

PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS  
AGENDA ITEM SUMMARY

Meeting Date: February 15, 2011 [ X ] Consent [ ] Regular  
[ ] Ordinance [ ] Public Hearing

Department: Facilities Development & Operations

I. EXECUTIVE BRIEF

**Motion and Title:** Staff recommends motion to approve: an Agreement with the City of Delray Beach (City) for Public Art Consulting Services for public art administrative services.

**Summary:** This Agreement provides for the provision of public art administrative services to the City, by FDO (Art in Public Places Program). The services are to be charged on an hourly basis at a cost of \$65/hr/person. In addition, the City shall pay for reimbursable expenses invoiced at the actual cost of expenditures incurred by the County. The term of this Agreement is for one (1) year from the date of execution by the County. The Agreement provides for five (5) options to renew each for a period of one (1) year if agreeable to both City and County. Through this Agreement, FDO will provide public art administrative services to the City, including but not limited to, project scope development, project promotion, artist selection, contract administration, project design, fabrication and installation, ribbon cutting ceremony coordination, public art master planning, and educational workshops for the City's Public Art Advisory Board. (FDO ADMIN) District 4 (MJ)

**Background and Justification:** The City has determined that it is beneficial to the City to utilize the County's Art in Public Places Program to provide project management services for the City's public art program. The City does not currently have a public art staff position and in lieu of outsourcing its public art project management needs to a private consultant, the City has chosen FDO/ADMIN for those services. No additional personnel will be required within FDO/ADMIN to perform these services.

**Attachments:**  
Agreement

Recommended By: Arman Wolf 1/20/11  
Department Director Date

Approved By: [Signature] 2/2/11  
County Administrator Date

## II. FISCAL IMPACT ANALYSIS

### A. Five Year Summary of Fiscal Impact:

Fiscal Years	2011	2012	2013	2014	2015
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	(\$17,510)	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	X (\$17,510)				=====
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget: Yes No X

Budget Account No: Fund \_\_\_\_\_ Dept \_\_\_\_\_ Unit \_\_\_\_\_ Object \_\_\_\_\_

### B. Recommended Sources of Funds/Summary of Fiscal Impact:

\*Services will be provided on an as needed basis and will be billed to the City for reimbursement.

### C. Departmental Fiscal Review: \_\_\_\_\_

## III. REVIEW COMMENTS

### A. OFMB Fiscal and/or Contract Development Comments:

X \$17,510 is an estimate based on \$65/hr/person.

OFMB

Contract Development and Control

### B. Legal Sufficiency:

This Contract complies with our contract review requirements.

Assistant County Attorney

### C. Other Department Review:

Department Director

This summary is not to be used as a basis for payment.

**AGREEMENT FOR PUBLIC ART CONSULTING SERVICES**

THIS AGREEMENT, made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the CITY of Delray Beach, Florida, hereinafter referred to as "CITY", and Palm Beach County, hereinafter referred to as "COUNTY".

WITNESSETH:

WHEREAS, the CITY represents that it is a Florida municipal corporation with the authority to engage the COUNTY and accept the obligation for payment for the services desired; and,

WHEREAS, the CITY desires to engage the COUNTY to perform certain public art professional services pertinent to such work in accordance with this AGREEMENT and with certain service authorizations to be issued at the time of or subsequent to execution of this AGREEMENT; and

WHEREAS, this AGREEMENT does not entitle the COUNTY to any fees for any particular project without first receiving a service authorization; and

WHEREAS, the COUNTY desires to provide such professional services in accordance with this AGREEMENT and service authorizations.

NOW, THEREFORE, in consideration of the premises and the mutual benefits which will accrue to the parties hereto in carrying out the terms of this AGREEMENT, it is mutually understood and agreed as follows:

I. DEFINITIONS; GENERAL CONDITIONS

- A. THE SCOPE OF WORK is to be implemented in phases as set forth by this Agreement and by individual service authorization forms (hereinafter a "SERVICE AUTHORIZATION" or "SERVICE AUTHORIZATIONS"), a sample

of which is attached hereto as Exhibit "A" and made a part hereof, and as also may be added as approved by the City from time to time.

