

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2013	2014	2015	2016	2017
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	* _____	_____	_____	_____	_____
External Revenues	(\$15,000)	(\$10,000)	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	(\$15,000)	(\$10,000)	=====	=====	=====
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget: No

Budget Account No: Fund 0001 Dept 410 Unit 4110 Object 4901

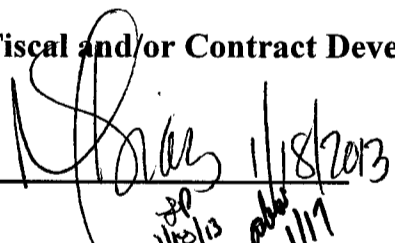
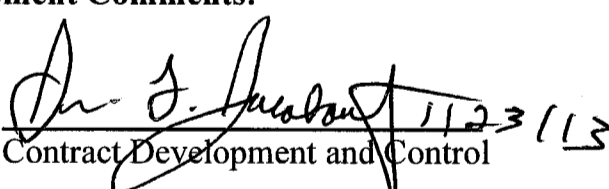
B. Recommended Sources of Funds/Summary of Fiscal Impact:

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

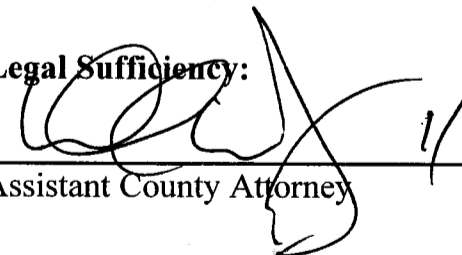
C. Departmental Fiscal Review: _____

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development Comments:

OFMB  1/18/2013 1/20/13 1/1/13	 Contract Development and Control 1/23/13
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B. Legal Sufficiency:


 Assistant County Attorney
 1/24/13

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 COUNTY'S PROJECT MANAGER previously provided public art assessment services to the CITY, which culminated with the approval of certain recommendations by the CITY Commission on May 8, 2012; and

WHEREAS, in order to implement those recommendations, the CITY desires to engage the COUNTY to perform certain public art professional services in accordance with this AGREEMENT; and

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

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. GENERAL DUTIES OF COUNTY:

- A. PROJECT MANAGER: When referenced, the PROJECT MANAGER shall be Palm Beach County Art in Public Places Administrator who is currently Elayna Toby Singer.
- B. The relationship of the COUNTY to the CITY will be that of a professional consultant, and the COUNTY will provide the professional and planning 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 shall be an independent contractor at all times.

- C. 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. In the event that the PROJECT MANAGER is not satisfactory to the CITY, The CITY shall either: 1) submit a request to the Director of the Facilities Development & Operations Department requesting the re-assignment of the PROJECT MANAGER or 2) terminate the AGREEMENT.
- D. The PROJECT MANAGER is authorized to act on behalf of the COUNTY for the purpose of administration of this AGREEMENT. The PROJECT MANAGER shall, by the terms of this AGREEMENT, also act as the CITY'S authorized representative, when performing all of the COUNTY duties set forth in this AGREEMENT, unless the CITY advises, in writing, the PROJECT MANAGER otherwise. In such capacity, the COUNTY shall consult with the CITY'S Representative prior to representing positions of the CITY. The parties agree and acknowledge that the CITY shall provide adequate oversight during the term of this AGREEMENT.
- E. Professional and Planning 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 this AGREEMENT upon execution by both parties.
- F. The COUNTY shall be responsible for the professional, quality, timely completion, including compliance with all regulations and rules, as well as the coordination with all appropriate agencies of all 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 reports and other services, the COUNTY shall, without additional compensation, correct or revise said errors or omissions to the satisfaction of the CITY.

- G. 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.
- H. The PROJECT MANAGER shall attend all meetings 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 City Commission and/or Public Art Advisory Board meetings as may be required to facilitate the project.
- I. The COUNTY shall not provide any professional engineering services, procurement, specific art project implementation services and/or construction administration services pursuant to this Agreement. In the event that the CITY desires that the COUNTY provide such services in the future, the CITY and the COUNTY shall enter into a separate Agreement for these services.

II. SPECIFIC DUTIES OF COUNTY:

PROJECT MANAGER will work with City stakeholders to develop a Public Art Master Plan and to expand the City's public art program capacity. More specifically, the duties of the Project Manager will include the following:

- A. **Vision, Mission, Guiding Principles, Goals, and Objectives:**
 - 1. Reaffirm and/or develop the vision, mission, guiding principles, short and long-term goals and objectives for the City's public art program.
- B. **Project Types & Locations:**
 - 1. Develop a matrix for permanent and temporary public art project selection including site, scope, budget, timelines and priorities for implementation.
 - 2. Create Public Art Focus Plans with stakeholder groups to develop specific public art visions, project ideas and work plans.

