

PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS  
AGENDA ITEM SUMMARY

Meeting Date: March 8, 2022                       Consent                       Regular  
    Ordinance                       Public Hearing

Department: Facilities Development & Operations

I. EXECUTIVE BRIEF

**Motion and Title: Staff recommends motion to approve:** an Agreement for Art Services with Social Space, LLC in the amount of \$796,000 for the design, permitting, fabrication and installation of “VOTE!” sculptural installation for the approaching Palm Beach County Supervisor of Elections facility.

**Summary:** On August 13, 2021, a selection committee comprised of the Public Art Committee, Supervisor of Election Wendy Sartory Link and representative of Song and Associates, Inc. (project architect) unanimously recommended the proposal entitled “VOTE!” by artist Matthew Mazzotta (dba Social Space, LLC) as the Art in Public Places installation for the approaching Supervisor of Elections facility on Cherry Road in unincorporated Palm Beach County. “VOTE!” is a sculpture comprising of four voting booths with three flamingos, which aims to make the voting process more transparent and accessible. The flamingos symbolize the human experience of voting and assert every voter’s individuality during the elections. “VOTE!” is planned to be sited at the southwest corner of the proposed building to facilitate wayfinding and announce the Supervisor of Elections facility as “the voting and elections place” as vehicular passengers and pedestrians approach the facility in an eastbound direction on Cherry Road from Military Trail. The Agreement provides for all design, permitting, fabrication and installation services required to complete the installation concurrent with construction of the facility. The Agreement is for a total amount of \$796,000 and duration of 593 days. Funding is from the \$51.05M NAV Pub Imp Rev Bonds, 21A, CP, SOE Bldg Bond issued to support construction of the approaching facility. **(FDO ADMIN) District 7/Countywide (MWJ)**

**Background & Justification:** Consistent with County policy, two percent (2%) of the estimated vertical construction cost of the approaching Palm Beach County Supervisor of Elections facility is being committed to an Art in Public Places installation. A total of 75 applicants from across the country responded to the competitive Call to Artist issued in pursuit of artist proposals for this facility. Ultimately “VOTE!” was unanimously found by the project’s selection committee to fulfill the site- and program-specific public art design goals and criteria for the Supervisor of Elections facility as outlined in the project’s Call to Artists. “VOTE!” is strategically situated and designed to facilitate wayfinding, create a unique identity for the facility, bring transparency and accessibility to the voting process, and showcase a fundamental process that occurs within the building. The total cost to professionally design, permit, fabricate and install the sculptural installation, which is the subject of this Agreement, is \$796,000.00 and said amount was accounted for within the bond issuance for the capital construction of the facility. The Agreement provides 593 days for final completion of all work and administration in order to align with the facility’s capital construction schedule.

**Attachments:**

- 1. Agreement for Art Services
- 2. Budget Availability Statement

Recommended By: Zen Annie C. Ayala-Celoz                      2/25/22  
   Department Director                      Date

Approved By: KBaker                      3/4/22  
   County Administrator                      Date

**II. FISCAL IMPACT ANALYSIS**

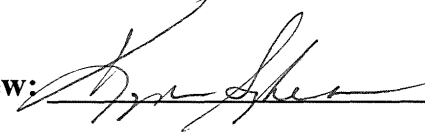
**A. Five Year Summary of Fiscal Impact:**

Fiscal Years	2022	2023	2024	2025	2026
Capital Expenditures	\$796,000	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
<b>NET FISCAL IMPACT</b>	<u>\$796,000</u>	<u>_____</u>	<u>_____</u>	<u>_____</u>	<u>_____</u>
<b># ADDITIONAL FTE POSITIONS (Cumulative)</b>	_____	_____	_____	_____	_____
<b>Is Item Included in Current Budget:</b>	Yes	<u>X</u>	No	_____	
Does this item include the use of Federal funds?	Yes	_____	No	<u>X</u>	

Budget Account No: Fund 3080 Dept 411 Unit B652 Object 6502

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

Funding for this project is from the \$51.05M NAV Pub Imp Rev Bonds, 21A, CP, SOE Bldg Bond (Supervisor of Elections Operations Building).

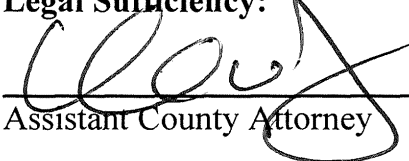
**C. Departmental Fiscal Review:**  \_\_\_\_\_

**III. REVIEW COMMENTS**

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

 OFMB QA <u>2/16/22</u> LM <u>2/16</u>	 Contract Development and Control <u>2/18/22</u>
---	---

**B. Legal Sufficiency:**

  
 Assistant County Attorney 2/18/22

**C. Other Department Review:**

\_\_\_\_\_  
 Department Director

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

## **AGREEMENT FOR ART SERVICES**

THIS AGREEMENT is made and entered into this day \_\_\_\_\_ by and between Palm Beach County, a political subdivision of the State of Florida, by and through its Board of County Commissioners (“COUNTY”) and Social Space, LLC, a limited liability company organized in the State of New York and authorized to do business in the State of Florida, whose Federal Tax ID Number is 81-2917544 (“ARTIST”).

WHEREAS, the COUNTY desires to commission the ARTIST to create public art for the Palm Beach County Supervisor of Elections Facility; and

WHEREAS, the ARTIST is willing and able to create the art for the COUNTY on the terms and conditions set forth below; and

WHEREAS, the COUNTY and the ARTIST wish to enter into this AGREEMENT for the ARTIST'S services.

NOW THEREFORE, in accordance with the mutual covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

### **ARTICLE I REPRESENTATIVES**

#### **Section 1.01 Representatives**

The ARTIST'S Representative for this Agreement shall be Matthew Mazzotta.

The COUNTY'S Representative for this Agreement shall be the Art in Public Places Administrator. Any work performed by the ARTIST without proper authorization from the COUNTY is performed at the ARTIST'S risk and the COUNTY shall have no obligation to compensate the ARTIST for such work.

### **ARTICLE II SCOPE OF SERVICES**

#### **Section 2.01 Services**

The ARTIST shall perform or provide all services and furnish all supplies, materials and equipment necessary for the design, execution, fabrication and installation of VOTE! (“Work of Art”) described in the Proposal submitted to and recommended by the Palm Beach County Public Art Committee (“Proposal”), a copy of which is attached hereto as Exhibit 1 and incorporated herein by this reference in its entirety. The Work of Art shall be installed at a general location selected by the COUNTY (“Work Site”). Upon installation and completion of the Work of Art, the ARTIST shall present the Work of Art to the Art in Public Places Administrator for approval and acceptance in accordance with Section 2.12 hereof (“Final Acceptance”). The ARTIST'S services shall not be considered complete until Final Acceptance by the Art in Public Places Administrator.

## **Section 2.02 Materials and Specifications**

The ARTIST shall determine the artistic expression, size, material, texture, color, specific location and method of fabrication of the Work of Art, subject to the Design Requirements contained in Exhibit 2, attached hereto and incorporated herein, and the approval of the COUNTY.

Upon execution of this Agreement, COUNTY will provide ARTIST with the construction documents for the specific area at the Work Site where the Work(s) of Art will be installed. All specifications for the Work(s) of Art will be calculated directly from the construction documents. ARTIST is responsible for providing COUNTY with all necessary specifications for constructing and preparing all foundational aspects of the Work Site for installation. COUNTY is responsible for ensuring that the Work Site is prepared in accordance with the specifications provided by ARTIST. Any miscalculations that are due to the ARTIST receiving inaccurate construction documents from the COUNTY, or COUNTY's contractor's error, may cause delay in the fabrication, construction, delivery and/or installation of the Work(s) of Art and the COUNTY, or COUNTY's contractors, will bear the cost, if any, of correcting such miscalculations. Any miscalculations that are due to error of the ARTIST or its subcontractors may cause delay in preparation of the Work Site and/or installation of the Work(s) of Art and ARTIST will bear the cost, if any, of correcting such miscalculations.

## **Section 2.03 Coordination Meetings**

The ARTIST shall attend pre-construction and/or progress coordination meeting(s) at the Work Site as necessary to ensure proper and timely execution of the Work of Art. In conjunction with the COUNTY and its consultants, the ARTIST shall periodically determine, monitor and inform the COUNTY of the requirements for the delivery, storage and/or installation of the Work of Art including, but not limited to, site preparation, anchoring and/or supports, lighting, testing and/or other appurtenances. Additionally, as it can be reasonably determined by ARTIST, the ARTIST shall promptly inform the COUNTY, within a reasonable time of any pertinent corrective/remedial work to be performed to the Work Site.

## **Section 2.04 Field Inspections**

The ARTIST shall conduct periodic inspections of the Work Site and report to the COUNTY on issues concerning the quality of materials or workmanship provided by others for the Work of Art.

## **Section 2.05 Site Inspections and Staging Requirements**

Prior to construction or installation of the Work of Art, the ARTIST and/or subcontractor shall visit and inspect the Work Site. Subsequent to such inspection and throughout installation of the Work of Art, the ARTIST shall have sole responsibility for learning the nature and location of the Work Site and the general local conditions. In particular the ARTIST will identify conditions that affect the:

1. transportation, access, disposal, handling and storage of materials; and
2. availability, quantity and quality of labor; and
3. availability of water and electric power; and
4. availability and condition of roads; and
5. climatic conditions; and
6. location of underground utilities as depicted on contract documents and as verified by local utility companies and the COUNTY; and
7. physical conditions of existing construction; and
8. subsurface materials to be encountered; and
9. nature of the ground water conditions; and
10. equipment and facilities needed preliminary to and during performance of this Agreement; and

11. other matters which can in any way affect the performance or cost of this Agreement.