- B. The services to be performed by the COUNTY, and time for completion of the particular phase of the work by COUNTY, shall be authorized by a SERVICE AUTHORIZATION. The SERVICE AUTHORIZATION shall include 1) the scope of work to be performed; 2) the cost for the services to be provided by the COUNTY (including an itemization of man-hours, wage rates, reimbursable expenses, and other related costs); 3) schedule for completion; 4) the name of PROJECT MANAGER; and 5) the overall budget for the art project. The SERVICE AUTHORIZATION shall be signed by the CITY and the COUNTY'S authorized representative. A CITY purchase order shall be issued with authorization identifying funds and amount of expenditures. The purchase order authorization is established in the CITY Code of Ordinances as the mechanism by which service authorizations are approved and contain provisions for expenditure levels of approval authorizations. The terms of this AGREEMENT supersede the terms stated on the purchase order.
- C. PHASES: A phased approach may be utilized. The CITY and the COUNTY shall have the right to negotiate the terms of each phase as contained within each SERVICE AUTHORIZATION, and to not proceed with a SERVICE AUTHORIZATION, if the parties cannot agree to the terms of the SERVICE AUTHORIZATION. This phased approach shall not waive the CITY's right to terminate the COUNTY contract during any phase of the project.
- D. PROJECT MANAGER: When referenced, the PROJECT MANAGER shall be Palm Beach County Art in Public Places Administrator who is currently Elayna Toby-Singer. If Ms Toby-Singer is no longer the Palm Beach County Art in Public Places Administrator, then written agreement between CITY and COUNTY shall be obtained prior to utilizing new PROJECT MANAGER.
- II. GENERAL DUTIES OF COUNTY
- A. The relationship of the COUNTY to the CITY will be that of a professional consultant, and the COUNTY will provide the professional and technical services required under this AGREEMENT in accordance with acceptable professional practices and ethical

standards. No employer/employee relationships shall be deemed to be established and the COUNTY, its agents, subcontractors, and employees shall be independent contractors at all times.

- B. The CITY has determined that the Art in Public Places Administrator of the COUNTY's Facilities Development & Operations Department is qualified to perform the services set forth in this Agreement (the "PROJECT MANAGER"). This PROJECT MANAGER will be subject to the continuous approval of the CITY. The PROJECT MANAGER shall manage and coordinate CITY projects and is authorized to act on behalf of the COUNTY on any other related matter with respect to performance of services for the CITY in accordance with the AGREEMENT. In the event that the PROJECT MANAGER is not satisfactory to the CITY, The CITY shall submit a request to the Director of the Facilities Development & Operations Department requesting the re-assignment of the PROJECT MANAGER. The PROJECT MANAGER is authorized to negotiate Service Authorizations and amendments on behalf of the COUNTY. Service Authorizations with a cumulative total of less than \$200,000 on a single City art project may be executed by the Director of Facilities, Development & Operations on behalf of the COUNTY.
- C. The COUNTY shall, by the terms of this Agreement, be an authorized representative of the CITY, and may execute all or part of the responsibilities and authorities on behalf of the CITY as specifically set forth in this Agreement as may be specifically delineated in a Service Authorization. In such capacity, the COUNTY shall consult with the CITY prior to making decisions on all matters and the CITY and COUNTY shall jointly determine matters which are of a nature and magnitude that approval by the CITY must be obtained prior to authorizing action. The parties agree and acknowledge that the CITY shall provide adequate oversight during the term of this AGREEMENT and SERVICE AUTHORIZATIONS and that the CITY shall be the final decision maker as to any of the services performed by COUNTY in accordance with this AGREEMENT and SERVICE AUTHORIZATIONS. At a minimum, the COUNTY must consult with, and obtain the approval of the CITY with regard to the following matters: (i) payments to the Artist; (ii) changes to the Artists' Contract; and (iii) changes to the

Project Scope. Under no circumstances shall the COUNTY be obligated to fund and project costs or be financially responsible for the changes in scope

