BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

Meeting Date: July 20, 2005

Division: Engineering

Bulk Item: Yes ___ No ___

Department: Engineering

Staff Contact Person: David S. Koppel, P.E.
County Engineer

AGENDA ITEM WORDING: Approval of Award Agreement to Terry Thommes for Art in Public Places at the Freeman Justice Building.

ITEM BACKGROUND:
The Art in Public Places Ordinance #022-2001 provides for an appropriation of 1% of the construction costs for new construction exceeding $500,000 and renovations exceeding $100,000. The Art in Public Places Committee has the sole purpose of reviewing responses to Request for Proposals for art to be acquired and installed in each public construction project and recommends one or more artists for the Freeman Justice Center project.

PREVIOUS RELEVANT BOCC ACTION:

Approval of Ordinance #022-2001, Art in Public Places.

CONTRACT/AGREEMENT CHANGES:

New Agreement.

STAFF RECOMMENDATIONS:

Approval.

TOTAL COST: $33,000.00

BUDGETED: Yes X No ___

COST TO COUNTY: $33,000.00

SOURCE OF FUNDS: 304 Funds
304/24000560620-CG9813-560620

REVENUE PRODUCING: Yes ___ No X

AMOUNT PER MONTH ____ **Year** ____

APPROVED BY: County Atty ___ OMB/Purchasing ___ Risk Management ___

DIVISION DIRECTOR APPROVAL:
David S. Koppel, P.E., County Engineer

DOCUMENTATION: Included X Not Required ____

DISPOSITION: _____

AGENDA ITEM # _____

MONROE COUNTY BOARD OF COUNTY COMMISSIONERS

CONTRACT SUMMARY

Contract with: Terry Thommes

Contract #_____

Effective Date: July 20, 20050

Expiration Date: 60 days subsequent to issuance of CO of CC

Contract Purpose/Description:
Award Agreement for Art in Public Places
Freeman Justice Center

Contract Manager: Larry S Chalmers. (Name) 4468 (Ext.) Construction Management (Department/Stop #)

for BOCC meeting on 07/20/2005 Agenda Deadline: 07/05/2005

CONTRACT COSTS

Total Dollar Value of Contract: $ 33,000. Current Year Portion: $ _____

Budgeted? Yes ☒ No ☐ Account Codes: 304-24000-560620-CG9813-530340

Grant: $ _____ _____-_____-_____-_____-_____

County Match: $ _____ _____-_____-_____-_____-_____

_____-_____-_____-_____-_____

ADDITIONAL COSTS

Estimated Ongoing Costs: $_____/yr For: _____
(Not included in dollar value above) (eg. maintenance, utilities, janitorial, salaries, etc.)

CONTRACT REVIEW

	Date In	Changes Needed	Reviewer	Date Out
Division Director	7-6-05	Yes ☐ No ☑		7-6-05
Risk Management	7-6-05	Yes ☐ No ☑		7-6-05
O.M.B./Purchasing		Yes ☐ No ☐		7/5/05
County Attorney	6/30/05	Yes ☐ No ☑		6/30/05

Comments: _____

OMB Form Revised 2/27/01 MCP #2

Monroe County Art in Public Places Award Agreement

This AGREEMENT dated the____day of _____200 , is entered into by and between the BOARD OF COUNTY COMMISSIONERS FOR MONROE COUNTY, hereinafter "County," and **Terry Thommes,** hereinafter "Artist,"

SS or FEIN # 20 - 1106403.

WHEREAS, the Art in Public Places Ordinance #022-2001, codified at MCC §2-322(A), provides for an appropriation of 1% of the construction costs for new construction exceeding $500,000 and renovations exceeding $100,000; and

WHEREAS, the Ordinance establishes an Arts in Public Places (AIPP) Committee to advise the County Commission regarding art to be acquired and installed in each public construction project subject to the AIPP allocation; and

WHEREAS, the AIPP Committee has selected and recommended to the BOCC one or more artists for this project; and

WHEREAS, the Board of County Commissioners of Monroe County have determined that it is in the interest of the promoting the understanding and awareness of the visual arts to contract for the creation and installation of artwork in **Freeman Justice Center Building, Key West, Florida.**

NOW, THEREFORE, in consideration of the mutual covenants and payments contained herein, the parties have entered into this agreement on the terms and conditions as set forth below.

1. AGREEMENT PERIOD. This agreement is for the period __**July 20, 2005** through 60 days subsequent to date of issuance of Certificate of Occupancy or Certificate of Completion for building. This agreement shall remain in effect for the stated period unless one party gives to the other written notification of termination pursuant to and in compliance with paragraphs 7, 12 and 13 below. All work for which AIPP funds are to be expended must be completed by the stated termination date.

2. SCOPE OF AGREEMENT. The Artist shall provide

3 sets of etched bronze panels for public-access elevator doors on three floors: lobby, and two floors above lobby.
$5,500 per door or $11,000 per set
$33,000 total

Artist shall confer with and coordinate activities with the construction contractor on the job in order to insure that there is as much cooperation and cohesiveness in the incorporation of the art into the building under construction, and so that there shall be the least amount of interference between the Artist and the Contractor.