The failure of the ARTIST to identify any described condition shall not relieve the ARTIST of responsibility for properly estimating either the difficulties or costs of successfully and timely creating the Work of Art.

**Section 2.06 Schedule of Contract Values**

The ARTIST shall provide, in a form satisfactory to the COUNTY, a Schedule of Contract Values, attached hereto as Exhibit 3 and incorporated herein, depicting a detailed breakdown of the fixed fee and the estimated cost of each subdivision of work which makes up the fixed fee (insurance, proposal, design, permitting, fabrication, site preparation, installation costs, etc.). The value of each item entered on the Schedule of Contract Values shall include a true proportionate amount of the ARTIST'S overhead and profit.

**Section 2.07 Construction Schedule**

The ARTIST shall provide a detailed Construction Schedule, attached hereto as Exhibit 4 and incorporated herein, depicting the activities contemplated to occur and their sequence.

**Section 2.08 Subcontractors**

The ARTIST shall provide a detailed list of Subcontractors, attached hereto as Exhibit 5 and incorporated herein, who will be performing services for the ARTIST on the Work of Art, with a description of the services to be provided by each subcontractor and a designation as a County certified SBE contractor, where applicable.

Employees and subcontractors of the ARTIST are all subject to prior and continuous approval of the COUNTY. If at any time during the term of this Agreement, an individual performing services on behalf of the ARTIST is, for any reason, unacceptable to the COUNTY, ARTIST shall replace the unacceptable personnel with personnel acceptable to the COUNTY.

**Section 2.09 Proposed Materials**

The ARTIST shall provide a detailed list of all Proposed Materials, attached hereto as Exhibit 6 and incorporated herein, to be utilized by the ARTIST including, but not limited to, the style, type, and color of all materials. This list should identify any County certified SBE suppliers.

**Section 2.10 Design Reviews and Milestones**

The ARTIST shall prepare and submit plans, specifications, drawings or other graphic materials as required and at the intervals contained in the Design Reviews and Milestones, attached hereto as Exhibit 7 and incorporated herein.

**Section 2.11 Permits**

The ARTIST shall research and obtain any necessary permits required by the local jurisdiction in which the Work of Art is located.

**Section 2.12 Completion by the ARTIST and Final Acceptance by the COUNTY**

Completion by the ARTIST. The following items shall be completed prior to a request from the ARTIST for inspection for Final Acceptance:

1. Certificate of Completion obtained from the proper building official.

2. All construction and installation completed.
3. Work of Art complete in place and cleaned.
4. Work Site cleared of ARTIST's equipment and supplies.
5. All systems fully functional and demonstrated to COUNTY.

Final Acceptance by the COUNTY. When ARTIST considers the installation of the Work(s) of Art complete, the ARTIST shall notify the COUNTY's Art in Public Places (AiPP) Administrator. The AiPP Administrator shall inspect the Work(s) of Art within two (2) business days after ARTIST's notice. If the AiPP Administrator determines that aspects of the work are not in compliance with this Contract, then the AiPP Administrator will provide the ARTIST with a list of items to be corrected by the ARTIST within thirty (30) days of ARTIST's receipt of the list. If the AiPP Administrator determines that the Work(s) of Art are complete and in compliance with the terms of this Contract, including completed corrective action, if any, then the ARTIST will provide to the AiPP Administrator:

1. Final Invoice;
2. Final Release (Exhibit 8)
3. Warranty of Title (Exhibit 9)
4. Documentation Worksheet (Exhibit 10)
5. Final Documents as described in Section 2.13

Whereupon, the AiPP Administrator will approve final payment under the terms of Section 3.02. Neither Final Acceptance nor final payment therefor shall relieve ARTIST of its responsibility for defective work under Section 5.02 or responsibility for full contract compliance.

Upon final payment, ARTIST will submit to the AiPP Administrator the executed Bill of Sale / Transfer of Title attached hereto as Exhibit 11.

### **Section 2.13 Final Documents**

Upon installation of the Work of Art and on or before submittal of a final payment invoice, the ARTIST shall deliver slides, photographic prints, digital images and "as built" drawings, and other documents to the Art in Public Places Administrator. Digital photographs shall be of acceptable professional quality in the determination of the Art in Public Places Administrator and shall be properly marked to include the name of the ARTIST, title of the Work of Art, and location, medium and dimension of the Work of Art. The ARTIST'S documents shall include the following:

1. At least five (5) different viewpoints of the completed Work of Art in 300dpi JPEG images; and
2. One (1) full set of "as built" drawings as well as any and all construction, fabrication and installation specifications, drawings or other documentation pertaining to the Work of Art.

### **Section 2.14 Public Education and Special Events**

Upon COUNTY request the ARTIST shall support the COUNTY'S community outreach program by providing an education lecture/workshop to the public about the process of designing, fabricating and installing the Work of Art. Upon COUNTY request the ARTIST shall attend the "Ribbon Cutting" or "Grand Opening" event as coordinated by the COUNTY.

## **ARTICLE III COMPENSATION**

### **Section 3.01 Firm Fixed Price**

The COUNTY shall pay the ARTIST a fixed fee of \$796,000 for all materials and services to be performed and furnished by the ARTIST under this Agreement including the ARTIST'S fee.

### **Section 3.02 Method of Payment**

The COUNTY shall, at intervals of two weeks or longer, make progress payments to the ARTIST. The ARTIST shall request such payments by submitting:

1. A properly completed invoice for progress payment consistent with the Schedule of Contract Values (Exhibit 3) submitted in detail sufficient for audit purposes; and
2. Photographic evidence of the current state of work for which payment is requested, including the stage of completion for any work performed offsite (e.g. material procurement, fabrication, packaging for shipment). COUNTY reserves the right, in its sole and absolute discretion, to withhold payment for work partially complete until such time that a meaningful stage of completion is achieved in accordance with the Schedule of Contract Values; and
3. An updated Schedule of Contract Values indicating labor performed and materials incorporated into the Work of Art for each subdivision of the schedule during the period for which the invoice is prepared.
4. Subcontractor Activity Form (Exhibit 12) documenting subcontractor activity during the period for which the ARTIST is requesting payment.
5. Subcontractor Payment Certification (Exhibit 13) documenting payment of subcontractors when the COUNTY has paid the ARTIST on a prior invoice for services provided by a subcontractor.

The invoices shall be submitted to the COUNTY'S Art in Public Places Administrator. ARTIST invoices which have to be returned because of preparation errors by ARTIST will result in a delay in payment. Upon verification by the COUNTY'S Art in Public Places Administrator and approval of the Director of Facilities Development & Operations or designee, the COUNTY will process the invoices for payment.

Final payment by the COUNTY shall be withheld until receipt of the Final Release, attached hereto as Exhibit 8 and incorporated herein, and completion of the public education and special events described in Section 2.14 of this Agreement, as verified by the Art in Public Places Administrator.

### **Section 3.03 Annual Budgetary Funding**

This Agreement and all obligation of COUNTY hereunder requiring the expenditure of funds are subject to and contingent upon annual budgetary funding and appropriations by the Palm Beach County Board of County Commissioners.

### **Section 3.04 Artist Payment Rights**

The ARTIST providing goods and services to the COUNTY should be aware of the payment times frames provided by Section 218.70, Florida Statutes, the Florida Prompt Payment Act. Upon receipt of a "proper invoice," as set forth in Section 218.72(1), Florida Statutes, the COUNTY has fortyfive (45) days to pay a proper invoice. If payment is not made within thirty (30) days of the due date of a proper invoice, the payment will bear interest at the rate of one (1) percent per month in accordance with Section 218.74, Florida Statutes.

## **ARTICLE IV CONDUCT OF WORK**

### **Section 4.01 Time of Performance**

Notice to Proceed. Services by the ARTIST and the ARTIST'S subcontractors in connection with the Work of Art shall commence upon a "Notice to Proceed" issued by the COUNTY'S Art in Public Places Administrator. The Work of Art shall be completed within 593 days of the Notice to Proceed and in accordance with the Construction Schedule approved by the COUNTY.

Excusable Delays. The ARTIST shall not be considered in default by reason of any failure in performance if such failure arises out of causes reasonably beyond the control of the ARTIST or its subcontractors and without their fault or negligence. Such causes include, but are not limited to, acts of God, force majeure, natural or public health emergencies, labor disputes, freight embargoes, and abnormally severe and unusual weather conditions. Upon the ARTIST's request, the COUNTY shall consider the facts and extent of any failure to perform the work and, if the ARTIST's failure to perform was without it or its subcontractors fault or negligence, the Construction Schedule and/or any other affected provision of this Contract shall be revised accordingly, subject to the COUNTY'S rights to change, terminate, or stop any or all of the work at any time.

ARTIST and COUNTY acknowledge the terms of this "Excusable Delays" provision; however ARTIST also acknowledges that this Contract is being issued during the COVID-19 pandemic and ARTIST has considered the impact on the Construction Schedule and its performance of the terms of this Contract and ARTIST shall not request a time extension or invoke this "Excusable Delays" provision for causes and events known at the time of execution of this Contract. As of the time of execution, Artist after reasonable diligence, warrants and represents that it is unaware of any condition that would result in delay. Causes and events not known after reasonable diligence at the time of execution or which develop after execution related to the COVID-19 pandemic or otherwise may be an excusable delay under the terms of the preceding paragraph.

COUNTY Delays. If ARTIST's services under this Contract are delayed or suspended in whole or in part by COUNTY for more than nine (9) months for reasons beyond ARTIST's control, ARTIST may be entitled to an adjustment in compensation to the extent of any documented and verified costs actually, reasonably and necessarily incurred by ARTIST due to any such COUNTY delay; but in no event shall COUNTY be liable for any lost profits, lost opportunity damage or consequential damages.