- D. Professional and Technical Services. It shall be the responsibility of the COUNTY to work with the CITY and apprise it of solutions to problems and the approach or technique to be used towards accomplishment of the CITY'S objectives as set forth in SERVICE AUTHORIZATION, which will be made a part of this AGREEMENT upon execution by both parties.
- E. The scope of services to be provided shall be covered in detail in SERVICE AUTHORIZATIONS.F The CITY and COUNTY will work cooperatively to establish the overall budget for each SERVICE AUTHORIZATION, with the CITY retaining the final authority for budget approval. Increases or reductions to the overall budget of a project shall be approved by the appropriate CITY official and/or the Public Art Advisory Board (the "PAAB") and communicated to the COUNTY. Upon receipt of a revised overall budget, the COUNTY will determine whether an amendment to the applicable SERVICE AUTHORIZATION is required, and, if required, the parties will negotiate said change.
- G. The COUNTY shall be responsible for the professional quality, technical accuracy, timely completion, compliance with regulations and rules, and the coordination with all appropriate agencies of all specifications, reports and other services furnished by the COUNTY under this AGREEMENT. If the CITY determines there are any errors, omissions or other deficiencies in the COUNTY'S specifications, reports and other services, the COUNTY shall, without additional compensation, correct or revise said errors or omissions to the satisfaction of the CITY.
- H. Approval by the CITY of specifications, reports and incidental professional services or materials furnished hereunder shall not in any way relieve the COUNTY of responsibility for the technical adequacy of its work. The CITY'S review, approval or acceptance of, or payment for, any of the services shall not be construed to operate as a waiver of any rights under this AGREEMENT or of any cause of action arising out of the performance of this AGREEMENT.

- I. The COUNTY and its sub-consultants shall have no responsibility for the discovery, presence, handling or removal or disposal of or exposure of persons to hazardous materials in any form existing prior to construction at the project site, including but not limited to asbestos, asbestos products, polychlorinated biphenyl (PCB) or any other toxic substances.
- J. The PROJECT MANAGER shall attend all meetings, as specified or as defined in each SERVICE AUTHORIZATION of the City Commission or any City approval Board, where the project is discussed, unless the City's representative declares such attendance and participation is not necessary. In addition, the PROJECT MANAGER shall attend all additional meetings as may be required to facilitate the project.

III. DUTIES OF COUNTY: (SAME title as II)

If included in a Service Authorization issued by the CITY, COUNTY will perform the following duties. This list is not intended to be exhaustive and a Service Authorization may contain duties not listed but agreed to by the parties. A Service Authorization should contain all duties being assigned to the COUNTY by may require the CITY to issue a Notice to Proceed to the COUNTY in order to commence with next phase.

**A. *Scope Development Phase***

If the Scope Development Phase is authorized, the following requirements shall apply.

1. Scope Development Meeting with PAAB and User Group(s).
2. Coordinate with CITY in the development of each SERVICE AUTHORIZATION, including, but not limited to, the overall public art project budget and the cost of services to be provided by the COUNTY.
3. Prepare the Call to Artists (Project Request for Qualifications or RFQ) and coordinate with CITY, PAAB and User Group(s).

**B. Project Promotion Phase**

If the Project Promotion Phase is authorized, the following requirements will apply:

1. Prepare advertisement for public art projects.
2. Prepare press releases and information to be posted on web site(s) to help promote public art projects.
3. Coordinate all promotional material with City.

**C. Artist Selection Phase**

If the Artist Selection Phase is authorized, the following requirements shall apply:

1. Respond to all Artists questions related to the RFQ.
2. Review all submittals from Artists.
3. Prepare packages for PAAB members which include: submittals, scoring sheets and selection criteria for short listing Artists.
4. Coordinate between submittals and PAAB to ensure Artists attendance at short list selection meeting and facilitate the shortlist meeting and facilitate short list meeting.
5. Prepare minutes of short list meeting to be distributed to PAAB members.
6. Coordinate and attend meeting with Artists and user at site.
7. Facilitate final Artist selection meeting, notify selected Artist and prepare minutes of selection meeting.

**D. Contract Administration Phase**

If the Contract Administration Phase is authorized, the following requirements shall apply:

1. Work with selected Artist and the CITY in preparing all contract documents and exhibits to be included in the contract.
2. Obtain final approval of the CITY for Artist contract documents and exhibits.



3. Verify Artist's progress and approve all pay applications.
4. Prepare all final documentation needed to close out project, including all maintenance documents that need to be filed with the CITY.

**E. Design Phase**

If Design Phase is authorized, the following requirements shall apply:

1. Coordinate with Artist all aspects of design, engineering and permitting that are required.
2. Oversee design milestones and report to PAAB on progress of design.
3. Obtain required design and material approvals for Artist from PAAB and/or CITY.
4. Coordinate any required design meetings.

