

**AGREEMENT BETWEEN COUNTY AND CONTRACTOR FOR  
GOODS AND SERVICES**

THIS AGREEMENT, effective this \_\_\_\_ day of \_\_\_\_ in the year, 20\_\_, between:

MARTIN COUNTY BOARD OF COUNTY COMMISSIONERS, a political subdivision of the State of Florida,  
(hereinafter COUNTY), located at 2401 S.E. Monterey Road, Stuart, FL 34996

AND the CONTRACTOR: \_\_\_\_\_  
located at (hereinafter CONTRACTOR) \_\_\_\_\_.

Term: 1 year

Not to Exceed Amount: \$ \_\_\_\_\_

**WHEREAS,** COUNTY owns works of art, architectural enhancements, and special landscape treatments in public places ("Art in Public Places"); and

**WHEREAS,** COUNTY desires to contract for services and materials for the maintenance, preservation, and restoration of the Art in Public Places; and

**WHEREAS,** CONTRACTOR has represented that it is able to satisfactorily provide the services and materials according to the terms and conditions of the Scope of Work, which is incorporated herein as Exhibit A, and the terms and conditions contained herein; and

**NOW THEREFORE,** in consideration of the above and mutual covenants contained herein, the parties agree as follows:

1. **Services to be Performed.** The CONTRACTOR hereby agrees to provide the COUNTY with goods and services, as requested and more specifically outlined in the Scope of Work attached hereto and made a part hereof as Exhibit A, this Agreement and all subsequent official documents that form the Contract Documents for this Agreement, including any additional contract terms contained herein. The COUNTY hereby agrees to make available to the CONTRACTOR the items listed in Exhibit B attached hereto and made a part hereof.

2. **Time of Service.** Services shall be performed in a timely manner, from \_\_\_\_\_, 20\_\_\_\_, through \_\_\_\_\_, 20\_\_\_\_.

3. **Term of Agreement/Option of Renewal.** This Agreement shall be in effect from the date of execution and for the term indicated on Page 1 of this Agreement and any extensions thereof. This Agreement may be renewed subject to execution of a written agreement between the COUNTY and CONTRACTOR for up to 30 additional days. This option shall be exercised only if all prices, terms and conditions remain the same, or decrease.

4. **Amendment of the Agreement.** This Agreement may be amended only by mutual written agreement signed by the parties. No statement, representations, warranties, either written or oral, from whatever source arising, except as expressly stated in this Agreement, shall have any legal validity between the parties or is binding upon any of them. The parties acknowledge that this Agreement contains the entire understanding and agreement of the parties. No modifications hereof shall be effective unless made in writing and executed by the parties hereto with the same formalities as this Agreement is executed.

5. **Assignment/Subcontracting.** A material element of this Agreement is the personal skill, judgement, and creativity of the CONTRACTOR. Therefore, the CONTRACTOR shall perform all services and provide all goods and equipment required by this Agreement. No assignment or subcontracting shall be allowed without the prior written consent of the COUNTY. In the event of a corporate acquisition and/or merger, the CONTRACTOR shall provide written notice to the COUNTY within thirty (30) business days of CONTRACTOR's notice of such action or upon the occurrence of said action, whichever occurs first. The right to terminate this Agreement, which shall not be unreasonably exercised by the COUNTY, shall include, but not be limited to, instances in which a corporate acquisition and/or merger represent a conflict of interest or are contrary to any local, state or federal laws.

6. **Termination/Default.** COUNTY shall notify CONTRACTOR of any failure to comply with any requirement in the Scope of Work and shall notify CONTRACTOR in writing of such failure/default. CONTRACTOR shall correct such failure/default within five (5) working days. COUNTY shall have the right to terminate this Agreement if such correction is not made within the time specified above. COUNTY reserves the right to cancel this Agreement, without cause, by giving thirty (30) days prior written notice to the CONTRACTOR of the intention to terminate. Failure of the CONTRACTOR to comply with any of the provisions of this Agreement shall be considered a material breach of Agreement and shall be cause for immediate termination of the Agreement at the sole discretion of the COUNTY. Upon termination of this Agreement, the CONTRACTOR shall be only entitled to payment and profit for that portion of the Scope of Work that is completed to the time of termination. Where this Agreement is terminated for cause by the COUNTY, such payment to CONTRACTOR shall be reduced by the amount equal to any additional costs incurred by the COUNTY as a result of the termination.