3. Address possible barriers to temporary public art projects (permitting, sign ordinances, etc).

C. Policies & Procedures:

1. Revise and/or develop policies and procedures for public art commissions, outright purchases, donations, and/or loans.
2. Revise and/or develop policies and procedures for public art removal.
3. Revise and/or develop policies and procedures to support local artists.
4. Revise and/or develop "Call to Artists" (RFQ) template and "Artist Selection" methodology per national standards.
5. Develop Public Art Board roles and responsibilities, seat requirements, and term limits.

D. Agreements: Artist Services, Art Loans and Donations:

1. Develop standard agreements regarding artist services, art loans, and art donations per public art national standards.

E. Planning and Operational Integration:

1. Work with the City Manager, Department Heads, CRA Staff and the Public Art Board to integrate public art into ongoing City strategic and capital planning/budgeting to improve public art project management and visual outcomes.
2. Integrate public art into ongoing planning. Establish a collaborative relationship with City Departments so that public art can be aligned with the visions and missions of each.
3. Assess and make recommendations to improve zoning requirements, development guidelines, etc. to support permanent and temporary public art project development and implementation.
4. Recommend a public art program staffing and management strategy within the City's organizational structure.

F. Funding Strategy:

1. Review and recommend improvements to the City's current mechanisms for funding the public art program.

2. Review and make recommendations for funding public art in City/CRA jointly funded capital improvement projects.
3. Assess feasibility and make recommendations for expanding the art requirement for all new construction including private development.
4. Review and make recommendations as to which of the City's "non public art" priorities could be accomplished through public art.
5. Identify additional funding sources for public art (corporate, donations, grants, etc.).
6. Develop funding strategies to professionally staff the City's Public Art program.
7. Review and make recommendations for funding public art maintenance/conservation.

G. Stakeholder Engagement, Strategic Collaborations and Partnerships:

1. Consult with and solicit input from stakeholders on key components of the Master Plan to assure linkages and collaborative opportunities that align public art projects with stakeholder interests and expectations. Stakeholder involvement will include but not be limited to:
 - a. City Manager, Department Heads, and Staff,
 - b. City of Delray Advisory Boards/Committees, Public Art Board, Downtown Development Authority, Education Board, Green Implementation Advancement Board, Historic Preservation Board, Kids and Cops, Neighborhood Advisory Council, Parking Management Board, Planning and Zoning Board, Police Advisory Board, and Site Plan Review and Appearance Board,
 - c. City Commission,
 - d. Delray Beach Community Redevelopment Agency,
 - e. Delray Businesses,
 - f. Chamber of Commerce,
 - g. Artists,
 - h. Non-Profit Cultural Arts Organizations,
 - i. Delray Beach Art District Gallery Association,
 - j. Related community and neighborhood groups,
 - k. Citizens of Delray Beach.

H. **Community Outreach and Education:**

1. Identify specific opportunities to engage and educate stakeholders and the broader community about the existing public art program and forthcoming opportunities.
2. Develop public engagement strategy to provide a public feedback mechanism to ensure that the community has the opportunity to share insights and opinions on an ongoing basis. Successful public engagement will foster a sense of community ownership and build support for the City's Public Art Program.
3. Identify educational and promotional opportunities to disseminate information about completed public artworks throughout the City.

I. **Documentation of Public Art:**

1. Recommend methods for public art curatorial and inventory systems.

J. **Maintenance of Public Art:**

1. Recommend methods for addressing public art maintenance.

III. SPECIFIC DUTIES OF CITY:

The CITY shall provide the following:

- A. The CITY Manager or his/her designee shall act as the CITY'S representative with respect to the work to be performed under this AGREEMENT. In the event that the CITY MANAGER chooses to identify a designee, that designee shall be either an Assistant City Manager or Department Head. The CITY Manager or his/her 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 Agreement. Said authority may include but is not limited to: transmitting instructions, stopping work, receiving information, and interpreting the CITY'S policies and decisions with respect to materials, equipment, elements, and systems pertinent to the services covered by this AGREEMENT.

- B. Provide access to CITY facilities for the purposes of implementing the COUNTY duties under this AGREEMENT.

IV. AGREEMENT PERIOD:

The term for this AGREEMENT shall be for sixteen (16) months from the date of execution by the CITY. The CITY and the COUNTY may extend the duration of this Agreement by executing an Amendment.

