or any other agreement (express or implied) in any way relating to CITY is intended to apply to the full extent of the policies involved. Nothing referred to here or contained in any agreement involving CITY in relation to the project(s) contemplated by this agreement is intended to be construed to limit the application of insurance coverage in any way.
5. None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to CITY and approved of in writing.
6. All coverage types and limits required are subject to approval, modification and additional requirements by the CITY, as the need arises. ARTIST shall not make any reductions in scope of coverage (e.g. elimination of contractual liability or reduction of discovery period) which may affect CITY's protection without CITY's prior written consent.
7. Proof of compliance with these insurance requirements, consisting of binders of coverage, or endorsements, or certificates of insurance, at the option of CITY, shall be delivered to CITY at or prior to the execution of this Contract. In the event such proof of any insurance is not delivered as required, or in the event such insurance is canceled at any time and no replacement coverage is provided, CITY has the right, but not the duty, to obtain any insurance it deems necessary to protect its interests under this or any other agreement and to pay the premium. Any premium so paid by CITY shall be charged to and promptly paid by ARTIST or deducted from sums due ARTIST, at CITY option.
8. ARTIST agrees to endorse, and to require others to endorse, the insurance provided pursuant to these requirements, to require 30 days notice to CITY and the appropriate tender prior to cancellation of such liability coverage and notice of any material alteration or non-renewal of any such coverage, and to require

contractors, subcontractors, and any other party in any way involved with the project contemplated by this agreement to do likewise.

9. It is acknowledged by the parties of this Agreement that all insurance coverage required to be provided by ARTIST or any subcontractor, is intended to apply first and on a primary non-contributing basis in relation to any other insurance or self insurance available to CITY.
10. ARTIST agrees to ensure that subcontractors, and any other party involved with the project that is brought onto or involved in the project by ARTIST, provide the same minimum insurance coverage required of ARTIST. ARTIST agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. ARTIST agrees that upon request, all agreements with subcontractors and others engaged in the project will be submitted to CITY for review.
11. ARTIST agrees that all layers of third party liability coverage required herein, primary, umbrella and excess, will have the same starting and expiration date. ARTIST agrees further that all other third party coverages required herein will likewise have concurrent starting and ending dates.
12. ARTIST agrees not to self-insure or to use any self-insured retentions or deductibles on any portion of the insurance required herein and further agrees that it will not allow any contractor, subcontractor, Architect, Engineer or other entity or person in any way involved in the performance of work on the project contemplated by this agreement to self-insure its obligations to CITY. If ARTIST's existing coverage includes a deductible or self-insured retention, the deductible or self-insured retention must be declared to the CITY. At that time the CITY shall review options with the ARTIST, which may include reduction or elimination of the deductible or self-insured retention, substitution of other coverage, or other solutions.
13. The CITY reserves the right at any time during the term of the contract to change the amounts and types of insurance required by giving the ARTIST ninety (90) days advance written notice of such change. If such change results in substantial additional cost to the ARTIST, the CITY will negotiate additional compensation proportional to the increased benefit to CITY.
14. For purposes of applying insurance coverage only, all contracts pertaining to the project will be deemed to be executed when finalized and any activity commences in furtherance of performance under this agreement.
15. ARTIST acknowledges and agrees that any actual or alleged failure on the part of CITY to inform ARTIST of non-compliance with any insurance requirement in no way imposes any additional obligations on CITY nor does it waive any rights hereunder in this or any other regard.
16. ARTIST will renew the required coverage annually as long as CITY, or its employees or agents face an exposure from operations of any type pursuant to

this agreement. This obligation applies whether or not the agreement is canceled or terminated for any reason. The insurance shall include but not be limited to products and completed operations and discontinued operations, where applicable. Termination of this obligation is not effective until CITY executes a written statement to that effect.

17. ARTIST agrees to waive its statutory immunity under any workers' compensation statute or similar statute, in relation to the CITY, and to require all subcontractors and any other person or entity involved in the project contemplated by this Agreement to do likewise.
18. Requirements of specific coverage features are not intended as limitations on other requirements or as a waiver of any coverage normally provided by any given policy. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue, and is not intended by any party or insured to be all-inclusive.
19. Any provision in any of the construction documents dealing with the insurance coverage provided pursuant to these requirements is subordinate to and superseded by the requirements contained herein. These insurance requirements are intended to be separate and distinct from any other provision in this Agreement and are intended by the parties here to be interpreted as such.
20. All liability coverage provided according to these requirements must be endorsed to provide a separate aggregate limit for the project that is the subject of this agreement and evidencing products and completed operations coverage for not less than two years after issuance of a final certificate of occupancy by all appropriate government agencies or acceptance of the completed work by CITY.
21. ARTIST agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge CITY or ARTIST for the cost of additional insurance coverage required by this Agreement. Any such provisions are to be deleted with reference to CITY. It is not the intent of CITY to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against CITY for payment of premiums or other amounts with respect thereto.