Storage Costs. In the event a COUNTY delay causes the ARTIST to delay installation of the Work(s) of Art, the COUNTY shall be responsible for locating storage space for the Work(s) of Art on site or for the costs of off-site storage for the Work(s) of Art.

### **Section 4.02 On-Site Supervision**

The ARTIST shall personally supervise all phases of the Work of Art's development, fabrication



and installation. The ARTIST shall be at the Work Site periodically during installation of the Work of Art to ensure installation is in accordance with the ARTIST'S design intent.

The ARTIST or an employee of the ARTIST shall be present at the Work Site at all times to supervise when construction or installation is in progress. During periods when construction or installation is suspended, the ARTIST shall provide a method of communication, acceptable to the COUNTY, to authorize any emergency work which may be required.

#### **Section 4.03 Inspection**

The COUNTY shall have the right to review the progress of the Work of Art during the fabrication thereof and to receive progress reports from the ARTIST.

#### **Section 4.04 Code Compliance**

Construction of the Work of Art shall be performed in compliance with all applicable codes of the state of Florida, Palm Beach County and local municipality.

#### **Section 4.05 Cooperation with Others**

COUNTY and other contractors and subcontractors may be working at the Work Site during the performance of this Agreement. ARTIST shall fully cooperate with the COUNTY and other contractors to avoid any delay or hindrance of their work. COUNTY may require that certain facilities at the Work Site be used concurrently by ARTIST and other parties and ARTIST shall comply with such requirements.

If any part of the ARTIST'S services depends on proper execution or results of any work performed by the COUNTY or separate contractor, the ARTIST shall inform the COUNTY of the date the work needs to be completed in order to maintain the ARTIST'S schedule for the Work of Art. In accordance with the terms of Section 2.02, the Site must be prepared and delivered pursuant to the specifications provided to the COUNTY by ARTIST. Subject to and in accordance with the terms of Section 2.02, any defects at the Site due to failure to comply with accurate specifications provided by ARTIST will be the sole and exclusive responsibility of COUNTY or COUNTY's contractor. Subject to and in accordance with the provisions of Sections 2.02 and 4.01, COUNTY takes full responsibility for delays caused by COUNTY or separate contractor in preparing the Site or remedying any deficiencies or defects, including but not limited to the cost of storage. Upon completion of the work by the COUNTY or separate contractor, the ARTIST shall promptly report to the COUNTY any obvious defects in the work of which the ARTIST becomes aware. Failure of the ARTIST to report any obvious defects of which the ARTIST becomes aware shall constitute an acceptance of the work by the COUNTY or separate contractor as fit and proper, except as to defects which may subsequently become apparent. Any costs caused by obvious defects in work of others of which the ARTIST becomes aware shall be borne by the ARTIST, unless ARTIST gives written notice to COUNTY prior to proceeding with the installation of the Work of Art. In no event shall the COUNTY be liable to the ARTIST for delay damages.

#### **Section 4.06 Use of Licensed Contractor**

Prior to fabrication or construction of the Work of Art, the ARTIST shall determine whether any aspect of the ARTIST'S services will require a construction contractor of any category, licensed by the state of Florida or Palm Beach County. If a construction contractor is required, ARTIST and COUNTY agree that the provisions of this Section shall apply.

The ARTIST shall select a properly licensed contractor to assist ARTIST with the construction

and/or installation of the Work of Art. ARTIST shall hold COUNTY harmless from any and all claims of the contractor. The cost of the contractor shall become a part of ARTIST'S fee for services.

#### **Section 4.07 Incorporation of Costs**

In the event that the ARTIST'S costs will cause the total cost of the Work of Art to exceed the fixed price listed in Section 3.01 of this Agreement, ARTIST may take any action reasonably necessary to reduce costs including, but not limited to, reducing ARTIST'S fee or negotiating a reduction in others' fees. However, if ARTIST'S proposed cost reductions will reduce the scope of the Work of Art or materially alter the original design or intent, ARTIST and COUNTY agree that the COUNTY may terminate this Agreement without further cost to the COUNTY. ARTIST also agrees that, should ARTIST fail to reduce the cost of the Work of Art to an amount equal to or less than the fixed price, COUNTY may terminate this Agreement without further cost to the COUNTY.

#### **Section 4.08 Responsibility for Work Security**

ARTIST shall, at his/her expense, conduct operations under this Agreement in a manner to avoid risk of loss, theft or damage by vandalism, sabotage or other means to COUNTY property.

#### **Section 4.09 Protection of Work in Progress, Materials and Equipment**

ARTIST shall promptly take all reasonable precautions necessary and adequate to avoid conditions which involve a risk of loss, theft or damage to property, materials or equipment connected to the Work of Art. ARTIST shall continuously inspect its work, materials, equipment and facilities to discover and determine any such conditions and shall be solely responsible for discovery, determination and correction of any such condition. ARTIST shall prepare and maintain accurate reports of incidents of loss, theft or vandalism and furnish these reports to COUNTY within three (3) days of each incident.

ARTIST shall bear all risk of loss or damage to the Work of Art in progress, the materials delivered to the Work Site, and the materials and equipment involved in the Work of Art until completion and Final Acceptance of the Work of Art by the COUNTY. The Work of Art shall be delivered to the COUNTY in proper, whole and unblemished condition. The ARTIST shall not bear any responsibility for any loss or damage which results solely from the negligence of the COUNTY or its representatives.

#### **Section 4.10 Protection of Existing Property**

ARTIST shall not damage, close, or obstruct any utility installation, highway, road or other property until permits have been obtained. If any facility or property is closed, obstructed, damaged or rendered unsafe by ARTIST, ARTIST shall, at ARTIST'S expense, make such repairs and provide temporary guards, lights and other signals as necessary or required for safety and as acceptable to COUNTY and/or its Insurance Representative.

ARTIST shall not damage any existing building or structures. The ARTIST shall verify that the means and methods of construction used inside, adjacent to, under or over existing buildings will not cause damage. The ARTIST shall provide protection methods which are acceptable to the COUNTY and/or its Insurance Representative.

Unless specifically provided in this Agreement, ARTIST shall not do any work that would disrupt or otherwise interfere with the operation of any pipeline, telephone, electric, radio, gas, transmission line, ditch or other structure, nor enter upon lands in their natural state until approved by COUNTY. After obtaining approval, ARTIST shall give due notice to COUNTY of its intention to start such work before it begins the work. ARTIST shall not be entitled to any extension of time or any extra compensation on account of postponement, interference or delay caused by any such line, ditch or structure on or adjacent

to the Work Site.

ARTIST shall preserve and protect all cultivated and planted areas and vegetation such as trees, plants, shrubs and grass on or adjacent to the Work Site which, as determined by COUNTY, do not reasonably interfere with the ARTIST'S services. ARTIST shall be responsible for damage to such areas and vegetation including, without limitation, damage from operating equipment or stockpiling materials. ARTIST shall also be responsible for unauthorized cutting of trees and vegetation. All cost in connection with any repairs or restoration necessary or required by such damage or unauthorized cutting shall be borne by ARTIST.

**Section 4.11 Restricted "Off" Work Hours**

Where applicable, the ARTIST and/or ARTIST'S subcontractor shall observe and comply with any Restricted "Off" Work Hours requirements. ARTIST shall submit to the Art in Public Places Administrator any request(s) to perform services at times other than "normal work hours" (8 a.m. to 5 p.m. Mon.-Fri.) and said request shall be subject to approval by COUNTY.

**ARTICLE V  
WARRANTIES**

**Section 5.01 Warranty of Title**

The ARTIST warrants that the Work of Art in this AGREEMENT shall be the result of the artistic effort of the ARTIST and that, unless otherwise stipulated, the Work of Art shall be unique, an edition of one. The ARTIST shall deliver the Work of Art free and clear of any liens, claims or other encumbrances of any type arising from the acts of the ARTIST. Upon delivery of the Work of Art, the ARTIST shall furnish a signed and sworn Warranty of Title, attached hereto as Exhibit 9 and incorporated herein.

**Section 5.02 Warranty of Quality**

The ARTIST warrants the Work of Art shall be free of defects in material and workmanship and that the ARTIST shall correct, at the ARTIST'S expense, any defects which appear within one (1) year of Final Acceptance of the Work of Art by the COUNTY. It is understood by the COUNTY that the Work of Art has been designed and built by the ARTIST as a Work of Art. Any use of the Work of Art by the COUNTY other than that contemplated by ARTIST in the ARTIST'S proposal voids any warranties by the ARTIST.

This Section 5.02 shall survive termination or expiration of this Agreement.

**Section 5.03 Risk of Loss**

The ARTIST shall bear the full risk of loss of, or damage to, the Work of Art until all services have been completed and the Work of Art is accepted by the COUNTY. The ARTIST shall take such measures as are necessary to protect the Work of Art from loss or damage. The ARTIST shall not bear any responsibility for any loss or damage which results solely from the negligence of the COUNTY or its representatives.

**ARTICLE VI  
ASSIGNMENT AND SUBCONTRACTING**

**Section 6.01 Assignment, Transfer or Subcontracting**

A material element of this Agreement is the personal skill, judgment and creativity of the ARTIST. Therefore, the ARTIST shall not assign, transfer or subcontract the creative and/or artistic portions of the Work of Art to another party without the express prior written approval of the COUNTY.

**ARTICLE VII  
RIGHTS OF OWNERSHIP**

**Section 7.01 Ownership of Documents**

The ARTIST shall deliver to the COUNTY, for acceptance, and before being eligible for final payment of any amounts due, all documents and materials prepared by and for the COUNTY under this Agreement.