**F. Fabrication and Installation Phase**

If Fabrication and Installation Phase is authorized, the following requirements shall apply:

1. Verify all materials and workmanship of art piece.
2. Facilitate review and approval of all Artists structural engineering and construction documents with CITY and PAAB.
3. Coordinate the permit process between Artist and CITY.
4. Coordinate and oversee art installation.

**G. Ribbon Cutting Phase**

If Ribbon Cutting Phase is authorized, the following requirements shall apply:

1. Coordinate Ribbon Cutting event to ensure attendance by the Artist, CITY and PAAB, as well as inviting the public.
2. Attend event and provide news release on event.

#### **H. Public Art Donation Phase**

If Public Art Donation Phase is authorized, the following requirements shall apply:

1. Develop policies and procedures for accepting art donations. Identify required exhibits to be included in agreement.
2. Work with Artist in execution of Public Art Donation agreement.
3. Review donation requests and work with CITY and PAAB to determine appropriateness of donation.
4. Work with stakeholders; CITY, PAAB, Donor and User to identify appropriate location for donated art piece.
5. Facilitate permits, etc. required to install donated art.

#### **I. Education Workshops for PAAB Phase**

If Education Workshops for PAAB Phase is authorized, the following requirements shall apply:

1. Provide examples of National Best Practices along with sample of Public Art Projects.
2. Provide details on the steps required in the Public Art process, from project scope to ribbon cutting.
3. Provide information on National Standards for developing Call to Artists (RFQ's).
4. Provide National Standards for Public Art contract components.
5. Provide information on Public Art maintenance.

#### **IV. DATA AND SERVICES TO BE PROVIDED BY THE CITY**

The CITY shall provide the following:

- A. Other data and services to be agreed upon in SERVICE AUTHORIZATIONS.
- B. Pay for all legal advertisements incidental to obtaining RFQ's from Artists.

- C. The CITY Manager or his designee shall act as the CITY'S representative with respect to the work to be performed under this AGREEMENT. The CITY Manager or his designee shall have the authority to the extent authorized by the CITY Charter and Code of Ordinances to exercise the rights and responsibilities of the CITY provided in this contract. Said authority may include but is not limited to: transmit instructions, stop work, receive information, drafting and negotiation of contracts with selected Artists, interpret CITY'S policies and decisions with respect to materials, equipment, elements, and systems pertinent to the services covered by this AGREEMENT.
- D. Pay all permit application filing fees.
- E. Provide access to CITY facilities.
- F. Coordinate with the COUNTY in establishing, and where necessary, amending, the overall budget for each SERVICE AUTHORIZATION. The CITY shall have final approval on the overall budget amount.

V. TIME OF PERFORMANCE

- A. The COUNTY will begin work promptly after issuance of a Notice to Proceed.
- B. The COUNTY'S services called for under the AGREEMENT shall be completed in accordance with the schedule and completion date contained in each SERVICE AUTHORIZATION. If the COUNTY'S services are unreasonably delayed by the CITY in excess of 180 days, the time of performance and compensation shall be renegotiated, provided; however, the COUNTY as a condition precedent to renegotiations shall notify the City within fifteen (15) calendar days at the end of the delay of COUNTY proposed additional costs incurred by reason of said delay.

VI. AGREEMENT PERIOD

The term for this Agreement shall be for one (1) year from the date of execution by the CITY. The Agreement may be renewed for five one (1) year terms if agreeable to both

CITY and COUNTY. In the event a SERVICE AUTHORIZATION is still outstanding upon the expiration of the initial term or a renewal term, this AGREEMENT shall continue until such time as all outstanding SERVICE AUTHORIZATIONS, if any, that have been issued are completed. Each Service Authorization shall delineate a time for completion of the service to be rendered.

#### VII. COMPENSATION

- A. The CITY will compensate the COUNTY for the services performed on each SERVICE AUTHORIZATION in accordance with a negotiated not to exceed budgeted amount based on time charges which are based upon hourly rates, plus reimbursable expenses.