3. AMOUNT OF AGREEMENT AND PAYMENT. The County shall provide an amount not to exceed $_**33,000** for materials and services used to create and install the project. The Board of County Commissioners assumes no liability to fund this agreement for an amount in excess of this award. Monroe County's performance and obligation to pay under this agreement is contingent upon an annual appropriation by the BOCC. Pursuant to Florida's Prompt Payment Act, upon receipt by County of an **invoice for each of three (3) phases, and documentation** to satisfy the Clerk that the appropriate phase has been completed, payment shall be made for the following phases at the referenced rates:

1) Design Phase: 33.3% of total payment;
2) Materials: 33.3% of total when artists submits **receipts** for materials and eligible costs equal to or greater than 33-1/3% of the contract total; and
3) Completion: 33.3% final payment due when installation is deemed complete and contractual agreement specifications are verified by the Monroe County Purchasing Department.

Eligible costs and expenditures for the project and the total award include, but are not limited to:

A. Artists design fee
B. Labor, materials, contracted services required for production and installation
C. Artists operating expenses related to the project
D. Travel related to this project, pursuant to statutory limitations
E. Transportation of the work to the site
F. Installation to the site
G. Permits and fees necessary for the installation (applicable for exterior projects which also require HARC review)
H. Legal costs directly related to the project
I. Liability costs of artist

Payment shall be made upon presentation of an invoice and documentation necessary to support the completion of the work. Artist shall also provide a release of liens if applicable.

Final payment requests must be submitted no later than 60 days after the completion of project

4. OWNERSHIP and RIGHTS. Upon the installation of the artwork, County shall own the artwork and all rights related thereto fully and completely.

5. RECORDS. The Artist shall keep such records as are necessary to document the performance of the agreement and give access to these records at the request of the County, the State of Florida or authorized agents and representatives of said government bodies. The Artist understands that it shall be responsible for repayment of any and all audit exceptions which are identified by the Auditor General for the

State of Florida, the Clerk of Court for Monroe County, the Board of County Commissioners for Monroe County, or their agents and representatives.

6. MODIFICATIONS AND AMENDMENTS. Any and all modifications of the terms of this agreement shall be only amended in writing and approved by the Board of County Commissioners for Monroe County.

7. INDEPENDENT CONTRACTOR. At all times and for all purposes hereunder, the Artist is an independent contractor and not an employee of the Board of County Commissioners of Monroe County. No statement contained in this agreement shall be construed as to find the Artist or any of its employees, contractors, servants or agents to the employees of the Board of County Commissioners of Monroe County, and they shall be entitled to none of the rights, privileges or benefits of employees of Monroe County.

8. COMPLIANCE WITH LAW. In carrying out its obligations under this agreement, the Artist shall abide by all statutes, ordinances, rules and regulations pertaining to or regulating the provisions of this agreement, including those now in effect and hereafter adopted. Any violation of said statutes, ordinances, rules or regulations shall constitute a material breach of this agreement and shall entitle the County to terminate this agreement immediately upon delivery of written notice of termination to the Artist.

Licensing and Permits. Contractor warrants that it shall have, prior to commencement of work under this agreement and at all times during said work, all required licenses and permits whether federal, state, County or City.

9. HOLD HARMLESS/INDEMNIFICATION. The Artist hereby agrees to indemnify and hold harmless the BOCC Florida Keys Council of the Arts, AIPP Committee and any of its officers and employees from and against any and all claims, liabilities, litigation, causes of action, damages, costs, expenses (including but not limited to fees and expenses arising from any factual investigation, discovery or preparation for litigation), and the payment of any and all of the foregoing or any demands, settlements or judgments arising directly or indirectly under this agreement. The Artist shall immediately give notice to the County of any suit, claim or action made against the County that is related to the activity under this agreement, and will cooperate with the County in the investigation arising as a result of any suit, action or claim related to this agreement.

10. ANTI-DISCRIMINATION. The Artist agrees that they will not discriminate against any of their employees or applicants for employment or against persons for any benefit or service because of their race, color, religion, sex, national origin, or physical or mental handicap where the handicap does not affect the ability of an individual to perform in a position of employment, and to abide by all federal and state laws regarding non-discrimination.

11. ANTI-KICKBACK. The Artist warrants that no person has been employed or retained to solicit or secure this agreement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, and that no employee or officer of the County has any interest, financially or otherwise, in the said funded project, except for general membership. For breach or violation of this warranty, the County shall have

the right to annul this agreement without liability or, in its discretion, to deduct from the agreement price or consideration, the full amount of such commission, percentage, brokerage or contingent fee.

12. TERMINATION. This agreement shall terminate pursuant to Paragraph #1.Termination prior thereto shall occur whenever funds cannot be obtained or cannot be continued at a level sufficient to allow for the continuation of this agreement pursuant to the terms herein. In the event that funds cannot be continued at a level sufficient to allow the continuation of this agreement pursuant to the terms specified herein, this agreement may then be terminated immediately by written notice of termination delivered in person or by mail to Artist. The County may terminate this agreement without cause upon giving **90 days** written notice of termination to Artist. The County shall not be obligated to pay for any services or goods provided by Artist after Artist has received written notice of termination.