The COUNTY and the ARTIST shall comply with the provisions of Chapter 119, Florida Statutes (Public Records Law).

All covenants, agreements, representations and warranties made herein, or otherwise made in writing by any party pursuant hereto, including but not limited to any representation made herein relating to disclosure or ownership of documents, shall survive the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby.

Upon completion of the Final Construction Drawings and Final Acceptance by the COUNTY, all materials developed by the ARTIST and submitted to the COUNTY for the purpose of this Agreement shall become the property of the COUNTY. ARTIST shall maintain ownership of their copyrights.

This Section 7.01 shall survive termination or expiration of this Agreement.

**Section 7.02 Ownership of Materials and Work Product**

When the ARTIST submits progress payment applications for materials used in the design and/or fabrication process of the Work of Art prior to permanent installation on a COUNTY property, and the Art in Public Places Administrator verifies that the materials are being used by the ARTIST and stored in a secure location, the materials become the property of the COUNTY.

**Section 7.03 Title to the completed Work of Art**

Title to the completed Work of Art shall vest in the COUNTY at the time of Final Payment by the COUNTY.

This Section 7.03 shall survive termination or expiration of this Agreement.

**Section 7.04 Right of Ownership**

ARTIST expressly reserves every right available to ARTIST under the Federal Copyright Act, Visual Artists Rights Act of 1990, VARA and other applicable statutes to control the making or dissemination of copies or reproductions of the designed Work(s) of Art, except the rights which are limited by this Agreement.

In the event that ARTIST prevails in any dispute with the COUNTY over the ownership or display of the Work(s) of Art, ARTIST agrees that ARTIST'S sole and exclusive remedy shall be to have COUNTY permit the Artist to remove the Work(s) of Art and, upon returning to the COUNTY any consideration given by the COUNTY for the Work(s) of Art, retain possession of the Work(s) of Art.

ARTIST certifies that the designed Work(s) of Art created pursuant to this Agreement is a unique work of art and has not been and will not be substantially duplicated by the ARTIST. ARTIST may utilize photographs or other reproductions of the Work(s) of Art in marketing materials or as representative samples of the ARTIST's work. ARTIST agrees to include on or in any form of reproduction of the designed Work(s) of Art initiated or authorized by the ARTIST, a credit to the COUNTY, stating that the designed Work(s) of Art was commissioned by the COUNTY and owned by the COUNTY. COUNTY retains the right to publish and distribute photographs, drawings or other forms of reproductions of the designed Work(s) of Art, both as depicted in the conceptual drawings and as installed and formally accepted by the COUNTY, for reference, promotional, educational and scholarly purposes. The COUNTY agrees to make no commercial use of the designed Work(s) of Art without the ARTIST's written consent. In all cases, the Work(s) of Art shall be credited to ARTIST.

The terms of this Section 7.04 shall survive termination or expiration of this Agreement.

#### **Section 7.05 Ownership and Use of Instruments of Service**

During the performance of this Agreement, the ARTIST specifically grants to the COUNTY the right to make presentations of the Work of Art in progress and/or to photograph or otherwise reproduce faithful images of the Work of Art in progress for presentational purposes. Presentation(s) of the Work of Art in progress to COUNTY officials/employees and/or the public may be conducted by the Art in Public Places Administrator or his/her designee without specific approval of the ARTIST.

#### **Section 7.06 Alteration of Work(s) of Art**

ARTIST acknowledges that the designed Work(s) of Art will be installed at, and integrated into the Palm Beach County Supervisor of Elections Facility.

The COUNTY will not alter, relocate, modify or change the Work(s) of Art without making adequate attempt to contact the ARTIST or the ARTIST's estate for written authorization regarding the proposed alteration, modification or change. Such authorization shall not be unreasonably withheld.

In the case of Work(s) of Art which are specifically created for a site or which are integral to the design or construction of a building, COUNTY will not alter, modify, or change the Work(s) of Art and/or the site without reaching agreement with the ARTIST regarding the proposed change, alteration, or modification.

In the event that the COUNTY deems it necessary to deaccession, decommission, or remove a Work(s) of Art, in accordance with Visual Artists Rights Act of 1990, VARA, the COUNTY shall make adequate attempt to contact the ARTIST with the offer of the first right of refusal to purchase his/her Work(s) of Art, providing it stands alone and is not integrated into a larger piece.

The COUNTY will reach agreement with the ARTIST on all repairs and restoration other than ordinary maintenance which are made during the lifetime of the ARTIST. To the extent practical, the ARTIST shall be given the opportunity to accomplish such repairs and restoration at a reasonable fee.

If COUNTY and the ARTIST cannot agree regarding alterations or repairs, COUNTY may

accomplish such changes as it deems necessary. In that event, COUNTY agrees to no longer represent the Work(s) of Art as that of the ARTIST, upon receipt of written request to that effect from the ARTIST.

The terms of this Section 7.06 shall survive termination or expiration of this Agreement.

## **ARTICLE VIII REPAIRS AND MAINTENANCE**

### **Section 8.01 Maintenance of the Work of Art**

The ARTIST shall complete the "Documentation Worksheet," attached hereto as Exhibit 10 and incorporated herein, to provide detailed written instructions for routine maintenance and long-term conservation of the Work of Art.

The COUNTY recognizes that although normal maintenance of the Work of Art will involve simple and relatively inexpensive procedures, such maintenance on a regular basis is essential to the integrity and authenticity of the Work of Art. The COUNTY shall provide such regular maintenance according to the written specifications of the ARTIST and shall protect and maintain the Work of Art against the ravages of time, vandalism and the elements. To the extent practicable, the COUNTY shall make all significant repairs and restorations of the Work of Art in accordance with the Documentation Worksheet. Notwithstanding any provision in this Agreement to the contrary, the COUNTY shall have no obligation to protect or maintain the Work of Art against COUNTY-approved renovation to or demolition of the building in or around which the Work of Art is located if the Work of Art cannot reasonably, in the sole discretion of the COUNTY, be salvaged or relocated prior to the renovation or demolition.

This Section 8.01 shall survive termination or expiration of this Agreement.

### **Section 8.02 Repairs & Restorations of the Work of Art.**

The COUNTY shall have the right to determine when and if repairs and restorations to the Work of Art will be made. During the ARTIST'S lifetime, the ARTIST shall have the right to approve all repair and restoration of a significant nature. Repairs are considered significant if the Work of Art will no longer represent the ARTIST'S original intention, as described in the Documentation Worksheet, or if the Work of Art poses a threat to public safety. Within thirty days of written notice from the COUNTY, sent via certified mail, the ARTIST will provide, in writing, recommendations for repairs and restoration to the Work of Art, including a timeline for completion, to the COUNTY. If the ARTIST fails or refuses to provide recommendations within thirty days of written notice, the COUNTY shall have the right to make its own repair or restoration provided that the Work of Art is not thereafter represented to be the Work of Art of the ARTIST. To the extent practical, the ARTIST shall be given the opportunity to make or personally supervise significant repairs and restorations. The ARTIST may be paid a reasonable fee for such repairs provided both parties agree to the fee, in writing, prior to the execution of services.

This Section 8.02 shall survive termination or expiration of this Agreement.

## **ARTICLE IX INSURANCE/INDEMNIFICATION**

### **Section 9.01 Insurance**

ARTIST shall, at its sole expense, maintain in effect at all times during the term of this Agreement insurance coverage with limits not less than those set forth in the table below. Coverage shall be provided by insurers acceptable to COUNTY. ARTIST shall deliver to COUNTY, Certificate/s of Insurance in accordance with the terms in the table below, evidencing that such policies are in force prior to execution of the Agreement by COUNTY, prior to commencing work on the Project, within five (5) business days of a written request by COUNTY, and/ or upon expiration of any required coverage. ARTIST shall notify COUNTY within ten (10) days of any cancellation or non-renewal of required coverage. Unless the expired or non-renewed coverage is replaced prior to the cancellation effective date, COUNTY may suspend the Work until replacement coverage is evidenced and approved by COUNTY. Where applicable, coverage shall apply on a primary and non-contributory basis.

**Workers' Compensation insurance.** ARTIST shall provide Workers' Compensation insurance, including coverage for Employer's Liability in accordance with the minimum limits forth in the table below, or proof of exemption in accordance with Florida Statutes, Chapter 440.

**Commercial General Liability insurance.** ARTIST shall provide Commercial General Liability insurance in accordance with the minimum limits forth in the table below.

**Watercraft Liability insurance.** Should any of the work hereunder involve use of a watercraft owned or operated by ARTIST, ARTIST shall provide Protection and Indemnity coverage in accordance with the minimum limits forth in the table below.

**Business Automobile Liability insurance.** ARTIST shall provide Comprehensive Automobile Liability insurance covering all owned, nonowned and hired automobiles in accordance with the minimum limits forth in the table below.

**Aircraft Liability insurance.** Should any of the work hereunder involve aircraft (fixed wing or helicopter), or drone (unmanned aerial vehicle) owned or operated by ARTIST, ARTIST shall provide Aircraft Liability insurance in accordance with the terms and conditions of the table set forth below.

**Additional Insured Endorsement.** All required policies excluding the Workers' Compensation coverage shall be endorsed to include, "Palm Beach County Board of County Commissioners" as an Additional Insured. The Additional Insured shall be indicated on the Certificate of Insurance.

**No Representation of Coverage Adequacy.** Neither the requirements contained herein nor COUNTY'S approval of insurance coverage to be maintained by ARTIST, shall limit or qualify the liabilities and obligations assumed by ARTIST under this Agreement.