1. TIMES CHARGES/ NOT TO EXCEED BUDGETED AMOUNT

Computation of Time Charges/Not to Exceed Amount. Within each SERVICE AUTHORIZATION, the COUNTY will submit a not to exceed budget cost to the CITY for prior approval based on actual time charges which shall not exceed established hourly rates as shown in Exhibit B attached hereto. The CITY shall not be obligated to reimburse the COUNTY for costs incurred in excess of the not to exceed cost amount, unless Aa part of an original or amended Service Authorization is approved by CITY. Reimbursable expenses shall not be a part of the not to exceed amount and shall be reimbursed in accordance with Section VII.A.1.b. herein.

- a. The CITY agrees to pay the COUNTY compensation for services rendered based upon the established hourly salary rates as shown in Exhibit B for services rendered on CITY. The schedule of hourly rates as set forth in Exhibit B is attached hereto and made a part hereof.
- b. In addition, the CITY shall pay for reimbursable expenses invoiced at the actual cost of expenditures incurred by the COUNTY. The COUNTY will provide an estimate of reimbursable expenses for inclusion in the SERVICE AUTHORIZATION;

however, the CITY shall pay the actual cost of reimbursable expenses incurred by the COUNTY, whether the actual expenses exceed or are less than the estimated amount. :

- (1) Actual expense of transportation and lodging in accordance with CITY policy in effect at the time of travel when traveling in connection with each SERVICE AUTHORIZATION (including mileage within Palm Beach County accrued during the performance of this AGREEMENT and any SERVICE AUTHORIZATIONS), express courier charges, and permit fees paid for securing approval of authorities having jurisdiction over the project.
- (2) Actual expense of reproductions, of Drawings and Specifications including duplicate sets of the completion of each SERVICE AUTHORIZATION for the CITY'S review and approval.
- (3) Actual expenses of testing, laboratory services, and field equipment.
- (4) Actual expense of overtime work requiring higher than regular rates, when authorized by the CITY.
- (5) Actual expense of Auto Travel at the established CITY rate per mile. The COUNTY will make every attempt to combine site visits with COUNTY trips.

B. Total Compensation for all services shall not exceed the budget cost listed upon each SERVICE AUTHORIZATION, without written amendment.

- C. If the CITY determines that any price for services, however calculated provided by the COUNTY negotiated in connection with this AGREEMENT or any cost reimbursable under this AGREEMENT was increased by any significant sums because the COUNTY furnished incomplete or inaccurate costs or pricing data, then such price or cost shall be reduced accordingly and the SERVICE AUTHORIZATION shall be reduced accordingly and the SERVICE AUTHORIZATION shall be modified in writing to reflect such reduction.

#### VIII. PAYMENT

The CITY agrees that it will use its best effort to pay the COUNTY within thirty (30) calendar days from presentation of the COUNTY itemized report and invoice and approval of the CITY'S representative, unless additional time for processing is required for payments for basic services, subcontractual services, and reimbursable expenses as defined in Section VII. The COUNTY shall submit monthly invoices, as required in the SERVICE AUTHORIZATION, which shall include a report of work completed during the respective invoice period. Invoices shall be in a format consistent with those shown in Exhibit C, which is attached hereto and incorporated herein. The report shall be adequate in detail to describe work progress (% complete for each task) and written summaries of work completed. No payment request shall exceed the value of work and services performed by the COUNTY under the SERVICE AUTHORIZATION.

#### IX. MISCELLANEOUS PROVISIONS

##### A. Ownership Documents:

All reproducible drawings and CADD disks in a format compatible with CITY'S Computer system shall be given to the CITY. Details, design calculations, and all other documents and plans that result from the COUNTY SERVICES under this AGREEMENT shall become and remain the property of the CITY, including copyright rights, whether the project is completed or not, and will be delivered to the CITY upon demand. COUNTY reserves the right to retain a copy of all such documents for record purposes. Where such documents are required to be filed with governmental agencies, the COUNTY will furnish copies to the CITY upon request. The contract work is represented by hard copy documenta-

tion; software is provided to the CITY for convenience only.

B. Copies of Documents:

The COUNTY shall prepare sufficient copies of all documents necessary to obtain approval through the City's processes, as well as other governmental authorities. The CITY acknowledges that the materials cited in Paragraph IX A. and other data provided in connection with this Agreement which are provided by the COUNTY are not intended for use in connection with any project other than the project for which such materials are prepared. Any use by the CITY of such materials in connection with a project other than that for which such materials were prepared without prior written consent and adaptation by the COUNTY shall be at the CITY'S sole risk, and the COUNTY shall have no responsibility or liability therefore.