V. COMPENSATION:

Quarterly Payments/Reimbursable Expenses. The CITY will compensate the COUNTY for the services performed and for reimbursable expense in accordance with the terms set forth below:

- A. CITY shall pay the COUNTY for the services performed pursuant to this AGREEMENT on a quarterly basis, except that the last payment shall be made following the 16th month of this AGREEMENT. Each of the five (5) payments made to the COUNTY shall be in the amount of Five Thousand Dollars (\$5,000.00), for a total not-to-exceed amount of Twenty-five Thousand Dollars (\$25,000.00). Reimbursable expenses shall not be a part of the not-to-exceed amount and shall be reimbursed in accordance with Section V.B herein. For each payment, the County shall provide an itemized report and invoice (the "Invoice"), in the form set forth in **Exhibit "A"**, which is attached hereto and incorporated herein. Each Invoice shall include a report of work completed during the respective Invoice period. The report shall describe work progress (percentage of work complete for each task) and written summaries of work completed since the last invoice.
- B. In addition, the CITY shall pay for reimbursable expenses at the actual cost of expenditures incurred by the COUNTY. Said reimbursable expenses shall be included in the Invoice submitted by the COUNTY. Reimbursable expenses shall be reimbursed as follows:

1. Express courier charges.
2. Actual expense of reproduction of documents and graphics including duplicate sets for the CITY'S review and approval.
3. Actual expense of Auto Travel at the established CITY rate per mile (including mileage within Palm Beach County accrued during the performance of this AGREEMENT). The COUNTY will make every attempt to combine site visits with COUNTY trips.

VI. PAYMENT:

The CITY agrees that it will use its best effort to pay the COUNTY within thirty (30) calendar days from receipt of the COUNTY Invoice.

VII. MISCELLANEOUS PROVISIONS:

A. Ownership of Documents:

All reproducible reports and graphics shall be created in a format compatible with CITY'S Computer system and shall be given to the CITY. COUNTY reserves the right to retain a copy of all such documents for record purposes. The Agreement work is represented by hard copy documentation; software is provided to the CITY for convenience only.

B. Copies of Documents:

The COUNTY shall prepare all documents necessary to obtain approval through the City's processes including all required copies. The CITY acknowledges that the materials cited in Paragraph VII. 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:

1. Without waiving the right to sovereign immunity as provided by Florida Statute, Section 768.28, the CITY and COUNTY acknowledge that they are both self-insured for General Liability and Automobile Liability under Florida's sovereign immunity statute with monetary waiver limits of \$200,000 Per Person and \$300,000 Per Occurrence; or such limits that may change and be set forth by the legislature.
2. The CITY and COUNTY acknowledge that they are both self-insured for Worker's Compensation & Employer's Liability in accordance with Florida Statute, Chapter 440.
3. When requested, each party agrees to provide a Certificate of Insurance evidencing self-insurance and/or sovereign immunity status, which the other party 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 this AGREEMENT and to accept the obligation for payment for the services described in this AGREEMENT.

E. Assignment:

The CITY and the COUNTY each binds itself and its successors, legal representatives, and assigns 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 the requirements of law; and, neither the CITY nor the COUNTY shall 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 acting pursuant to this Agreement, 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 pursuant to Florida Statutes, Chapter 119, 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:

1. The CITY reserves the right to award projects to other firms during the period of service of the COUNTY under this AGREEMENT. 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:

- a. Sharing information developed by the COUNTY under this AGREEMENT with the CITY.
- b. Holding joint meetings for project coordination.
- c. Establishing and maintaining lines of communication between the COUNTY and the CITY.

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 the giving of notice in compliance with the provisions

of this paragraph. For the present, the parties designate the following as the respective places of the giving of notice to wit:

CITY of Delray Beach

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

City Attorney's Office
200 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. AMENDMENTS: This Agreement can only be changed by written amendment signed by both the CITY and the COUNTY. The Director of Facilities Development and Operations may execute amendments on behalf of the COUNTY. The CITY Commission shall execute amendments on behalf of the CITY.
- J. Intentionally left blank.
- K. Records:

Records of all relative expenses shall be kept on a generally recognized accounting basis and shall be available to the CITY and/or its authorized representatives at a mutually convenient time.
- L. Intentionally left blank.
- M. Equal Opportunity Employment:

Each party assures and certifies that it shall comply with Title VII of the Civil Rights Act of 1964, as amended, and Palm Beach County Resolution No. R92-13, and shall not discriminate against any individual on the basis of their race, color, national origin, religion, ancestry, sex, age, marital status, familial status, sexual orientation, disability, or gender identity or expression.