**Insurance Requirements for Subcontractor/s.** ARTIST shall require subcontractors to provide commercial general liability, business automobile liability and workers' compensation insurance coverage and to include, "Palm Beach County Board of County Commissioners" as an Additional Insured on the Commercial General Liability and Business Automobile Liability policies. Proof of coverage shall be obtained by ARTIST prior to subcontractor's/s' work on the project, and shall be evidenced to COUNTY within five (5) business days of a written request.

**INSURANCE REQUIREMENTS**

The ARTIST shall provide at least the following insurance limits:

MINIMUM REQUIRED INSURANCE COVERAGE	CONTRACT LESS THAN \$500,000	CONTRACTS \$500,000 OR MORE
Commercial General Liability Combined Single Limit Personal Injury, Bodily Injury and Property Damage Liability Required Coverage: Premises/Operations Independent Contractors Products/Completed Operations Contractual Liability Broad Form Property Damage	\$500,000 per occurrence	\$1,000,000 per occurrence
Workers' Compensation and Employer's Liability If work is on or contiguous to navigable bodies of water: U.S. Longshoremen's and Harbor Workers Act and/or Jones Act Endorsements	Statutory \$500,000/\$500,000/\$500,000	
If work involves watercraft owned or operated by ARTIST, Protection and Indemnity Coverage	\$5,000,000 per occurrence	
If work involves hauling and/or rigging of property in excess of \$500,000 "All Risk" Transit or Motor Truck Cargo or similar form of insurance	Replacement cost coverage for highest value involved. Must contain a Waiver of Subrogation in favor of County.	
If work involves any type of aircraft (fixed wing or helicopter) Aircraft Liability	\$5,000,000 each occurrence bodily injury (including passengers) and property damage	
Business Automobile Liability Combined Single Limit Bodily Injury and Property Damage Must include all owned, hired and nonowned vehicles	Not less than \$100,000/\$300,000 Bodily Injury and \$50,000 Property Damage	\$1,000,000 per occurrence
Builder's Risk "All Risk" including flood, wind and water damage. Policy must specifically eliminate "Occupancy Clause" must be endorsed to cover until final acceptance of project by the County.  Sublimits for any coverage are not acceptable if they are less than the total value of the project.	Not Required.	
Certificates of Insurance	Must indicate Palm Beach County Board of County Commissioners as an Additional Insured for all coverage except Workers' Compensation  b. Must indicate as Certificate Holder: Palm Beach County Board of County Commissioners Capital Improvements Division 2633 Vista Parkway West Palm Beach, FL 33411 Attn: Isami Ayala-Collazo, Director Palm Beach County Supervisor of Elections Facility Project # 19216	



The ARTIST shall protect, defend, reimburse, indemnify and hold COUNTY, its agents, employees and elected officers harmless from and against all claims, liability, expense, loss, cost, damages or causes of action of every kind or character, including reasonable attorneys' fees and costs, whether at trial or appellate levels or otherwise, arising during and as a result of ARTIST's performance of the terms of this Agreement or due to the acts or omissions of ARTIST.

The provisions of this Section 9.02 shall survive the termination or expiration of this Agreement.

## **ARTICLE X LENGTH OF TERM AND TERMINATION**

### **Section 10.01 Length of Term and Commencement Date**

This Agreement shall take effect upon the approval and execution by both parties ("Commencement Date") and continue until completion of all phases of work or until the earlier termination of this Agreement as provided for herein.

### **Section 10.02 Termination**

This Agreement may be canceled by the ARTIST upon sixty (60) days prior written notice to the COUNTY in the event of substantial failure by the COUNTY to perform in accordance with the terms of this Agreement through no fault of the ARTIST. It may also be terminated, in whole or in part, by the COUNTY, with cause upon five (5) business day's written notice to the ARTIST or without cause upon ten (10) business day's written notice to the ARTIST. Unless the ARTIST is in breach of this Agreement, the ARTIST shall be paid for services rendered to the COUNTY's satisfaction through the date of termination as well as ARTIST's entire Artist Fee. In no event, whether termination is with or without cause, shall the COUNTY be liable for any lost profits, lost opportunity damage, or consequential damages. After receipt of a termination notice and except as otherwise directed by the COUNTY, the ARTIST shall:

- a. Stop work on the date and to the extent specified.
- b. Terminate and settle all orders and subcontracts relating to the performance of the terminated work.
- c. Transfer all work in process, completed work, and other materials related to the terminated work to the COUNTY.
- d. Continue and complete all parts of the work that have not been terminated.

Should a termination for breach later be declared wrongful, said termination shall be considered and treated as a termination without cause.

In the event of termination by the COUNTY with or without cause, the COUNTY will not use the ARTIST's design or other work product for any other project or purpose. Copyright to all work will remain with ARTIST.

**ARTICLE XI  
MISCELLANEOUS**

**Section 11.01 Publicity and News Releases**

The ARTIST shall not, during the term of this Agreement, disseminate publicity or news releases or submit for awards regarding the Work of Art without prior written approval from the COUNTY. All reproduction by the COUNTY shall contain a credit to the ARTIST.

**Section 11.02 Pledge of Credit**

The ARTIST shall not pledge the COUNTY'S credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgment, lien or any form of indebtedness. The ARTIST further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Agreement.

**Section 11.03 Federal and State Taxes**

The COUNTY is exempt from payment of Florida State Sales and Use Taxes. The ARTIST shall not be exempt from paying sales tax to its suppliers for materials used to fulfill contractual obligations with the COUNTY, nor is the ARTIST authorized to use the COUNTY'S Tax Exemption Number in securing such materials. The ARTIST shall be responsible for payment of all federal, state, and local taxes and fees incurred in connection with this Agreement.

**Section 11.04 Entirety of Agreement**

The COUNTY and the ARTIST agree that this Agreement sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Contract may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto.

**Section 11.05 Notices**

All communications relating to the day-to-day activities shall be exchanged between the ARTIST and the Art in Public Places Administrator. All notices required in this Agreement shall be sent by certified mail, return receipt requested, hand delivery or other delivery service requiring signed acceptance. If sent to the COUNTY, notices shall be addressed to:

Director, Facilities Development & Operations  
2633 Vista Parkway  
West Palm Beach, FL 33411-5603

With copy to:  
County Attorney's Office  
301 North Olive Ave, Suite 601  
West Palm Beach, Fl. 33401

If sent to the ARTIST, notices shall be addressed to:

Matthew Mazzotta  
SOCIAL SPACE LLC  
41 E. Main Street  
Canton, NY 13617

With copy to:  
Sarah Conley Odenkirk  
Cowan, DeBaets, Abrahams & Sheppard LLP  
9454 Wilshire Blvd, Suite 901  
Beverly Hills, CA 90212

### **Section 11.06 Changes of Address**

The ARTIST shall notify the COUNTY of changes of address, telephone or fax numbers and failure to do so, if such failure prevents the COUNTY from locating the ARTIST, shall be deemed a waiver by the ARTIST of those provisions of this Agreement that require the express approval of the ARTIST.

### **Section 11.07 Access and Audits**

The ARTIST shall maintain adequate records to justify all charges, expenses, and costs incurred in estimating and performing the work for at least five (5) years after completion or termination of this Agreement. The COUNTY shall have access to such books, records, and documents as required in this section for the purpose of inspection or audit during normal business hours, at the ARTIST'S place of business.

Palm Beach County has established the Office of the Inspector General in Palm Beach County Code, Section 2-421 - 2-440, as may be amended. The Office of the Inspector General's authority includes but is not limited to the power to review past, present and proposed County contracts, transactions, accounts and records, to require the production of records, and to audit, investigate, monitor, and inspect the activities of the ARTIST, its officers, agents, employees and lobbyists in order to ensure compliance with contract requirements and detect corruption and fraud. Failure to cooperate with the Inspector General or interfering with or impeding any investigation shall be in violation of Palm Beach County Code, Section 2-421 – 2-440, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

### **Section 11.08 Severability**

If any term or provision of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, or the application of such terms or provision, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.

### **Section 11.09 Governing Law and Venue**

This Agreement shall be governed by and interpreted according to the laws of the State of Florida and venue shall be in Palm Beach County, Florida.

### **Section 11.10 Public Records**

Notwithstanding anything contained herein, as provided under Section 119.0701, F.S., if the ARTIST: (i) provides a service; and (ii) acts on behalf of the COUNTY as provided under Section 119.011(2) F.S., the ARTIST shall comply with the requirements of Section 119.0701, Florida Statutes, as it may be amended from time to time. The ARTIST is specifically required to:

A. Keep and maintain public records required by the COUNTY to perform services as provided under this Agreement.

B. Upon request from the COUNTY's Custodian of Public Records, provide the COUNTY with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119 or as otherwise provided by law. The ARTIST further agrees that all fees, charges and expenses shall be determined in accordance with Palm Beach COUNTY PPM CW-F-002, Fees Associated with Public Records Requests, as it may be amended or replaced from time to time.

C. Ensure that public records that are exempt, or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the Agreement, if the ARTIST does not transfer the records to the public agency.

D. Upon completion of the Agreement the ARTIST shall transfer, at no cost to the COUNTY, all public records in possession of the ARTIST unless notified by COUNTY's representative /liaison, on behalf of the COUNTY's Custodian of Public Records, to keep and maintain public records required by the COUNTY to perform the service. If the ARTIST transfers all public records to the COUNTY upon completion of the Agreement, the ARTIST shall destroy any duplicate public records that are exempt, or confidential and exempt from public records disclosure requirements. If the ARTIST keeps and maintains public records upon completion of the Agreement, the ARTIST shall meet all applicable requirements for retaining public records. All records stored electronically by the ARTIST must be provided to COUNTY, upon request of the COUNTY's Custodian of Public Records, in a format that is compatible with the information technology systems of COUNTY, at no cost to COUNTY.