C. Insurance:

Without waiving the right to sovereign immunity as provided by Florida Statute, Chapter 768.28, the COUNTY acknowledges to be self-insured for General Liability and Automobile Liability under Florida's sovereign immunity statute with monetary waiver limits of \$100,000 Per Person and \$200,000 Per Occurrence; or such limits that may change and be set forth by the legislature.

The COUNTY acknowledges to be self-insured for Worker's Compensation & Employer's Liability insurance in accordance with Florida Statute, Chapter 440.

When requested, the COUNTY agrees to provide a Certificate of Insurance evidencing self-insurance and/or sovereign immunity status, which the CITY agrees to recognize as acceptable for the above mentioned coverages.

D. Authority to Contract:

The CITY represents that it is a Florida Municipal Corporation with the authority to engage the COUNTY for professional services described in the SERVICE AUTHORIZATIONS and to accept the obligation for payment for the services described in the SERVICE AUTHORIZATIONS.

E. Assignment:

The CITY and the COUNTY each binds itself and its successors, legal representatives, and assigns to the other party to this AGREEMENT and to the partners, successors, legal representatives, and assigns of such other party, in respect to all covenants of this AGREEMENT subject to budget considerations and requirements of law; and, neither the CITY nor the COUNTY will assign or transfer their interest in this AGREEMENT without the written consent of the other.

F. Confidential Information:

During all times that the COUNTY is employed on behalf of the CITY and at all times subsequent to the date of this contract, all discussions between the CITY and the COUNTY and all information developed or work products produced by the COUNTY during its employment and all matters relevant to the business of the CITY not otherwise being a matter of public record shall be deemed to be confidential. All such information and work product shall be protected by the COUNTY and shall not be revealed to other persons without the express written permission of the CITY, unless mandated by order of the court.

G. Non-Exclusive Contract:

The CITY reserves the right to award projects to other firms during the period of service of the COUNTY. The COUNTY agrees to cooperate with the CITY and other firms in accomplishing work that may require joint efforts to accomplish the CITY'S goals. This cooperation, when requested by the CITY, will include but not be limited to:



1. Sharing technical information developed under contract with the CITY.
2. Joint meetings for project coordination.
3. Establish lines of communication.

H. Notices:

Whenever either party desires to give notice unto the other, it must be given by written notice, sent by registered United States mail, with return receipt requested, addressed to the party for whom it is intended at the place last written, as the place for giving of notice in compliance with the provisions of this paragraph. For the present, the parties designate the following as the respective places of giving of notice to wit:

CITY of Delray Beach

CITY MANAGER  
City of Delray Beach, Florida  
100 NW 1st Avenue  
Delray Beach, Florida 33444

COUNTY

DIRECTOR, FACILITIES DEVELOPMENT & OPERATIONS  
2633 Vista Parkway  
West Palm Beach, FL 33411-5603

COUNTY ATTORNEY'S OFFICE  
301 North Olive Ave, Suite 601  
West Palm Beach, Fl. 33401

I. INTENTIONALLY LEFT BLANK.

J. Truth-In-Negotiation Certificate:

Signature of this AGREEMENT by COUNTY shall act as the execution of a truth in negotiation certificate stating that wage rates and other factual unit costs supporting the compensation of this AGREEMENT are accurate, complete, and current. The original contract price and any additions thereto shall be

adjusted to exclude any significant sums by which the CITY determines the contract price was increased due to inaccurate, incomplete, or non-current wage rates and other factual unit costs.

K. Records:

Records of all expenses relative to each SERVICE AUTHORIZATION shall be kept on a generally recognized accounting basis and shall be available to the CITY or its authorized representative at mutually convenient times.

L. Personnel:

The COUNTY represents that it has or will secure, at its own expense, qualified personnel required in performing the services under this AGREEMENT. All work shall be performed under the direction of a professional, registered under the State of Florida in the field for which he is responsible for performing such services.

The PROJECT MANAGER shall be approved by the CITY under each SERVICE AUTHORIZATION. Key project personnel will be identified for each project and expected to perform the work assignment as can reasonably be expected.