13. TERMINATION FOR BREACH. The County may immediately terminate this agreement for any breach of the terms contained herein. Such termination shall take place immediately upon receipt of written notice of said termination. Any waiver of any breach of covenants herein contained to be kept and performed by Artist shall not be deemed or considered as a continuing waiver and shall not operate to bar or prevent the County from declaring a forfeiture for any succeeding breach either of the same conditions or of any other conditions.

14. ENTIRE AGREEMENT. This agreement constitutes the entire agreement of the parties hereto with respect to the subject matter hereof and supersedes any and all prior agreements with respect to such subject matter between the County and the Artist.

15. CONSENT TO JURISDICTION. This agreement, its performance, and all disputes arising hereunder, shall be governed by the laws of the State of Florida, and both parties agree that the proper venue for any actions shall be in Monroe County.

16. ETHICS CLAUSE: Artist warrants that he has not employed, retained or otherwise had act on his behalf any former County officer or employee in violation of Section 2 or Ordinance No. 10-1990 or any County officer or employee in violation of Section 3 of Ordinance No. 10-1990. For breach or violation of the provision the County may, at its discretion terminate this agreement without liability and may also, at its discretion, deduct from the agreement or purchase price, or otherwise recover, the full amount of any fee, commission, percentage, gift, or consideration paid to the former or present County officer or employee.

17. PUBLIC ENTITY CRIME STATEMENT: A person or affiliate who has been placed on the convicted vendor list following a conviction for public entity crime may not submit a bid on an agreement to provide any goods or services to a public entity, may not submit a bid on a agreement with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to public entity, may not be awarded or perform work as a contractor, supplier, sub-contractor, or consultant under a agreement with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, for

CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list. Artist represents that Artist is not on the Convicted Vendor list.

18. AUTHORITY: Artist warrants that it is authorized by law to engage in the performance of the activities encompassed by the project herein described. Each of the signatories for the Artist below that they are authorized to contract Artist's services.

19. LICENSING AND PERMITS: Artist warrants that he or she shall have, prior to commencement of work under this agreement and at all times during said work, all required licenses and permits whether federal, state, County or City.

20. INSURANCE: Artist agrees that it maintains in force at its own expense a liability insurance policy which will insure and indemnify the Artist and the County from any suits, claims or actions brought by any person or persons and from all costs and expenses of litigation brought against the Artist for such injuries to persons or damage to property occurring during the agreement or thereafter that results from performance by Artist of the obligations set forth in this agreement. At all times during the term of this agreement and for one year after acceptance of the project**, unless the requirement is waived by the Monroe County Risk Manager,** Artist shall maintain on file with the County a certificate of the insurance of the carriers showing that the aforesaid insurance policy is in effect. All insurance policies must specify that they are not subject to cancellation, non-renewal, material change or reduction in coverage unless a minimum of thirty (30) days prior notification is given to the County by the insurer.

Acceptance and/or approval of Artist 's insurance shall not be construed as relieving Artist from any liability or obligation assumed under this contract or imposed by law.

The Monroe County Board of County Commissioners, its employees and officials will be included as "Additional Insured" on all policies except worker's compensation.

Any deviations from these General Insurance Requirements must be requested in writing on the County form titled "Request for Waiver of Insurance Requirements" and must be approved by Monroe County Risk Management. The following coverages shall be provided prior to commencement of work governed by this contract:

1. Workers Compensation if, and as required by Florida Statutes.
2. General Liability Insurance. Coverage shall be maintained through out the life of the contract and include, as a minimum:

* Premises Operations
* Products and Completed Operations
* Blanket contractual Liability
* Personal Injury Liability
* Expanded Definition of Property Damage

The minimum limits acceptable shall be:

$300,000 Combined Single Limit (CSL)

If split limits are provided, the minimum limits acceptable shall be:

$100,000 per Person

$300,000 per Occurrence
$ 50,000 Property Damage

An Occurrence Form policy is preferred. If coverage is provided on a Claims Made policy, its provisions should include coverage for claims filed on or after the effective date of this contract. In addition, the period for which claims may be reported should extend for a minimum of twelve (12) months following the acceptance of work by the County.

21. NOTICE. Any written notice to be given to either party under this agreement or related hereto shall be addressed and delivered as follows:

For Artist

Mr. Terry Thommes
Thommes Studio
6185 SW Gaines Avenue
Stuart, FL 34997

For County:
Florida Keys Council of the Arts,
1100 Simonton Street, Key West, FL 33040

and

County Attorney
P.O. Box 1026
Key West, FL 33041-1026

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

(SEAL) BOARD OF COUNTY COMMISSIONERS ATTEST: DANNY L. KOLHAGE, CLERK OF MONROE COUNTY, FLORIDA

By: _____ Deputy Clerk

By: _____ Mayor/Chairman

WITNESSES:

ARTIST:

By: _____ 6/15/2005

MONROE COUNTY ATTORNEY
APPROVED AS TO FORM:
SUZANNE A. VUTTON
ASSISTANT COUNTY ATTORNEY
Date 6/30/05