Failure of the ARTIST to comply with the requirements of this article shall be a material breach of this Agreement. COUNTY shall have the right to exercise any and all remedies available to it, including but not limited to, the right to terminate for cause. ARTIST acknowledges that it has familiarized itself with the requirements of Chapter 119, F.S., and other requirements of state law applicable to public records not specifically set forth herein.

**IF THE ARTIST HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE ARTIST'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, PLEASE CONTACT THE BUSINESS AND COMMUNITY AGREEMENTS MANAGER, FACILITIES DEVELOPMENT & OPERATIONS, 2633 VISTA PARKWAY, WEST PALM BEACH, FL 33411 OR BY EMAIL AT [FDORECORDSREQUEST@PBCGOV.ORG](mailto:FDORECORDSREQUEST@PBCGOV.ORG) OR BY TELEPHONE AT 561-233-5252.**

#### **Section 11.11 Public Entity Crimes**

As provided in F.S. 287.132-133, by entering into this Agreement or performing any work in furtherance hereof, the ARTIST certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the 36 months immediately preceding the date hereof. This notice is required by F.S. 287.133(3)(a).

### **Section 11.12 Independent Contractor Relationship**

The ARTIST is, and shall be, in the performance of all work services and activities under this Agreement, an Independent Contractor, and not an employee, agent, or servant of the COUNTY. All persons engaged in any of the work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to the ARTIST'S sole direction, supervision, and control. The ARTIST shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the ARTIST'S relationship and the relationship of its employees to the COUNTY shall be that of an Independent Contractor and not as employees or agents of the COUNTY.

The ARTIST does not have the power or authority to bind the COUNTY in any promise, agreement or representation.

### **Section 11.13 Construction**

No party shall be considered the author of this Agreement since the parties hereto have participated in extensive negotiations, drafting and redrafting of this document to arrive at a final Agreement. Thus, the terms of this Agreement shall not be strictly construed against one party as opposed to the other party based upon who drafted it.

### **Section 11.14 Non-Discrimination**

The COUNTY is committed to assuring equal opportunity in the award of contracts and complies with all laws prohibiting discrimination. Pursuant to Palm Beach County Resolution R2017-1770, as may be amended, the ARTIST warrants and represents that throughout the term of this Agreement, including any renewals thereof, if applicable, all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity and expression, or genetic information. Failure to meet this requirement shall be considered default of this Agreement.

### **Section 11.15 Third Party Beneficiaries**

No provision of this Agreement is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this Agreement.

### **Section 11.16 Scrutinized Companies**

A. As provided in F.S. 287.135, by entering into this Agreement or performing any work in furtherance hereof, the ARTIST certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the Scrutinized Companies that boycott Israel List, or is engaged in a boycott of Israel, pursuant to F.S. 215.4725. Pursuant to F.S. 287.135(3)(b), if ARTIST is found to have been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel, this Agreement may be terminated at the option of the COUNTY.

B. When contract value is greater than \$1 million: As provided in F.S. 287.135, by entering into this Agreement or performing any work in furtherance hereof, the ARTIST certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the Scrutinized Companies With Activities in Sudan List or Scrutinized Companies With Activities in The Iran Petroleum Energy Sector List created pursuant to F.S. 215.473 or is engaged in business operations in Cuba or Syria.

If the COUNTY determines, using credible information available to the public, that a false certification has been submitted by ARTIST, this Agreement may be terminated and a civil penalty equal

to the greater of \$2 million or twice the amount of this Agreement shall be imposed, pursuant to F.S. 287.135. Said certification must also be submitted at the time of Agreement renewal, if applicable.

**Section 11.17 E-Verify – Employment Eligibility**

ARTIST warrants and represents that it is in compliance with section 448.095, Florida Statutes, as may be amended, and that it: (1) is registered with the E-Verify System (E-Verify.gov), and beginning January 1, 2021, uses the E-Verify System to electronically verify the employment eligibility of all newly hired workers; and (2) has verified that all of ARTIST’s subcontractors performing the duties and obligations of this Agreement are registered with the E-Verify System, and beginning January 1, 2021, use the E-Verify System to electronically verify the employment eligibility of all newly hired workers.

ARTIST shall obtain from each of its subcontractors an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an Unauthorized Alien, as that term is defined in section 448.095(1)(k), Florida Statutes, as may be amended. ARTIST shall maintain a copy of any such affidavit from a subcontractor for, at a minimum, the duration of the subcontract and any extension thereof. This provision shall not supersede any provision of this Agreement which requires a longer retention period.

COUNTY shall terminate this Agreement if it has a good faith belief that ARTIST has knowingly violated Section 448.09(1), Florida Statutes, as may be amended. If COUNTY has a good faith belief that ARTIST’s subcontractor has knowingly violated section 448.09(1), Florida Statutes, as may be amended, COUNTY shall notify ARTIST to terminate its contract with the subcontractor and ARTIST shall immediately terminate its contract with the subcontractor. If COUNTY terminates this Agreement pursuant to the above, ARTIST shall be barred from being awarded a future contract by COUNTY for a period of one (1) year from the date on which this Agreement was terminated. In the event of such contract termination, ARTIST shall also be liable for any additional costs incurred by COUNTY as a result of the termination.

**THE REST OF THIS PAGE INTENTIONALLY LEFT BLANK**

**IN WITNESS WHEREOF**, the Board of County Commissioners of Palm Beach County, Florida has made and executed this Contract on behalf of the County, and an authorized official of the Artist has made and executed this Contract on behalf of the Artist.

**ATTEST:**  
**JOSEPH ABRUZZO, CLERK of the**  
**CIRCUIT COURT & COMPTROLLER**

**PALM BEACH COUNTY,**  
**A Political Subdivision of the State of**  
**Florida**  
**BOARD OF COUNTY COMMISSIONERS**

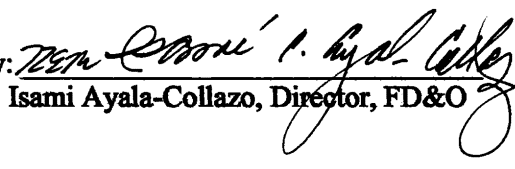
By: \_\_\_\_\_  
Deputy Clerk

By: \_\_\_\_\_  
Robert S. Weinroth, Mayor

**APPROVED AS TO**  
**LEGAL SUFFICIENCY**

**APPROVED AS TO TERMS**  
**AND CONDITIONS**

By:   
County Attorney

By:   
Isami Ayala-Collazo, Director, FD&O

**WITNESS:**  
  
\_\_\_\_\_  
Signature

**ARTIST: SOCIAL SPACE, LLC**  
By:   
\_\_\_\_\_  
Signature

Su Jen Lim  
\_\_\_\_\_  
Name (type or print)

Matthew Mazzotta  
\_\_\_\_\_  
Name (type or print)