M. Equal Opportunity Employment:

COUNTY agrees that it will not discriminate against any employee or applicant for employment for work under this Agreement because of race, color, religion, sex, age or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment advertising; lay-off or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The COUNTY agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth this non-discrimination clause. This provision applies to all COUNTY subcontractors and it is the responsibility of COUNTY to ensure subcontractor's compliance.

N. Prohibition Against Contingent Fees:

The COUNTY warrants that he has not employed or retained any company or person, other than a bona fide employee working solely for the COUNTY, to solicit or secure this AGREEMENT, and that he has not paid or agreed to pay any persons, company, corporation, individual or firm, other than a bona fide employee working solely for the COUNTY any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this AGREEMENT.

O. Termination:

This AGREEMENT may be terminated by either party by seven (7) calendar days prior written notice, in the event of substantial failure to perform in accordance with the terms hereof by the other party through no fault of the terminating party. The CITY shall have the right to terminate this AGREEMENT for convenience at any time by thirty (30) calendar days written notice to the COUNTY. In the event the project described in any SERVICE AUTHORIZATION, or the services of the COUNTY called for under any SERVICE AUTHORIZATION, is or are suspended, canceled, or abandoned by the CITY, the COUNTY shall be given five days prior written notice of such action and shall be compensated for the professional services provided and reimbursable expenses incurred up to the date of suspension, cancellation or abandonment. The COUNTY agrees to provide all documents to the CITY (specifically those referenced in paragraph IX.A.) Further, prior to the COUNTY destruction of any of the above referenced documents, the CITY shall be notified and allowed a reasonable period to gain access to and make copies of any such documents. Upon any termination of this AGREEMENT, the COUNTY agrees that it shall use its best efforts to work harmoniously with any successor who enters an AGREEMENT to provide services for the CITY in order to provide for a smooth transition period.

P. Indemnification:

COUNTY and CITY acknowledge the waiver of sovereign immunity for liability in tort contained in Florida

Statutes 768.28, the State of Florida's partial waiver of sovereign immunity, and acknowledge that such statute permits actions at law to recover damages in tort for money damages up to the limits set forth in such statute for death, personal injury or damage to property caused by the negligent or wrongful acts or omissions of an employee acting within the scope of the employee's office or employment. COUNTY and CITY agree to be responsible for all such claims and damages, to the extent and limits provided in Florida Statutes Section 768.28, arising from the actions of their respective employees. The parties acknowledge that the foregoing shall not constitute an agreement by either party to indemnify the other, nor a waiver of sovereign immunity, nor a waiver of any defense the parties may have under such statute, nor as consent to be sued by third parties.

Q. Interest of the COUNTY:

The COUNTY covenants that it presently has no interest and shall not acquire any interest, direct or indirect, in any Project to which this AGREEMENT pertains or any other interest which would conflict in any manner or degree with the performance of its services hereunder. The COUNTY further covenants that in the performance of this AGREEMENT, no person having such interest shall be employed.

R. Compliance with Laws:

- a. The COUNTY shall comply with the applicable requirements of State and applicable County laws and all Codes and Ordinances of the CITY OF DELRAY BEACH as amended from time to time, and that exist at the time of building permit issuance.
- b. For SERVICE AUTHORIZATIONS involving work under Federal or State Grantors or Approving Agencies, the CITY and the COUNTY shall review and approve the applicable required provisions or any other supplemental provisions as may be included in each SERVICE AUTHORIZATIONS.

S. Jurisdiction; Venue:

The COUNTY hereby covenants, consents and yields to the jurisdiction of the State Civil Courts of Palm Beach County, Florida. Any dispute between COUNTY and the CITY shall be governed by the laws of Florida with venue in Palm Beach County.

T. Internal Dispute Between Owner and COUNTY:

The City Manager shall be the final decision maker regarding internal disputes between CITY and COUNTY.

U. Extent of Agreement:

This AGREEMENT represents the entire integrated AGREEMENT between the CITY and the COUNTY and supersedes all prior negotiations, representations or AGREEMENTS, written or oral. This AGREEMENT does not entitle the COUNTY to receive any fee unless first being issued a Service Authorization. This AGREEMENT does not provide that a COUNTY is entitled to receive any Service Authorization. This AGREEMENT may not be amended, changed, modified, or otherwise altered in any way, at any time after the execution hereof, except by approval of the CITY Commission. This AGREEMENT applies only to those projects that are on the CITY'S Capital Improvement Plan (CIP), attached hereto as Exhibit "D". The CITY is not required to issue any Service Authorizations to COUNTY for any projects listed on the CIP.