N. Prohibition Against Contingent Fees:

The COUNTY warrants that it has not employed or retained any company or person, other than a bona fide County employee working solely for the COUNTY, to solicit or secure this AGREEMENT, and that it has not paid or agreed to pay any persons, company, corporation, individual or firm, other than a bona fide County 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:

The parties hereto expressly covenant and agree that in the event either party is in default of its obligations herein, the party not in default shall provide to the party in default thirty (30) days written notice to cure said default before exercising any of its rights as provided for in this Agreement. Failure to cure said default within thirty (30) days following notice shall be grounds for termination of this Agreement. The parties may mutually agree to extend the time for cure and/or termination.

The CITY shall have the right to terminate this AGREEMENT for convenience at any time by thirty (30) calendar days written notice (pursuant to the notice provisions in Section VII.H. above) to the COUNTY. In the event of a termination by the CITY, the COUNTY shall be given five (5) days prior written notice of such action and shall be compensated for the services provided and reimbursable expenses incurred up through the date of termination of this AGREEMENT. All work completed up through the date of termination including all reproducible reports and graphics shall become the property of the CITY upon the termination of this

AGREEMENT. Further, prior to the COUNTY'S 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 not yet provided to the CITY. Upon any termination of this AGREEMENT, the COUNTY agrees that it shall use its best efforts to work harmoniously with any successor who enters into an AGREEMENT to provide services for the CITY in order to provide for a smooth transition period.

P. Indemnification:

COUNTY and CITY acknowledge the partial waiver of sovereign immunity for liability in tort contained in Florida Statutes, Section 768.28, 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 the 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. Intentionally Left Blank

R. Compliance with Laws:

The COUNTY and CITY shall comply with the applicable requirements of State and applicable County laws and all Codes and Ordinances of the CITY, as amended from time to time.

S. Jurisdiction; Venue:

The CITY and COUNTY hereby covenants, consents and yields to the jurisdiction of the State Civil Courts of Palm Beach County, Florida. Any dispute between

the COUNTY and the CITY shall be governed by the laws of Florida with venue in Palm Beach County.

T. Internal Dispute Between CITY and COUNTY:

The City Manager shall be the final decision maker regarding internal disputes between the CITY'S Representative and PROJECT MANAGER.

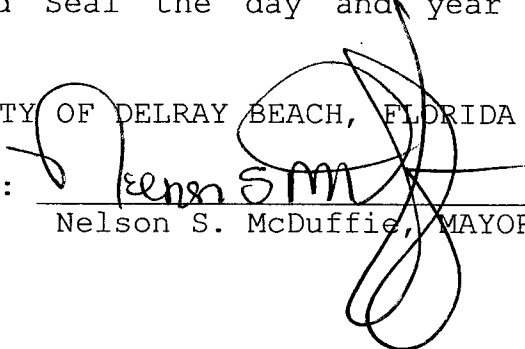
U. Extent of AGREEMENT:

This AGREEMENT represents the entire integrated AGREEMENT between the CITY and the COUNTY and supersedes all prior negotiations, representations or AGREEMENTS, written or oral.

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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.

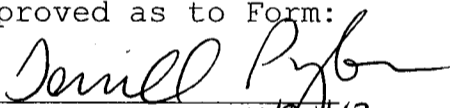
CITY OF DELRAY BEACH, FLORIDA

By: 
Nelson S. McDuffie, MAYOR

ATTEST:


City Clerk

Approved as to Form:


CITY Attorney 11/20/12

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

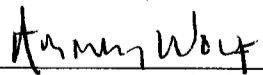
By: 
Director, Facilities
Development & Operations

EXHIBIT A

INVOICE

**Palm Beach County
Facilities Development & Operations Department**

2633 Vista Parkway
West Palm Beach, Fl. 33411-5603
Phone 561-233-0200 Fax 561-233-0206

DATE:
INVOICE #
FOR:

Bill To:
City of Delray Beach
ATTN:

DESCRIPTION	AMOUNT
<u>Services Provided</u>	
<u>Reimbursable Expenses</u>	
Please credit 0001-410-4110-6999	
TOTAL	

Make all checks payable to Palm Beach County Board of County Commissioners
Finance Department
PO Box 4036
West Palm Beach, Fl. 33402

If you have any questions concerning this invoice, contact:
Elayna Toby Singer, 561-233-0235 Email: esinger@pbcgov.org