\_\_\_\_\_  
Manager  
Title

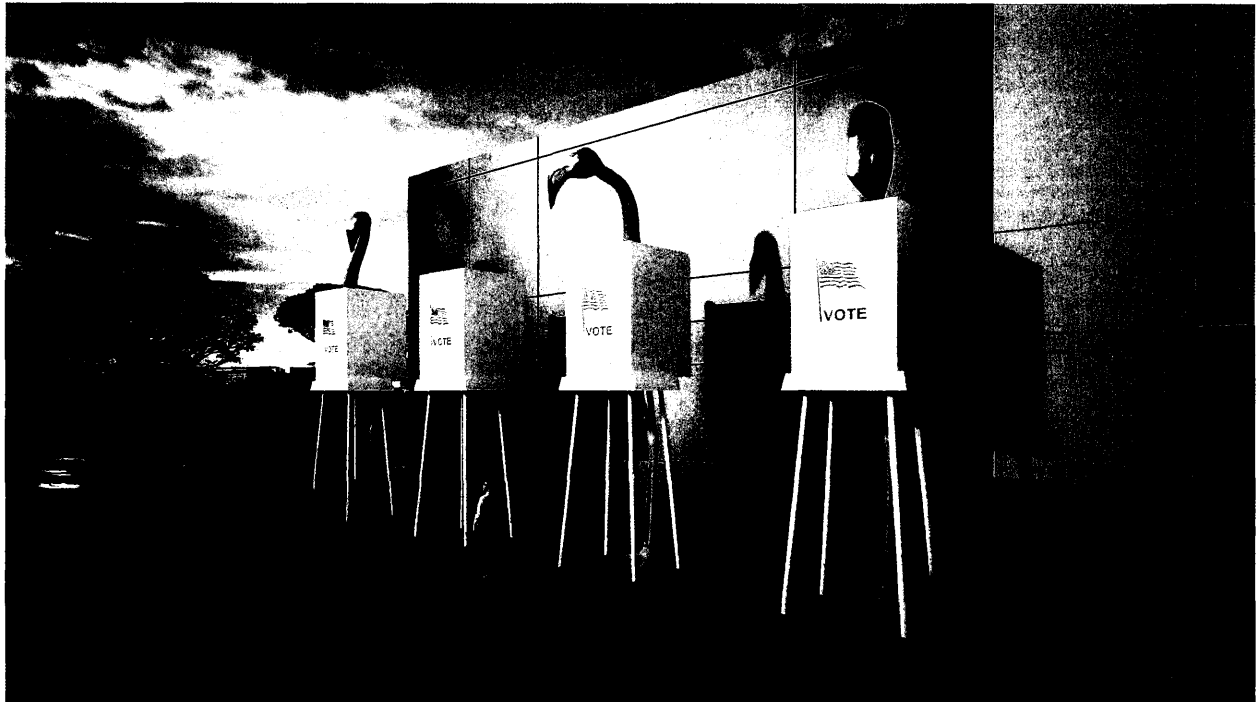


Figure 1 RENDERING 1

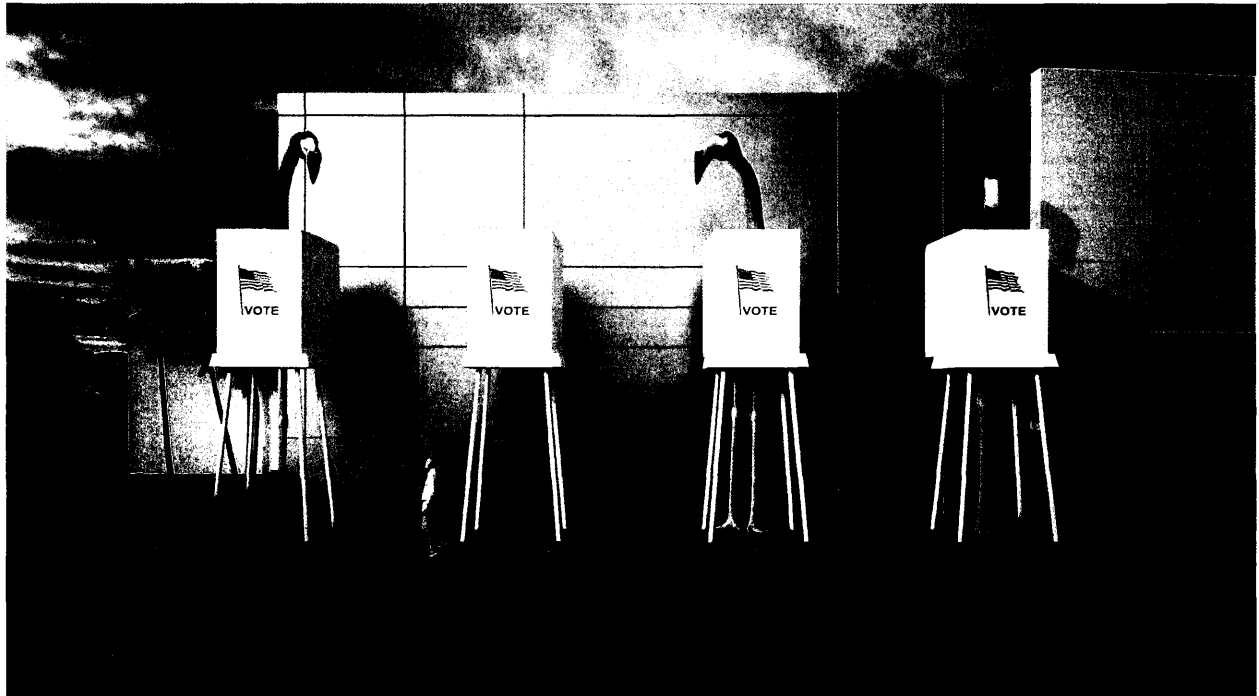


Figure 2 RENDERING 2



***Exhibit 2***  
***Design Requirements***

- Art is inspired by “The right to vote is one of the most fundamental liberties we enjoy as Americans and it is also one of our greatest civic responsibilities. Make freedom count.”
- Art will encourage Palm Beach County residents to vote.
- Art will motivate Palm Beach County residents to participate in the election process.
- Art will highlight that every vote counts.
- Art will be welcoming to all people.
- Art will prompt Palm Beach County residents to interact with and “be part of the art”.
- Art will include bold forms and vibrant colors for enhanced visibility to motorists and pedestrians.
- Art will foster a unique sense of place and enhance the surrounding neighborhood.
- Art will inspire the trust of Palm Beach County voters in County leadership and elections services.
- Art will complement the architecture, scale, medium and integrity of the facility.
- Art will be created with materials that require minimal maintenance.
- Art does not include representations of any political party.
- Art is non-partisan in imagery and/or words.
- Art contains no logos, or trademarked products and/or images.
- Art does not include reflective materials, emit light or smoke, or serve to attract birds due to facility’s proximity to Palm Beach International Airport.
- Art has day and night presence.

*Exhibit 3*  
*Schedule of Contract Values*

<b>Description</b>	<b>Contract Total</b>	<b>% Complete</b>	<b>Value in Place</b>	<b>Prev. Billed</b>	<b>Amount Due</b>	<b>Contract Balance</b>
<b>DESIGN DEVELOPMENT</b>	<b>\$62,500.00</b>					
<b>CONSTRUCTION DOCUMENTS AND SCULPTURAL MODELING</b>	<b>\$107,000.00</b>					
<b>PERMITTING</b>	<b>\$10,000.00</b>					
<b>MATERIALS</b>	<b>\$150,000.00</b>					
<b>FABRICATION</b>	<b>\$289,900.00</b>					
<b>INSTALLATION &amp; FOUNDATIONS</b>	<b>\$77,000.00</b>					
<b>CRATING/SHIPPING</b>	<b>\$15,000.00</b>					
<b>ARTIST FEE</b>	<b>\$79,600.00</b>					
<b>INSURANCE</b>	<b>\$5,000.00</b>					
<b>TOTAL</b>	<b>\$796,000</b>					

*Exhibit 4*  
*Construction Schedule*

<b><u>Task</u></b>	<b><u>Start Date</u></b>	<b><u>Duration</u></b>
<b>Notice to Proceed</b>	<b>3/21/22</b>	<b>1 Day</b>
<b>Design Development</b>	<b>3/22/22</b>	<b>30 Days</b>
<b>Plan Review</b>	<b>4/21/22</b>	<b>21 Days</b>
<b>Construction Documents</b>	<b>5/12/22</b>	<b>60 Days</b>
<b>Plan Review</b>	<b>7/11/22</b>	<b>14 Days</b>
<b>Permitting</b>	<b>7/25/22</b>	<b>120 Days</b>
<b>Fabrication</b>	<b>11/22/22</b>	<b>240 Days</b>
<b>Shipping</b>	<b>7/20/23</b>	<b>3 days</b>
<b>Installation</b>	<b>7/24/23</b>	<b>45 days</b>
<b>Closeout</b>	<b>09/07/23</b>	<b>60 days</b>

***Exhibit 5***

***Subcontractors***

**Structural Engineering:**

Yetiweurks  
55 Graceful Way  
Candler, NC 28715

**Electrical Engineer:**

EOR

**Metal Fabrication:**

Elmendorf Geurts  
940 S. Jason St. Unit 9  
Denver, CO 80223

**Fiberglass Fabrication:**

Fast Fiberglass  
14177 Co. Hwy. Q  
Sparta, WI 54656

**General Contractor:**

TBD

**Installation/Shipping:**

Public Art Services  
5810 West 38th Ave  
Wheatridge, CO 80212

***Exhibit 6  
Materials***

**Stainless steel**  
**Epoxy/Acrylic polyurethane**  
**Fiberglass composites**  
**Concrete**  
**Lighting fixtures TBD**  
**Ground Cover TBD**  
**Anti-Graffiti Coating**

*Exhibit 7*  
*Design Reviews and Milestones*

**Design Development and Review**  
**Construction Documents and Review**  
**Materials Procurement**  
**Midpoint of Fabrication and Review**  
**Fabrication Completion and Review**  
**Installation Completion and Review**  
**Project Closeout and Review**

***Exhibit 8***  
***Final Release***

CONDITIONAL FINAL WAIVER AND RELEASE OF CLAIM

KNOW ALL MEN BY THESE PRESENTS, that the undersigned, to induce the final payment in the sum of \$ \_\_\_\_\_ and other valuable considerations and benefits to the undersigned accruing, does upon receipt of payment waive, release and quit claim all claims or demands of every kind whatsoever against the project, commonly known as \_\_\_\_\_ the Work of Art at the Palm Beach County Supervisor of Elections Facility, on account of work and labor performed, and/or materials furnished in, to, or about the construction of any Work of Art located thereon.

It being understood that this is a Final Waiver and Release of Claim, and the undersigned warrants that no assignment of said claim, nor the right to perfect a claim against any art work by virtue of the accrual of said payment, has or will be made, and that the undersigned has the right to execute this Final Waiver and Release, and that all laborers employed by the undersigned in connection with the construction of improvements upon the aforesaid premises, to the extent of the payment herein referred to, have been fully-paid and all materials, supplies and personality are free and clear of conditional bill of sale and/or retain title contracts.

IN WITNESS WHEREOF, I have hereunto set my hand and seal and I hereby acknowledge that the foregoing statements are true and correct this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

WITNESS:

ARTIST:

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization, this \_\_\_\_ day of \_\_\_, 20\_\_\_\_ by \_\_\_\_\_ who is personally known to me or who has produced \_\_\_\_\_ as identification and who did (did not) take an oath.

\_\_\_\_\_  
\_\_\_\_\_, STATE OF \_\_\_\_\_

***Exhibit 9***  
***Warranty of Title***

I, \_\_\_\_\_, guarantee and warrant that the Work of Art created for the Palm Beach County Supervisor of Elections Facility, titled " \_\_\_\_\_ " is an unique edition of my own artistic efforts. I also warrant that the Work of Art is free and clear of any liens, claims or other encumbrances of any type.

\_\_\_\_\_  
Artist Signature

\_\_\_\_\_  
Artist Printed Name

\_\_\_\_\_  
Date



**Exhibit 10**  
**Documentation Worksheet**

**This information is required for all Works of Art owned by the COUNTY. Completion of this worksheet is a condition precedent to Final Payment thereof.**

Please fill in *all* information in the spaces indicated or “n/a” (for “not applicable”).  
Do not leave any space blank. All information must be legible (printed or typed).