IN WITNESS WHEREOF, the CITY has caused these presents to be executed in its name by its Mayor, and attested and its official Seal to be hereunto affixed by its CITY Clerk, and the COUNTY has hereunto set its hand and Seal the day and year first written above.

CITY OF DELRAY BEACH, FLORIDA

By: [Signature]  
MAYOR

ATTEST:

[Signature]  
City Clerk

Approved as to Form:

[Signature]  
CITY Attorney

ATTEST:

SHARON R. BOCK, CLERK AND  
COMPTROLLER

PALM BEACH COUNTY, BY ITS  
BOARD OF  
COUNTY COMMISSIONERS

By: \_\_\_\_\_  
Deputy Clerk

By: \_\_\_\_\_, Chair

(SEAL)

APPROVED AS TO FORM AND TO  
LEGAL SUFFICIENCY

By: \_\_\_\_\_  
County Attorney

APPROVED AS TO TERMS AND  
CONDITIONS

By: [Signature]  
Director, Facilities  
Development & Operations

EXHIBIT A (SAMPLE)  
CONSULTING SERVICE AUTHORIZATION

DATE: \_\_\_\_\_

SERVICE AUTHORIZATION NO. \_\_\_\_\_ FOR CONSULTING SERVICES

CITY P.O. NO. \_\_\_\_\_ CITY EXPENSE CODE \_\_\_\_\_

TITLE: \_\_\_\_\_

This Service Authorization, when executed, shall be incorporated in and shall become an integral part of the Contract.

Title: \_\_\_\_\_

I. PROJECT DESCRIPTION

II. SCOPE OF SERVICES

III. BUDGET

IV. COST OF COUNTY SERVICES

A. HOURLY RATE x NUMBER OF HOURS = NOT TO EXCEED AMOUNT.

B. ESTIMATED REIMBURSABLE EXPENSES.

IV. COMPLETION DATE

This service authorization is approved contingent upon the City's acceptance of and satisfaction with the completion of the services rendered in the previous phase or as encompassed by the previous service authorization. If the City in its sole discretion is unsatisfied with the services provided in the previous phase or service authorization, the City may terminate the contract without incurring any further liability. The COUNTY may not commence work on any service authorization approved by the City to be included as part of the contract without a further notice to proceed.

Approved by:

CITY OF DELRAY BEACH:

Date \_\_\_\_\_

\_\_\_\_\_  
Mayor

Attest: \_\_\_\_\_

\_\_\_\_\_  
Approved as to Legal  
Sufficiency and Form

COUNTY: \_\_\_\_\_

Date \_\_\_\_\_

By: \_\_\_\_\_  
(Seal)

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

Attest: \_\_\_\_\_

BEFORE ME, the foregoing  
instrument, this \_\_\_\_\_  
day of \_\_\_\_\_, 200\_,  
was acknowledged by \_\_\_\_\_  
on behalf of the \_\_\_\_\_ Corporation  
and said person executed the  
same free and voluntarily  
for the purpose there-in  
expressed.

Witness my hand and seal in  
the County and State  
aforesaid this \_\_\_\_\_ day of  
\_\_\_\_\_, 200\_.

Notary Public  
State of Florida  
My Commission Expires:



EXHIBIT B  
COUNTY HOURLY RATE

Position	Hourly Rate
Art in Public Places Administrator	\$65.00

EXHIBIT C  
SAMPLE --

INVOICE

City of Delray Beach

Project No.

Purchase Order No.

Task Order No.

Date

Client Ref. No.

Invoice No.

Description of services under Task Order # \_\_\_\_\_  
Period ending: \_\_\_\_\_.

LABOR

<u>Class</u>	<u>Employee Name</u>	<u>Rate</u>	<u>Hours</u>	<u>Amount</u>
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Subtotal Labor				\$
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EXPENSES

Computer

Word Processing

Auto Rental

Postage/Freight

Air Transportation

Print/Reprographics

Supplies

Subtotal Expenses

TOTAL AMOUNT DUE THIS INVOICE	\$
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COST SUMMARY

Contract Amount	\$
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Amount Earned This Period	\$
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Amount Previously Earned	
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Amount Remaining	\$
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