## **7. Compensation.**

- a. **Firm Fixed Price.** The COUNTY shall pay to the CONTRACTOR a fixed fee of \$\_\_\_\_\_, which shall constitute full compensation to the CONTRACTOR for all costs incurred for performance of the Scope of Work, including but not limited to fees, materials, labor of the CONTRACTOR and CONTRACTOR's assistants, engineering costs, studio, insurance, and operating costs applicable to the Scope of Work, attached hereto as Exhibit A; and any reasonable costs incurred by the CONTRACTOR for this work which are not the responsibility of the COUNTY. Prices shall remain firm for the duration of this Agreement and any renewals or extensions.
- b. **Payment Schedule.** The COUNTY will, make payment to the ARTIST in \_\_\_\_\_(\_\_\_\_) installments set forth according to the FIXED FEE to the CONTRACTOR and shall be made
  - 1) upon CONTRACTOR's completion of, and COUNTY's acceptance of, the work for \_\_\_\_\_ outlined on the Exhibit A – Scope of Work, and upon receipt from the CONTRACTOR of a request for payment. This should be accompanied by photographic evidence (before and after) of the completed work on \_\_\_\_\_ in accordance with Exhibit A – Scope of Work.
  - 2) upon CONTRACTOR's completion of, and COUNTY's acceptance of, the work for \_\_\_\_\_ outlined on the Exhibit A – Scope of Work, and upon receipt from the CONTRACTOR of a request for payment. This should be accompanied by photographic evidence (before and after) of the completed work on \_\_\_\_\_ in accordance with Exhibit A – Scope of Work.
- c. **Invoices.** Invoices shall contain sufficient detail for pre and post audit of the work performed for which the invoice is submitted and shall be submitted to the COUNTY designee as follows:

Martin County Office of Community Development  
2401 SE Monterey Road  
Stuart, Florida 34996  
Attn: Susan Kores

Payment as set forth under this Agreement will be made payable to the CONTRACTOR and will be remitted by check to the CONTRACTOR's address as indicated in this AGREEMENT. Upon receipt and approval by the COUNTY designee, the COUNTY will process for payment. The COUNTY shall pay invoices in accordance with the Local Government Prompt Payment Act.

8. **Permit/ Licenses.** CONTRACTOR must secure and maintain any and all permits and licenses required to complete this Agreement.

9. **Use of Art in Public Places.** CONTRACTOR agrees that the Art in Public Places shall not be photographed, videotaped or otherwise publicized or used in marketing, promotion and/or fundraising, in any manner whatsoever by or on behalf of CONTRACTOR, except as part of CONTRACTOR's portfolio, but shall not be associated with COUNTY without prior written permission from the County Administrator. Use of the COUNTY seal is prohibited at all times.

10. **Minimum Insurance Requirement.** The CONTRACTOR must maintain insurance in at least the amounts required throughout the term of this Agreement or any renewals or extensions. Coverage must include the CONTRACTOR and any assistants performing work under this Agreement who are either an employee or volunteer for the CONTRACTOR. The CONTRACTOR must provide a Certificate of Insurance in accordance with the Insurance Requirements and as set forth herein naming the COUNTY as an additional insured evidencing such coverage prior to issuance of a purchase order or commencement of any work under this Agreement.

- a. Loss Deductible Clause: The COUNTY shall be exempt from, and in no way liable for, any sums of money which may represent a deductible in any insurance policy. The payment of such deductible shall be the sole responsibility of the CONTRACTOR and/or subcontractor providing such insurance.
- b. Worker's Compensation Insurance: The CONTRACTOR shall take out and maintain during the life of this Agreement, Worker's Compensation Insurance for all of its employees connected with the work of this project and, in case any work is sublet, the CONTRACTOR shall require the subcontractor similarly to provide Worker's Compensation Insurance for all of the latter's employees unless such employees are covered by the protection afforded by the CONTRACTOR. Such insurance shall comply fully with the Florida Worker's Compensation Law. In case any class of employees engaged in hazardous work under this Agreement at the site of the project is not protected under the Worker's Compensation statute, the CONTRACTOR shall provide, and cause each subcontractor to provide adequate insurance, satisfactory to the COUNTY for the protection of its employees not otherwise protected. Coverage to include Employers Liability \$100,000 each accident, \$100,000 each Disease/Employee and \$500,000 each Disease/Maximum. A waiver of subrogation endorsement must be included (under policy of both Contractor and any subcontractors utilized).
- c. Commercial General Liability Insurance: The CONTRACTOR shall take out and maintain during the life of this Agreement Commercial General Liability insurance Including coverage for bodily injury, property damage, personal/advertising injury and products/completed operations for negligent acts which may arise from operations under this Agreement whether such operations are alone or by anyone directly or indirectly employed by it. Coverage must extend to damage to County Works of Art while in CONTRACTOR's care, custody and control and while performing maintenance, architectural enhancement and preservation work as described in this Agreement. The policy should include Contractual Liability to cover the hold harmless and indemnity provision as set forth in this Agreement. A per project limit of liability is required. A waiver of subrogation must be included (under policy of both Contractor and any subcontractors utilized). The amounts of such insurance shall be the minimum limit as follows:

Each Occurance -	\$1,000,000
Personal/Advertising Injury -	\$1,000,000
Products/Completed Operations Aggregate -	\$2,000,000
General Aggregate -	\$2,000,000
Fire Damage -	\$100,000 and 1 fire
Medical Expense -	\$10,000 any 1 person

Additional Insured requirement: An additional insured endorsement **must** be attached to the certificate of insurance and must include coverage for completed operations (should be ISO CG20101185 or current editions of CG0237 & CG2010) under the General Liability policy.

- d. Commercial Automobile and General Liability Insurance: The CONTRACTOR shall require each of its subcontractors to procure and maintain during the life of this subcontract, insurance of the type specified above or insure the activities of his subcontractors in its policy, as specified above.

11. Indemnification. CONTRACTOR shall indemnify, pay the cost of defense, including attorneys' fees, and hold harmless the COUNTY from all suits, actions or claims, liabilities, assertions of liability, losses, costs and expenses, including but not limited to attorney's fees, reasonable investigative and discovery costs, court costs, claim or claims of any character brought on account of any injuries or damages received or sustained by any person, person or property by or from the said CONTRACTOR; or by, or in consequence of any neglect in safeguarding the work; or by the use of unacceptable materials or methods in the work; or on account of any act or omission, neglect or misconduct of the said CONTRACTOR; or by, or on account of, any claim or amounts recovered under the "Workers Compensation Law" or of any other laws, by-laws, ordinance, order or decree, except only such injury or damage as shall have been occasioned by the sole negligence of the COUNTY. The first ten dollars (\$10.00) of compensation received by the CONTRACTOR represents specific consideration for this indemnification obligation.

12. **Governing Law.** The laws of the State of Florida shall govern this Agreement.

13. **Independent Contractor Status and Compliance with the Immigration Reform and Control Act of 1986.** The CONTRACTOR is and shall remain an independent contractor and is neither agent, employee, partner nor joint venture of COUNTY. CONTRACTOR acknowledges that it is responsible for complying with the provisions of the Immigration Reform and Control act of 1986 located at 8 U.S.C. 1324, et. Seq., and regulations relating thereto, as either may be amended from time to time. Failure to comply with the above provisions shall be considered a material breach and shall be grounds for immediate termination of the Agreement, at the discretion of COUNTY.

14. **Warranty of Quality.** The CONTRACTOR warrants the Work provided under this Agreement shall be free of defects and material in workmanship and that the CONTRACTOR shall correct any such defects which appear for a period of one (1) year from the termination of this Agreement, at the CONTRACTOR's expense. Any use by the COUNTY for purposes other than for adornment of the site as a Work of Art voids this warranty. The CONTRACTOR also warrants that the materials used to frame, display or construct the Work of Art are durable, structurally sound and appropriate to the environmental conditions in which they will be displayed.

15. **Title to the Work of Art.** CONTRACTOR shall deliver the Work of Art free and clear of any liens, claims or other encumbrances of any type arising from the acts of CONTRACTOR. Title to the Work of Art, including all designs and other materials developed by CONTRACTOR in association therewith shall vest in the COUNTY at the time of final acceptance by the COUNTY. CONTRACTOR agrees that the Work of Art shall not be photographed, videotaped or otherwise publicized or used in marketing, promotion and/or fundraising, in any manner whatsoever by or on behalf of CONTRACTOR, except as part of CONTRACTOR's portfolio. The Work of Art shall not be associated with the COUNTY without prior written permission from the County Administrator. Use of the COUNTY seal is prohibited at all times. CONTRACTOR also warrants that the Work of Art is and shall remain a unique edition of one. Upon delivery, CONTRACTOR will furnish a signed and sworn statement attesting to the requirements of this paragraph.