**ARTIST INFORMATION**

*If the Work of Art is created by an artist team, provide information for EACH artist on the team.*

**Name:** Matthew Louis Mazzotta

**Date of Birth:** March 28, 1977

**Birthplace / Place of Death:** STATEN ISLAND, NEW YORK, U.S.A.

**Citizenship:** U.S.A.

**Ethnicity/Culture:** CAUCASIAN

**ARTWORK INFORMATION**

**Title:** VOTE!

**Discipline:**

♣ Painting/Drawing     Sculpture    ♣ Ceramic

♣ Fiber Art    ♣ Photography    ♣ Film/Video

Other \_\_\_\_\_

**Medium:**

**Materials:** Provide a *complete list of all materials which compose the Work of Art.* Include generic and manufacturer’s product names, as well as product numbers. Include contact information of product manufacturer’s if available. Note the words “*see attached list*” and attach list to worksheet if necessary.

Below, provide a list of all *commercially manufactured materials* which are part of the Work of Art:

Generic Name

Product Brand Name/Number

- 1) \_\_\_\_\_
- 2) \_\_\_\_\_
- 3) \_\_\_\_\_
- 4) \_\_\_\_\_
- 5) \_\_\_\_\_
- 6) \_\_\_\_\_

List below the manufacturer contact information for all *commercially manufactured materials* listed above:

Company Name

Business Address

Tel./Fax /Email

_____	_____	_____
_____	_____	_____
_____	_____	_____

**FABRICATION & TECHNICAL SPECIFICATION INFORMATION**

**Fabricator(s)/Collaborator(s):** List company name and contact information (*address, tel./fax, contact name*) of any fabricator(s) and/or collaborator(s) for the Work of Art. If more than one fabricator, please include a brief description of specific work performed by each.

**Method of Fabrication:** Describe method of fabrication of the Work.

**Fabrication Documents:** Such as working models; material samples; shop and/or as-built drawings; plans; and specification information. Specification information must be provided for all paint materials (primers and finishes) used in the creation of the Work of Art. Include a description and location for any fabrication materials of the Work of Art which are to be retained by sources other than Palm Beach County Art in Public Places.

**Maintenance Instructions:** Describe in detail the suggested maintenance procedure. Include special materials required, instructions for their use, and recommended frequency of procedure. Additionally, describe any acceptable material substitutes for primers and/or paint finishes.

Cleaning

*Materials*

*Instructions*

*Frequency*

Replacement Parts (*List any components which require regular replacement*)

*Materials*  
*Sources*

Graffiti Protection

**Lighting:** Describe any special lighting requirements for the Work whether or not provided/integrated as part of the Work.

**PUBLICITY INFORMATION**

**Exhibitions:** Exhibition history of the Work of Art. Indicate whether or not the proposal or drawings have been exhibited. Include copies of exhibition materials (i.e. invitations, news articles) if available.

**Publications:** Fill in publication history; reproduction or mention of the Work. Include copies of publications if available.

**PREPARER'S NAME**

Fill in name of individual completing form and contact *information if other than artist.*

**PREPARER'S SIGNATURE**

Please sign and date the form in the space provided. If preparer is other than the artist, then describe affiliation to artist or relationship with the Work (i.e. owner of the work, artist's representative, artist's spouse, trustee of artist's estate etc.)

**Completion Date** \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_  
(month) (day) (year)

- ♣ Denotes date of fabrication
- ♣ Denotes date of installation

***Dimensions (attach isometric sketch with dimensions if necessary)***

***Inscriptions and Identifying Marks***

♣ Artist's signature - Location \_\_\_\_\_

♣ Date - Location \_\_\_\_\_

Other – Location \_\_\_\_\_

***Siting***

Street Address: \_\_\_\_\_

Building Name: \_\_\_\_\_

Building Floor Level: \_\_\_\_\_

Location is Exterior and/ or Interior Application ("E" or "I"): \_\_\_\_\_

**Exhibit 11**  
**Bill Of Sale / Transfer of Title**

ARTIST: Social Space, LLC

COUNTY: Palm Beach County

ARTIST in consideration of compensation fully paid does hereby sell, transfer and convey to COUNTY the title to the following Work(s) of Art:

Title:

Created By:

Edition:

Medium or Materials

Size or Dimensions:

Date Created or Completed:

ARTIST hereby warrants that is the lawful owner of said Work(s) of Art and that it has full legal right, power, and authority to sell and transfer title to said Work(s) of Art.

ARTIST certifies that the above described Work(s) of Art is owned free and clear from all claims, liens and encumbrances of any kind and will warrant and defend the title to said Work(s) of Art against any and all persons whomsoever.

Copyright and reproduction rights reserved by ARTIST.

Social Space, LLC

By: \_\_\_\_\_  
Signature

Name: \_\_\_\_\_  
Printed

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

**Exhibit 12**  
**Subcontractor Activity Form**

ARTIST: Social Space, LLC  
ARTIST's Representative: Matthew Mazzotta

This form is used to show the monthly payment activity for work performed by each subcontractor on the project as shown on Exhibit 5 to the Agreement for Art Services. This form is to be submitted ARTIST with each invoice to the COUNTY. List the name(s) of each subcontractor on the project. As the project proceeds, please complete each column under the Subcontracting Information section.

Subcontracting Information					
Name of Subcontractor(s)	Total Contract Amount	Amount Drawn for Sub this period	Amount Drawn for Sub to Date	Amount Paid to Date for Subcontractor	Actual Starting Date

I hereby certify that the above information is accurate to the best of my knowledge.

\_\_\_\_\_  
Matthew Mazzotta

\_\_\_\_\_  
Date

**Exhibit 13**  
**Subcontractor Payment Certification**

This form must be submitted for each Subcontractor after receipt of payment from the ARTIST. The ARTIST must submit this form with each invoice submitted to the COUNTY when the COUNTY has paid the ARTIST for a previous invoice for services provided by a subcontractor. A completed release of lien form can be submitted in lieu of this form.

This is to certify that \_\_\_\_\_ received an  installment or  final  
*Subcontractor/Subconsultant Name*

payment of \$ \_\_\_\_\_ from Social Space, LLC on \_\_\_\_\_, 202\_ for my invoice

dated \_\_\_\_\_, 202\_ for labor and/or materials supplied on the SOE AiPP Project.

If the undersigned intends to distribute any portion of this payment to another Subcontractor, please list the business name and the amount below accompanied by a separate Subcontractor Payment Certification Form where the 2<sup>nd</sup>/3<sup>rd</sup> tier Subcontractor executes this form

\_\_\_\_\_  
Name of 2<sup>nd</sup>/3<sup>rd</sup> tier Subcontractor

\_\_\_\_\_  
Amount

By: \_\_\_\_\_  
Signature of Subcontractor

\_\_\_\_\_  
Printed Name/Title

# BUDGET AVAILABILITY STATEMENT

REQUEST DATE: 9/14/21

REQUESTED BY: Elayna Toby Singer

PHONE: 233-0235

PROJECT TITLE: Supervisor of Election Facility Public Art  
(Same as CIP or IST, if applicable)

IST PLANNING NO.:

ORIGINAL CONTRACT AMOUNT: \$

BCC RESOLUTION#:

REQUESTED AMOUNT: \$796,000

DATE:

CSA or CHANGE ORDER NUMBER:

LOCATION: 4215 Cherry Road, West Palm Beach, Florida

BUILDING NUMBER: 2974

DESCRIPTION OF WORK/SERVICE LOCATION: 2019-050082

PROJECT/W.O. NUMBER:

CONSULTANT/CONTRACTOR: Matthew Mazzotta dba Social Space LLC

PROVIDE A BRIEF STATEMENT OF THE SCOPE OF SERVICES TO BE PROVIDED BY THE CONSULTANT/CONTRACTOR: VOTE! Sculptural Installation

CONSTRUCTION	\$
PROFESSIONAL SERVICES	\$796,000
STAFF COSTS*	\$
EQUIP. / SUPPLIES	\$
CONTINGENCY	\$
TOTAL	\$796,000

\* By signing this BAS your department agrees to these CID staff charges and your account will be charged upon receipt of this BAS by FD&O. Unless there is a change in the scope of work, no additional staff charges will be billed. If this BAS is for construction costs of \$250,000 or greater, staff charges will be billed as actual and reconciled at the end of the project. If the project requires Facilities Management or ESS staff your department will be billed actual hours worked upon project completion.

**BUDGET ACCOUNT NUMBER(S) (Specify distribution if more than one and order in which funds are to be used):**

FUND: 3080 DEPT: 411 UNIT: B652 OBJ: 6502

**IDENTIFY FUNDING SOURCE FOR EACH ACCOUNT: (check and provide detail for all that apply)**

Ad Valorem (Amount \$ \_\_\_\_\_) Infrastructure Sales Tax (Amount \$ \_\_\_\_\_)  
State (source/type: \_\_\_\_\_ Amount \$ \_\_\_\_\_) Federal (source/type: \_\_\_\_\_ Amount \$ \_\_\_\_\_)  
Grant (source/type: \_\_\_\_\_ Amount \$ \_\_\_\_\_) Impact Fees: (Amount \$ \_\_\_\_\_)  
 Other (source/type: BOND Amount \$ 59,833,250)

Department: FD+O

BAS APPROVED BY: [Signature]

DATE 9/15/2021

ENCUMBRANCE NUMBER: \_\_\_\_\_

[Signature]  
11/31/2022