16. **Severability.** The terms and conditions of this Agreement shall be deemed to be severable. Consequently, if any clause, term, or condition hereof shall be held to be illegal or void, such determination shall not affect the validity or legality of the remaining terms and conditions, and notwithstanding any such determination, this Agreement shall continue in full force and effect unless the particular clause, term, or condition held to be illegal or void renders the balance of the Agreement to be impossible for performance.

17. **Conflict of Interest.** CONTRACTOR represents that it has no interest and shall acquire no interest(s), which conflict in any manner with the performance of services required hereunder, as provided for in Chapter 112, Part III, Florida Statutes, CONTRACTOR further represents that no person having any interest shall be employed for said performance. CONTRACTOR shall notify COUNTY in writing by certified mail of all potential conflicts of interest for any prospective business association, interest or other circumstance which may influence or appear to influence CONTRACTOR's judgment or quality of services being provided hereunder. Such written notification shall identify the prospective business association, interest or circumstance, the nature of work that CONTRACTOR may undertake and request an opinion from COUNTY, the prospective business association, interest or circumstance would not constitute a conflict of interest by CONTRACTOR, COUNTY shall so state in the notification and CONTRACTOR shall, at its option, enter into said association, interest or circumstance and it shall be deemed not in conflict with respect to services provided to COUNTY by CONTRACTOR under the terms of this Agreement.

18. **Dispute Resolution**

- a. As a condition precedent to the filing of any legal proceedings, the parties shall endeavor to resolve claim disputes or other matters in question by mediation. Mediation shall be initiated by any party by serving a written request for same on the other party. The parties shall, by mutual agreement, select a mediator within 15 days of the date of the request for mediation. If the parties cannot agree on the selection of a mediator then the COUNTY shall select the mediator, who, if selected solely by the

COUNTY, shall be a mediator certified by the Supreme Court of Florida. The mediator's fee shall be paid in equal shares by each party to the mediator.

- b. The parties expressly agree that each party will bear its own attorney's fees incurred in connection with this Agreement.
- c. This Agreement and the terms hereof shall be construed in accordance with the laws of the State of Florida and venue for all actions in a court of competent jurisdiction shall lie in Martin County, Florida.
- d. The parties expressly and specifically hereby waive the right to a jury trial as to any issue in any way connected with this Agreement.

19. **Public Records.** CONTRACTOR shall comply with public records laws, specifically, CONTRACTOR shall:

- a. keep and maintain public records required by COUNTY to perform the service;
- b. upon request from COUNTY's custodian of public records, provide 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, Florida Statutes or as otherwise provided by law;
- 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 Agreement term and following completion of this Agreement if CONTRACTOR does not transfer the records to COUNTY; and
- d. upon completion of this Agreement, transfer, at no cost, to COUNTY all public records in possession of CONTRACTOR or keep and maintain public records required by COUNTY to perform the service. If CONTRACTOR transfers all public records to COUNTY upon completion of this Agreement, CONTRACTOR shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If CONTRACTOR keeps and maintains public records upon completion of this Agreement, CONTRACTOR shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to COUNTY, upon request from COUNTY's custodian of public records, in a format that is compatible with the information technology systems of COUNTY.

**IF CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT COUNTY'S CUSTODIAN OF PUBLIC RECORDS AT (772) 419-6959, [Public\\_Records@martin.fl.us](mailto:Public_Records@martin.fl.us), 2401 SE MONTEREY ROAD, STUART, FLORIDA 34996.**

IN WITNESS WHEREOF, the COUNTY and the CONTRACTOR have executed this Agreement as of the date first above written.

**REVIEWED BY DEPARTMENT**

**BOARD OF COUNTY COMMISSIONERS  
MARTIN COUNTY, FLORIDA**

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Susan Kores  
Manager, Office of Community Development

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Taryn Kryzda  
County Administrator

**CONTRACTOR**

**APPROVED AS TO FORM AND LEGAL  
SUFFICIENCY BY COUNTY ATTORNEY**

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Krista A. Storey  
Acting County Attorney

**EXHIBIT A**  
**SCOPE OF WORK**